

COPY

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COMMON PLEAS COURT
ERIE COUNTY, OHIO

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IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO VADA S WILSON
CLERK OF COURTS

2018 CV 0196

Case No. 2018 CV 0196 Tygh M Tone

Kevin J. Baxter,
Erie County Prosecuting Attorney

Plaintiff,

vs.

Judge Frederick H. McDonald
Sitting by Assignment

Carl Heuckroth
d/b/a DSC, LTD

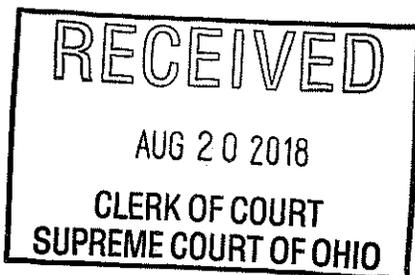
Defendant.

OPINION AND JUDGMENT ENTRY

This case is before the court on the Plaintiff Kevin J. Baxter Erie County Prosecuting Attorney's motion for summary judgment, and the Defendant Carl Heuckroth d/b/a DSC, LTD's opposition to that motion, and upon defendant's request for judgment on the pleadings. For the reasons that follow, I find that plaintiff's motion for summary judgment should be granted and defendant's request for judgment on the pleadings should be denied.

I.

Plaintiff's complaint is filed pursuant to R.C. 2323.52, the vexatious litigator statute. The complaint alleges that defendant has instituted at least twenty one civil actions against various defendants since August 3, 2017, and that nine of those actions were against Erie County officials or employees. The complaint further alleges that defendant's conduct constitutes vexatious conduct as defined by R.C. 2323.52. The complaint seeks to have



defendant declared a vexatious litigator, and that he be prohibited from conducting further litigation without leave of court.

II.

A. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

The general rules regarding motions for summary judgment are well established. In *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978), the Supreme Court of Ohio stated the requirements that must be met before a motion for summary judgment can be granted:

The appositeness of rendering a summary judgment hinges upon the tripartite demonstration: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment.

A party who claims to be entitled to summary judgment on the ground that a nonmovant cannot prove its case bears the initial burden of: (1) specifically identifying the basis of its motion, and (2) identifying those portions of the record that demonstrate the absence of a genuine issue of material fact regarding an essential element of the nonmovant's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The movant satisfies this burden by calling attention to some competent summary judgment evidence, of the type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmovant has no evidence to support his or her claims. *Id.* Once the movant has satisfied this initial burden, the burden

shifts to the nonmovant to set forth specific facts, in the manner prescribed by Civ.R. 56(E), indicating that a genuine issue of material fact exists for trial. *Id. Accord Mitseff v. Wheeler*, 38 Ohio St.3d 112, 114-115, 526 N.E.2d 798 (1988).

The Sixth District Court of Appeals has consistently held that summary judgment should be granted with caution in order to protect the nonmoving party's right to trial. As stated by the court in *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 14-15, 467 N.E.2d 1378 (6th Dist.1983):

We recognize that summary judgment, pursuant to Civ.R. 56, is a salutary procedure in the administration of justice. It is also, however, a procedure which should be used cautiously and with the utmost care so that a litigant's right to a trial, wherein the evidentiary portion of the litigant's case is presented and developed, is not usurped in the presence of conflicting facts and inferences. * * * It is settled law that "[t]he inferences to be drawn from the underlying facts contained in the affidavits and other exhibits must be viewed in the light most favorable to the party opposing the motion, * * *" which party in the instant case is appellants. * * * It is imperative to remember that the purpose of summary judgment is not to try issues of fact, but rather to determine whether triable issues of fact exist. (Citations omitted.)

R.C. 2323.52 states in pertinent part as follows:

(A) As used in this section:

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

...

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. ...

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

...

(D)

(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

...

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)

(1) A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. ...

...

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

III.

Plaintiff has attached certified copies of records from the Erie County Clerk of Courts in eight cases filed between August 2, 2017, and April 2, 2018, against Erie County officials and employees. I was the judge assigned to each of these cases. Six of the cases alleged dereliction of duty by the Erie County officials and employees. The remaining cases allege falsification of records, and wrongful assignment of tax id numbers without deeded collateral resulting in continuing massive corruption. The complaints seek damages ranging from ten million to one hundred million dollars. In the first seven cases attached to the motion for summary judgment, motions to dismiss for failure to state a claim pursuant to Civ. R. 12(B)(6) were granted. Defendant did not file an opposition to any of the motions in those seven cases. In each of those seven cases the court found that the complaint failed to allege any basis to find liability on the part of an Erie County official or employee.

The defendant in his opposition to the motion for summary judgment argues that there are many issues of material fact that preclude summary judgment. He produces no affidavits or documentary evidence to rebut plaintiff's exhibits.

I find on the basis of the record in this case that there are no genuine issues of material fact and that defendant has engaged in "vexatious conduct" and that he is a "vexatious litigator" as those terms are defined in R.C. 2323.52(A)(2)(a) and (b) and R.C.2323.52 (A)(3). I further find that defendant's conduct obviously served merely to harass the defendants, and that his conduct was not warranted under existing law and that it cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Finally, I find that the defendant has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in civil actions in the Common Pleas Court of Erie County. It follows that plaintiff is entitled to summary judgment in his favor.

B. DEFENDANT'S REQUEST FOR JUDGMENT ON THE PLEADINGS

On April 20, 2018, defendant filed a Motion for Judgment on the Pleadings. Plaintiff filed an opposition to that motion. On May 21, 2018, this court in an Opinion and Judgment Entry denied the motion for judgment on the pleadings. For the reasons stated in that Opinion, defendant's current request for judgment on the pleadings must be denied.

JUDGMENT ENTRY

Upon consideration of the record in this case, the court finds that there are no genuine issues of material fact, and that plaintiff is entitled to judgment as a matter of law.

Carl Heuckroth, aka Carl Heuckroth d/b/a/ DSC, LTD, aka Carl Heuckroth Managing Member of D.S.C. L.T.D, having been found to be a vexatious litigator as defined in R.C. 2323.52(A)(3), is Ordered prohibited from doing any of the following without first obtaining the leave of this court:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) Continuing any legal proceedings that he has had instituted in any of the courts specified in subparagraph (a) above prior to the entry of this order;
- (c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in subparagraph (a) above.

It is further Ordered that this Order remain in force indefinitely.

It is further Ordered that the Clerk of Courts for Erie County send a certified copy of this order to the Supreme Court of Ohio as required by R.C. 2323.52(H).

It is further Ordered that the Clerk of Courts for Erie County refuse to accept pleadings or other papers submitted for filing by defendant, unless he has obtained leave of court for the filing of such pleadings or other papers.

8/16/18

Date

Frederick H. McDonald
Judge Frederick H. McDonald

Sitting by Assignment

Journalized 08/16/2018

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I HEREBY CERTIFY THIS TO BE
A TRUE COPY OF THE ORIGINAL
FILED IN THIS OFFICE.

LUVADA S. WILSON, CLERK OF COURTS
Erie County, Ohio

By Judith A. Young