IN THE COMMON PLEAS COURT
OF MIAMI COUNTY, OHIO
GENERAL DIVISION

GARY A. NASAL MIAMI COUNTY PROSECUTOR	:	CASE NO. 11-242
	:	Judge Robert J. Lindeman
Plaintiff, VS.	:	
CARL EDWARD HUELSMAN	:	JUDGMENT ENTRY
Defendant.	:	

This matter came on for consideration pursuant to Loc.R. 3.04 upon the Plaintiff's motion for summary judgment. The Defendant has not responded within rule. The Court has considered the attachments to the motion as well as taken judicial notice of the records of this court, being Case Nos. 06-246, 06-302, 06-714, 08-157, 09-648, 10-1048, 11-27 and 11-242.

BACKGROUND

On March 31, 2011 the Plaintiff filed his petition to have the Defendant, Carl Edward Huelsman, declared a vexatious litigator pursuant to O.R.C. Section 2323.52.

On April 28, 2011 the Defendant answered by filing a six page denial, including several exhibits. This denial included such assertions as: (1) the Defendant claimed he is a non-resident and alien to Miami County, Ohio; (2) the Court has no jurisdiction because (the Defendant) is not a person; (3) the prosecuting attorney is not the plaintiff since this is not a murder case; (4) the Defendant denied he is the Defendant in this case; and the Defendant

argued, that in analyzing his new label, this Court must go through each civil case and determine if the actions of the Defendant constitute vexatious litigation (R.C. 2323.52(A)(2)); and (5) if so, if the Defendant's actions represent behavior that is habitual, persistent and without reasonable cause. R.C. 2323.52(A)(3).

This the Court has done.

On May 23, 2011 the Court granted both parties leave to file a motion for summary judgment by June 3, 2011. Any such motion filed would be considered by the Court pursuant to Loc.R. 3.04.

The Plaintiff has filed a motion and the Defendant has not responded nor filed his own motion, and the matter is now before the Court.

ANALYSIS

O.R.C. Section 2323.52 seeks to prevent abuse of the system by those persons who persistently file lawsuits without reasonable grounds or otherwise engage in such litigation in the trial court of this state.[1]

The legislature further defined a vexatious litigator as:

> "Any person who has habitually, persistently and without reasonable grounds engaged in vexatious conduct or in a civil action or actions * * * whether the 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."[2]

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[1] *Mayer v. Briston* (2000), 91 Ohio St.3d 13.

[2] O.R.C. Section 2323.52(A)(3).

"Vexatious conduct" is defined as meaning conduct of a party in a civil action in which: (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; (C) the conduct is imposed solely by delay.[3]

The Defendant's problems began in 2006 (Case No. 06-246) when he filed suit against one William Grosz, over a dispute regarding a construction business the two of them owned. Several actions followed by Grosz filing suit against Mr. Huelsman (06-302, 06-714) and these were eventually consolidated with the first suit filed (06-246) which had been assigned to Judge Welbaum. As Mr. Huelsman worked through four or five attorneys in his case, it ultimately reached a settlement which was signed by the parties with their attorneys present, on February 6, 2007. By September 19, 2007 matters had taken a turn for the worse as the Defendant began representing himself and began alleging fraud and forgery (because his then attorney gave him bad advice), falsification and bid rigging. A motion to quash he filed in 2007 was overruled and he filed another on July 17, 2009, alleging essentially the same claims. (Most recently he filed a motion to strike on May 17, 2011 which is a rehash of old issues.)

The Defendant subsequently filed 09-648 and 10-1048.

During this time period he began lashing out at the judges, the court system, the receiver appointed in Case 06-246, his own former attorneys, as well as Mr. Grosz and his attorneys and out-of-county judges (Gorman and Gowdown).

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[3]O.R.C. Section 2323.52(A)(2)(a)(b).

The claims and unfounded accusations raised by Mr. Huelsman were designed to harass or maliciously injure the parties and to delay the proceedings (and indeed they did).

No less than four times in four different cases (06-246, 09-648, 10-1048, 11-77), the Defendant has been put on notice his conduct and pleadings were not warranted under existing law and could not be supported by any extension of existing law (by four different judges).[4] The Defendant's pleadings throughout his course of conduct are simply a rehashing of facts long-ago decided, or slanderous claims and accusations for which there is no basis.

The Defendant, since 2006, has habitually, persistently and without reasonable grounds engaged in vexatious conduct in a series of civil actions, some brought by himself and in others through his pleadings.

Accordingly, and upon the Plaintiff's motion for summary judgment, the Court, after a review of the material in a most favorable light to the Defendant, finds there is no genuine issue of material fact and the Plaintiff is entitled to judgment as a matter of law.

The Court finds that Carl Edward Huelsman is a vexatious litigator as that term is used in Ohio Revised Code Section 2323.52 and that he is prohibited from engaging in or doing the following activity without first obtaining the written leave of this court to proceed:

(1) Filing or instituting legal proceedings in the court of claims, or in any court of common pleas, municipal court or county court in the State of Ohio;

(2) Continuing any legal proceedings that he had instituted in any of the Courts noted in (1) above, prior to the filing of this entry;

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[4]Copies attached hereto, and made a part hereof.

(3) Making any application, other than an application for leave to proceed, in any legal proceeding instituted by the vexatious litigator or another person in any of the courts noted herein.

This order shall remain in effect indefinitely.

The Clerk of Courts of Common Pleas Court, Miami County, Ohio, shall send a certified copy of this order declaring Carl Edward Huelsman a vexatious litigator, to the Ohio Supreme Court pursuant to O.R.C. Section 2323.52(H).

Costs assessed to the Defendant.

ROBERT J. LINDEMAN, JUDGE

cc: Gary Nasal
Carl E. Huelsman

Pursuant to Civ.R. 58(B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgment and the date of entry upon the journal of its filing.

Judge

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO
GENERAL DIVISION

CARL E. HUELSMAN	:	CASE NO. 06-246 (Consolidated with 06-302 and 06-714)
Plaintiff	:	
vs.	:	Judge Welbaum
WILLIAM R. GROSZ	:	
Defendant	:	

ORDER GRANTING DEFENDANT GROSZ'S MOTION FOR SANCTIONS
FOR FRIVOLOUS CONDUCT
AND
AWARDING ATTORNEY FEES

On November 26, 2007 the Defendant William R. Grosz filed a motion for sanctions for Huelsman's frivolous conduct in the form of attorney fees. On November 28, Plaintiff Carl E. Huelsman filed a memorandum in opposition. On December 6, the Court held a hearing with the parties present. Carl E. Huelsman appeared *Pro Se.* William R. Grosz was represented by Thomas P. Whelley, II, Attorney at Law. Carl E. Huelsman requested more time to respond. The Court granted him seven days to file a written post-trial memorandum and granted William Grosz seven days to reply to any written response filed by Huelsman. Huelsman filed a

memorandum on December 13.

Defendant Grosz moves the Court for imposition of reasonable attorney fees against Huelsman pursuant to O.R.C. 2323.51. He claims that Plaintiff Huelsman's motions filed on August 15 and September 19, 2007 are frivolous conduct as defined by the statute. Grosz says that Huelsman violated each of the definitions of frivolous conduct set forth in subsections (A)(2)(a)(i) through (iv) when just one would suffice to impose the sanctions. Grosz is correct. See, *Black v. Pheils*, 2004-Ohio-4270, *Poole v. Becker Motor Sales, Inc.* Montgomery App. No. 18407, November 9, 2000, 2000 WL 1675865, *Hollon v. Hollon*, (1996), 117, Ohio App. 3d 344 (Where sanctions of attorney fees were imposed for frivolous challenges to settlement agreements).

The Court finds that Huelsman's said conduct constitutes frivolous conduct under subsections (i) through (iv) in that:

(i) "It obviously serves to merely harass or maliciously injure the other party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation."

(ii) "It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law."

(iii) "The conduct consists of allegations or other factual contentions that have no evidentiary support, or if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

(iv) "The conduct consists of denials or factual contentions that are not warranted by the

evidence or, if specifically so identified, are not reasonably based on a lack of information or belief."

In the August 15, 2007 filing, Huelsman moved to quash the receivership and mutual settlement agreement on the basis of fraudulent acts and forgery. Huelsman's allegation of fraud and forgery is based upon the circumstances surrounding his execution of the mutual settlement agreement.

The parties gathered together with their Attorneys to execute the mutual settlement agreement. After all of the other relevant parties and participants present had signed the agreement Huelsman signed the release with the following reservation, "Without Prejudice UCC 1-207" under his signature. (O.R.C. 1301.13).

Huelsman was told by Grosz's attorney that the signature with this reservation was not acceptable because is was like having no signature at all. With Huelsman's Attorney present, Grosz's Attorney told Huelsman that he had the choice to not sign the document and not have a settlement agreement, or sign it without the reservation and have an agreement. A new signature page was produced and Huelsman signed it without the reservation in the presence of his Attorney.

Huelsman attacked the validity of the receivership in his motion filed on September 19, 2007. The receivership issue was resolved in Grosz's favor by a previous hearing and order. Huelsman agreed to the receivership and it was thereafter twice modified by agreement of the parties while Huelsman was represented by an Attorney.

In general, Huelsman claims most, if not all of his five attorneys in this litigation have given him bad advice, violated ethical rules of conduct, and have prejudiced his rights. As it

relates to the motions at issue, Huelsman's arguments are either wholly without merit or irrelevant to the issues before the Court, or both.

Huelsman claims that the mutual settlement agreement should be invalidated because terms of the settlement are in conflict with the corporate agreements and resolutions. However, the purpose and intent of the mutual settlement agreement was to supercede them and resolve the dispute.

Huelsman points out that at paragraph 1.10, the mutual settlement agreement provides for a stay of the litigation pending a "satisfactory sale" of the equipment and listing for sale of the real property and upon execution of the documents necessary to accomplish the intent of the agreement. The Receiver hired an auctioneer and an auction sale was completed.

In the motions, the memorandum filed on November 28, and the hearings, Huelsman collectively argues that the sale was not "satisfactory" and in violation of the agreement for various reasons. He also argues that failing to properly execute the titles to the motor vehicles to the purchasers including their payment of taxes by the purchaser warrants invalidating the agreement even though the purchasers paid for the items.

Huelsman alleges bid rigging at the auction. There is no evidence of bid rigging under O.R.C. 4707.151. Section (B) provides:

> As used in this section "Bid rigging" means a conspiracy between the auctioneers, apprentice auctioneers, special auctioneers, any participants in an auction, or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

Merely bidding by an agent is not bid rigging. The statute only applies where persons

agree not to bid against each other or conspire to decrease or increase the number or amounts of the bids, not where the agreement is one person will bid on behalf of another. *Harris v. Brown*, Montgomery App. No. 14414, March 29, 1995, 1995 WL 137036.

The evidence is that the auctioneer told the parties that they should bid through agents. The auctioneer explained that in his experience if the parties bid and win it tends to upset the other bidders and they tend to leave early, and tends to reduce the amount of the sale. Also, Grosz asked Carey to bid for him because he feared that Huelsman would run the bid up out of spite.

Bidding through an agent is not bid rigging. Even if the practice were bid rigging no party to this litigation would be prejudiced under the circumstances here and it would not invalidate the mutual settlement agreement.

Huelsman alleges title jumping following the auction. There is no evidence of title jumping regarding the two trucks purchased at the auction by Grosz. Huelsman claims that since Carey was the winning bidder of the trucks it was a violation of the Ohio title laws for the titles to not be transferred to Carey before Grosz took title. Grosz was the winning bidder of vehicles through his agent, Eric Carey. Grosz was the purchaser, not Carey. Even if such conduct was title jumping, it would not invalidate the mutual settlement agreement because the title jumping alleged would not prejudice the parties' rights under the agreement.

Huelsman alleges transfer and sales tax violations following the auction. He says that the mutual settlement agreement should be invalidated because Grosz did not pay the transfer and sales tax on the two trucks in a timely manner. The evidence shows that Grosz did not timely pay the taxes on the two vehicles. However, he did eventually pay the taxes. Even if

Grosz never paid the taxes, it would not effect the validity of the mutual settlement agreement or effect the rights of the parties under the agreement.

Huelsman alleges dishonesty and misconduct on the part of the auctioneer under O.R.C. 4707.15 (causes for suspension or revocation of auctioneer license) and 4707.15, (bid rigging). He objects to the way some of the items were sold because they were not paired properly. Everyone had the same opportunity to bid on the items. Although the items at issue could have been paired better, there is no evidence that the auctioneer violated the statute or engaged in any other misconduct because they were not sold in the manner desired by Huelsman. There is no evidence that the auction was conducted in violation of the mutual settlement agreement or that the rights of the parties were prejudiced.

Huelsman did not present any evidence regarding his other allegations beginning at page six, paragraphs numbered four through seven of the September 19, 2007 MOTION TO QUASH RECEIVERSHIP AND MUTUAL SETTLEMENT AGREEMENT filed on September 19, 2007.

Under O.R.C. 2323.51, the Court may award reasonable attorney fees to any party in a civil action adversely affected by frivolous conduct. The Court finds that the Defendant Grosz was adversely affected by the frivolous conduct and that the amount of reasonable attorney fees incurred as a result of such frivolous conduct is, $5,967.80 regarding EXHIBIT A, the September 28, 2007 statement, $3,434.36 regarding EXHIBIT B, the October 24, 2007 statement, and $2,860.25 regarding the services described in EXHIBIT C, the November 20, 2007 statement.

The Court did not assess .8 of an hour times $300 on 9/06/07 on EXHIBIT B thereby

reducing the amount on that exhibit by $240.00 for an invoice total of $3,434.36. The Court did not assess the fees against Huelsman relating to Grosz's late payment of sales and transfer taxes in the amount of 5 hours at the rate of $300 per hour and subtracted $1,500.00 from the total of $4,360.25 set forth in EXHIBIT C. The total amount of attorney fees imposed as a sanction against Huelsman in this case on the evidence submitted to date is $12,262.41.

Plaintiff Carl E. Huelsman is ordered to pay William R.Grosz the sum of $12,262.41, plus any reasonable attorney fees incurred by Grosz relating to the hearing held on December 6, 2007 in an amount to be determined by the Court.

Grosz may request additional attorney fees by filing a verified statement and request for such additional fees. Huelsman shall have fourteen days from the date of filing of the request to file written objections to such request or request a hearing, or both. The Court will evaluate the request for such additional fees and shall issue a supplemental order on the information submitted.

IT IS SO ORDERED.

JEFFREY M.. WELBAUM, JUDGE

Jr 704 - Pg. 1077

Leg. Mail ✓ All Counsel and Parties of Record

000476

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO
GENERAL DIVISION

CARL E. HUELSMAN, et al.,	:	CASE NO. 09-648 Judge David A. Gowdown
PLAINTIFFS,	:	(By Assignment)
VS.	:	
WILLIAM R. GROSZ, et al.,	:	ORDER GRANTING DEFENDANTS' MOTION FOR SANCTIONS FOR FRIVOLOUS CONDUCT AND AWARDING ATTORNEY FEES AND EXPENSES
DEFENDANTS.	:	

This case is before the Court pursuant to Defendants' motion for sanctions against Plaintiff filed on December 4, 2009, in connection with Plaintiffs' motion for summary judgement. Defendants seek sanctions pursuant to Civil Rule 11 and O.R.C. Section 2323.51 claiming that Plaintiff Huelsman engaged in sanctionable frivolous conduct by filing the within action thereby requiring Defendants to defend the same. Defendants claim they have incurred attorney fees and other expenses. Defendants make their arguments in support of said motion in paragraph IV(C) beginning on page 12 of their motion filed December 4, 2009. Plaintiff Huelsman did not directly address Defendants' motion for sanctions in his memorandum contra filed December 18, 2009.

An evidentiary hearing was conducted on Defendants' motion for sanctions on June 10, 2010. Appearances were Plaintiff Carl

E. Huelsman, pro se, and Defendant William R. Grosz represented by Attorney Joseph C. Krella.

Although invited by the Court to sit at counsel table in the courtroom during the hearing (as he had during previous hearings conducted by this Court), Mr. Huelsman chose to sit in the gallery area of the Courtroom during the entire hearing.

Two witnesses testified at said hearing both called by the Defendants: Thomas P. Whelley, II, one of Defendants' attorneys and Defendant William R. Grosz. In addition, Defendant offered Defense Exhibits A through G inclusive, which the Court admitted into evidence.

Plaintiff Huelsman, from the gallery, chose not to offer any opening statement or closing argument, chose not to cross-examine either of Defendants' witnesses, and chose not to call any witnesses including himself, or to offer any evidence in defense of the motion. Mr. Huelsman stated that he was a by-stander to the proceedings, that he would ultimately be represented by the Miami County Prosecuting Attorney and that he was pleading "the 5th" with regard to the proceedings.

O.R.C. Section 2323.51 provides for the award of sanctions for frivolous conduct in civil actions. In the statute, "conduct" includes the filing of a civil action. "Frivolous conduct" includes (1) conduct that obviously serves merely to harass or maliciously injure another party to the civil action or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation

the Court now determines whether Defendants were adversely affected by it. As argued by the Defendants, the Court finds that the Defendants were adversely affected by the need to defend Huelsman's complaint. Said defense resulted in attorney fees and other expenses as set forth in Defense Exhibit F. These fees and expenses would not have been incurred but for Huelsman's frivolous conduct.

Having determined that the Defendants were adversely affected by Huelsman's frivolous conduct, the Court now determines the amount of the award. Pursuant to O.R.C. 2323.51, the Court can consider in its award (1) attorneys fees, (2) court costs and (3) other reasonable expenses. All of these costs and expenses must be shown to have been reasonably incurred and necessitated by the frivolous conduct.

Attorney Thomas Whelley, II testified as to the attorney fees, costs and other expenses incurred by Defendants in the defense of the within suit, all of which are detailed in Defense Exhibit F. Mr. Whelley, whom the Court considered to be an expert witness, testified that he is a partner with Dinsmore and Shohl in its Dayton Office; that he has been practicing law for over thirty years; that he was the lead attorney for the Defendants; that he is familiar with the billing statements to the Defendants; and that he is familiar with what attorneys charge for litigation representation in the community.

Based on the testimony of Mr. Whelley and calculations made by the Court from the information in Exhibit F, the Court finds

the following hourly rates that were charged. For services rendered in 2009, Mr. Whelley's hourly rate was $325; Mr. Krella's hourly rate was $175; Susan Solle's hourly rate was $215; and the hourly rate for legal assistants was $65. For services rendered in 2010, Mr. Whelley's hourly rate was $340; Mr. Krella's hourly rate was $190; Lisa Pierce's (a partner) hourly rate was $285; and the hourly rate for legal assistant was $65. Based on the evidence, the Court finds the hourly rates billed for services to be fair and reasonable in the Troy and Dayton community.

The summary page for Exhibit F represents eleven (11) billing cycles. The Court has reviewed each billing in detail. While the majority of the services billed relate to the defense of the litigation in the within case, there are some services that do not. Services relating to matters involving litigation in three other case numbers between the parties, services related to matters involving a pending receivership or disposition of real estate therein, and services admitted to be unrelated and "blackened-out" on Exhibit F will not be allowed by the Court.

The following are reductions from the total fees and costs of $26,245.73 as represented on Exhibit F:

1. 7/21/09: .30 of an hour @ $175 per hour totaling $52.50
2. 10/14/09: .30 of an hour @ $325 per hour totaling $97.50
3. 11/10/09: 1.00 hour @ $325 per hour totaling $325
4. 3/19/10: .20 of an hour @ $285 per hour totaling $57.00
5. 3/22/10: .20 of an hour @ $285 per hour totaling $57.00
6. 3/22/10: .30 of an hour @ $340 per hour totaling $102.00

7. 3/23/10: .20 of an hour @ $285 per hour totaling $57.00

8. 3/23/10: 2.00 hours @ $340 per hour totaling $680.00

9. 3/23/10: .30 of an hour @ $190 per hour totaling $57.00

10. 3/29/10: .50 of an hour @ $340 per hour totaling $170.00

11. 3/30/10: .20 of an hour @ $285 per hour totaling $57.00

12. 3/30/10 .60 of an hour @ $190 per hour totaling $114.00

13. All attorney services in the billing statement dated May 19, 2010 for services rendered 4/9/10 through 4/29/10 inclusive totaling $734.

14. 5/5/10: .70 of an hour @ $190 per hour totaling $133.00

The total deduction for attorney fees is $2,693.00

Mr. Whelley has asked for his and Mr. Krella's time necessitated by the sanction hearing held on June 10, 2010. The total request (as handwritten on the summary sheet) is $1,000 representing Mr. Whelley's time, and $1500 representing Mr. Krella's time. The Court will not allow these amounts but will allow two (2) hours for Mr. Whelley (hearing and travel) for a total of $680 and four (4) hours for Mr. Krella (preparation, hearing, and travel) for a total of $760 for a grand total of $1440.00 as additional attorney fees.

As adjusted by the deduction of $2,693.00 above and the addition of $1,440.00 above, the grand total of attorney and legal assistant fees and other costs and expenses that the Court allows is $24,992.73. The Court makes the specific finding that as modified above, the attorney fees, legal assistant fees and other

costs and expenses as represented in Exhibit F are reasonable and necessary and reasonably incurred and necessitated by Plaintiff's frivolous conduct.

Based on the foregoing, Plaintiff Carl E. Huelsman is ORDERED to pay to William R. Grosz the sum of $24,992.73 as a sanction for frivolous conduct.

IT IS SO ORDERED.

David A. Gowdown, Judge
(By Assignment)

Jr. 792 Pg. 476

CC: Carl E. Huelsman, 4340 Iddings Road, West Milton, OH 45383 and 3900 St. Route 571, Troy, OH 45373
Thomas P. Whelley, II, Dinsmore & Shohl, LLP, 1100 Courthouse Plaza SW, Dayton, OH 45402

NOTICE

All counsel and parties are notified that this order is a Final Appealable Order under Ohio Revised Code Section 2505.02. Pursuant to App. Rule 4, the parties shall file a notice of appeal within thirty (30) days.

PRAECIPE

The Clerk of Court is ordered to cause a copy of this Order to be served upon all counsel and parties of record.

IT IS SO ORDERED.

David A. Gowdown, Judge
(By Assignment)

IN THE COMMON PLEAS COURT
OF MIAMI COUNTY, OHIO
GENERAL DIVISION

CARL E. HUELSMAN, et al.	:	CASE NO. 10-1048
Plaintiffs,	:	Judge Robert J. Lindeman
VS.	:	
WILLIAM R. GROSZ, et al.	:	JUDGMENT ENTRY
Defendants.	:	

This matter came on for consideration pursuant to Loc.R. 3.03 upon the Defendants' motion to strike/or dismiss the complaint filed against them.

The Plaintiffs have not responded within rule.

The Plaintiff's Complaint:

The Court has reviewed the Plaintiffs' six page complaint several times but cannot discern a recognizable cause of action.

It appears all the Plaintiffs' allegations stem from previous cases which are referenced in his complaint and the attachments to his complaint. From the complaint and attachments, it appears all of the prior cases, 06-246, 06-302, 06-714, 08-157 and 09-648 have been terminated.

Now, contrary to *res judicata*, the Plaintiffs wish to rehash old complaints and allegations.

The Plaintiffs seek the following relief on pages 5 and 6 of their complaint:

(A) The Court order the prosecuting attorney to prosecute to judgment the Defendants. The prosecutor is not a party to this case. You cannot order a person to perform an act when he has not been afforded due process and made a party to the case.

(B) This Court consolidate Case 09-648 with the case the prosecuting attorney files. The prosecutor will not be filing anything unless he decides to do so. In addition, Case 09-648 has proceeded to judgment and is now in attachment mode per the Plaintiffs' own pleadings and attachments.

(C) This Court remove all sanctions and lock down orders (which arose in 09-648). This Court does not have authority or jurisdiction to issue such orders. The Plaintiffs should have appealed such decisions to the Second District Court of Appeals under 09-648 if they were in disagreement with them.

(D) That this Court order a receivership placed on Defendants. The Plaintiffs have failed to statutorily comply with the law for seeking a pre-judgment receivership and the complaint provides the Court with no basis to order a receivership.

(E) That the Court direct the prosecuting attorney to appeal all actions of the Defendants. As noted previously, this Court cannot order someone to perform an act when they are not a party to the case.

(F) That the Court appeal all tax returns filed by the Defendants. This is simply nonsense. The Court has no authority to appeal tax returns of another entity (appeal to who, anyway?).

The Plaintiffs have managed to claim utterly nothing that the Court can grant relief upon, with surprising aplomb.

Previous Orders in 09-648:

The Plaintiff has attached a copy of one of his previous cases (09-648) to his complaint as Exhibit 1, and the Court's entry in that case filed August 20, 2010, which noted summary judgment had been granted against the Plaintiffs as well as attorney fees for frivolous conduct, O.R.C. 2323.51. The Plaintiffs were notified this was an appealable order, but apparently chose not to appeal it.

That entry precludes the Plaintiffs from refiling the same claims under a different case number. Normally the bar of *res judicata* cannot be raised in a motion to dismiss under Civ.R. 12(B)(6), *Jim's Steak House, Inc. v. City of Cleveland* (1998), 81 Ohio St.3d 18, because to apply *res judicata*, the Court must consider matters outside the pleadings, being the resolution of another case. But in this case, the Plaintiffs have attached to their complaint such paperwork which permits the Court to consider them on a motion to dismiss.

The Defendants have also noted that Case 09-648 prohibits the Plaintiffs from filing any additional documents with the Clerk regarding these parties until the Plaintiffs post a $25,000.00 cash bond to cover the costs of such frivolous filings.

It also appears no bond has been posted by the Plaintiffs.

Nevertheless, this entry is not before the Court because it was not attached to the Plaintiffs' complaint and, while a court may take judicial notice of matters within the Court's records (*Natl. Distillers & Chem. Corp. v. Limbach* (1994), 71 Ohio St.3d 214), such matters are

still evidence as that term is used and the Court would be relying on matters outside the pleadings. Civ.R. 12(B) does not permit the Court to consider such matters.

Accordingly, the Plaintiffs' complaint is dismissed. Costs to the Plaintiffs.

RC

ROBERT J. LINDEMAN, JUDGE

cc: Carl Edward Huelsman
Creative Construction Services, LLC/ Creative Construction Investments LLC
Thomas P. Whelley II/Joseph C. Krella

Pursuant to Civ.R. 58(B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgment and the date of entry upon the journal of its filing.

RC

Judge

Jr. 803 Pg 545

IN THE COMMON PLEAS COURT OF MIAMI, COUNTY, OHIO
GENERAL DIVISION

Carl Huelsman

vs.

Case No. 11-077

Miami County, Ohio

DECISIONS

The case is before this court upon defendant Miami County's Motion to Dismiss the complaint filed pursuant to Rule 12 (B) (6) and (7) of the Civil Rules and plaintiff's Motion to Quash and Judicial Notice of Certain Law, filed March 11, 2011.

I. Plaintiff's Motion to Quash Defendant's Motion to Dismiss

Plaintiff's response to defendant's Motion to Dismiss has been to file a " Motion to Quash" which as best as this court can decipher is arguing that Judge Lindeman " has not set a proper venue" for this case, and "... would not be unbiased."
(Plaintiff's motion P 1.)

The Plaintiff's motion then cites Judge Lindeman's handling of judicial duties in other cases involving plaintiff as a party and which make-up some of the allegations set forth in the complaint at bar.

This court first observes that there is nothing in defendants Motion to Dismiss that would subject it to a Motion to Quash. It was timely; based upon C.R. 12 B (6) and (7); and filed on behalf of the only defendant in this case, Miami County. Secondly, although plaintiff complains of Judge Lindeman's handling of other cases in the body of the

complaint herein, Judge Lindeman is not a party to this case. Lastly, to the extent plaintiff's motion is complaining of Judge Lindeman being the judge on this case, he is not. By entry he has recused from this matter and the Supreme Court Of Ohio has assigned the undersigned as a visiting judge to the case. The undersigned is a retired judge from Franklin County.

Wherefore, for the foregoing reasons, plaintiff's Motion to Quash Defendant's Motion to Dismiss is found to be not well-taken and is hereby DISMISSED.

II. Defendant's Motion to Dismiss

Pursuant to C.R. 12 B (6) and (7), Miami County has filed a six branch Motion to Dismiss. The court has read the complaint and defendant's Motion to Dismiss and finds the motion to be well-taken.

A) CHAPTER 2744

To the extent that plaintiff is claiming money damages from negligent or wrongful conduct of its officers or employees Miami County, as a political subdivision of the State of Ohio asserts and is entitled to the protections of Chapter 2744 O.R.C. The complaint herein alleges liability of Miami County based on what can only be described as the performance of judicial, quasi-judicial, (or) prosecutorial functions of its officers or employees and for which 2744.03 (A) (1) provides immunity. The complaint simply does not assert claims beyond the reach of the immunity provided.

Moreover, plaintiff's only stated demand for specific monetary relief is in the form of $ 250.000.000 in punitive damages. As defendant correctly points out,

2744.05(A) O.R.C. specifically bars claims for punitive damages against political subdivisions in Ohio.

B) MANDAMUS

Plaintiff's complaint demands the court order certain judicial and law enforcement personnel of Miami County to order a certain company or companies to file tax returns for certain years; to remove a sheriff's deputy from office, and to prosecute certain individuals. To the extent that plaintiff is seeking what sounds like relief in mandamus, defendant correctly sets out the law of Ohio that requires one pursuing mandamus to "... establish a clear legal right ... a clear legal duty on the part of the respondents... and the lack of an adequate remedy at law." (Defendant's Motion to Dismiss p.5) Furthermore, to the extent plaintiff's efforts are directed at the judiciary, the law requires that a writ of mandamus cannot control judicial discretion. Nothing in the complaint demonstrates the plaintiff could establish a clear legal right to relief; a clear duty; and requisite failures to perform.

Moreover, the law of Ohio is clear that any attempt to bring an action in mandamus must be captioned in the name of the State. Failure to properly caption the case is fatal and requires dismissal of the complaint for mandamus. Here, plaintiff has not met the obligatory captioning requirement and for that reason alone, to the extent that the complaint seeks relief in the nature of mandamus, must be dismissed.

C) JOINDER

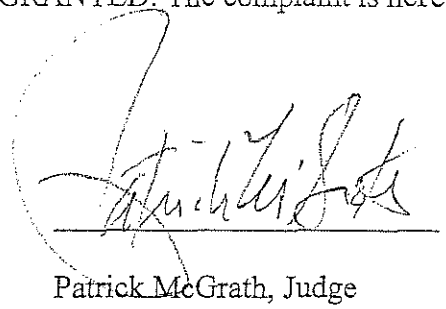
Furthermore, the court agrees with defendant the complaint has identified corporate entities and as individual as parties who would require joinder herein in order to afford complete relief(i.e. Mr. Grosz; " Smitties Lock Service", Creative Construction Services LLC. and Creative Construction Investment LLC.). These are parties requiring joinder who have an interest in the subject matter which, in their absence, may be impaired or impeded. Thus, plaintiff has failed to join necessary parties in under C R 19.

D) RES JUDICATA

Defendant points out the complaint's reference to case # 02-246 and #06-306 of this court and argues that to the extent plaintiff is attempting to re-litigate here all or some portion of the matters litigated in the prior cases, that the doctrine of res judicata would create an additional reason to bar this action. Without an exact comparison of the claims, a total res judicata analysis cannot be made, but it is apparent from the face of the complaint that the subject-matter; parties; and claims involved in the prior cases are repeated here. Thus, res judicata may serve as a further bar to this action, but the court believes it would be more appropriately addressed via a CR 56 process as it would require additional documents. Nevertheless, even absent res judicata as a basis, defendant's motion is meritorious .

WHEREFORE, for the reasons set forth above, the court finds defendant's motion

to be well-taken and it is hereby GRANTED. The complaint is hereby ordered DISMISSED.



Patrick McGrath, Judge

(by assignment)

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