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REBECCA E. BHAER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Peter Gwyn, Law Director
City of Perrysburg,

Case No. 97-CV-408

Plaintiff,

vs.

**MEMORANDUM DECISION
Plaintiff's Motion for
Summary Judgment**

Kurt Kluge,

Defendant.

Judge Gale Williamson

INTRODUCTION

This case is before the Court on the Motion of Plaintiff for Summary Judgment pursuant to Civ.R. 56, filed August 25, 1998, and Memorandum in Support and Opposition thereto. Based on the facts and applicable law, the Court finds that it must grant the Motion because there is no genuine issue as to any material fact and the Plaintiff is entitled to judgment as a matter of law.

FACTS

Peter Gwyn, Law Director of the City of Perrysburg, filed this Complaint against Kurt Kluge asking the Court to declare Mr. Kluge a vexatious litigator and order restrictions under R.C. 2323.52. The case *sub judice* originated from Mr. Kluge's criminal misdemeanor convictions that triggered a series of civil actions.

In 1995, Mr. Kluge, the *pro se* Defendant in this case, was charged with, convicted of, and sentenced in the Perrysburg Municipal Court for filing false tax returns and failing to pay tax on his income. Mr. Kluge--claiming he was falsely accused, falsely arrested, harassed, denied a fair trial, denied civil rights, and

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subjected to disparate treatment and lack of due process--filed Appeals and numerous Motions and Complaints against the City of Perrysburg, Perrysburg's Tax Administrator, Law Director, and Prosecutor in an attempt to "correct this injustice". In all cases, his lawsuits were found not well taken. The facts and procedural history of these underlying causes of action have been fully discussed and documented in Mr. Gwyn's Memorandum in Support of his Motion. Mr. Kluge perceives these events as a "diatribe of justice" by the City of Perrysburg and the Perrysburg Municipal Court. Mr. Gwyn argues it has reached the level of vexatious litigation.

The basis of this case *sub judice* is Civil Case No. 97-CV-371 filed in the Wood County Common Pleas Court by Mr. Kluge on August 5, 1997 against City of Perrysburg, Martin Aubry, Peter Gwyn, and Betty Barbe titled "Taxpayers Action per R.C. 309.05 with Injunctions, Wanton, Willful, Neglect of Duty". Mr. Kluge, without authority, included the State of Ohio as Plaintiff in the case. Upon Motion of Attorney General Betty Montgomery, the court corrected the misjoinder and dismissed the State of Ohio as a party. In a separate entry, the Court also dismissed the Complaint pursuant to Civ.R. 12(B)(6). Mr. Kluge filed an Objection and Appeal (sic), a Motion to Reconsider, and a Motion to Add the State of Ohio, Tax Commissioner and Attorney General as defendants in the case, which were denied by the Court. The Court found "nothing in its prior Order which warrants modification or reversal". Despite this final Order, Mr. Kluge filed subsequent Motions pertaining to the case, i.e. Order to Compel Defendants and Joinder of Cases (sic), Objection to Defendant's Motion to Dismiss, Defendant's Motion to Add Party's (sic) and Joinder of Cases (sic).

DISCUSSION

Civ.R. 56 provides that summary judgment shall be granted if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, show: (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; (3) that reasonable minds can come to but one

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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. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 375 N.E.2d 46.

The vexatious conduct claim in this case was filed pursuant to R.C. 2323.52(A)(2) and (3) which states in pertinent part:

“(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 a court of common pleas, municipal court***, 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.*****”

Mr. Gwyn argues specifically that Mr. Kluge's conduct in the filing of Civil Case No. 97-CV-371, the assertion of his claims, defenses, or other position in connection with the civil action, filing pleadings, motions, or other paper, R.C. 2323.51(A)(1)(a), is not warranted under existing law and serves merely to harass the Defendants in that case. In support of his argument, Mr. Gwyn submitted copies of the various papers filed in the case as well as the underlying tax cases. Mr. Kluge, in response, argues that there are “genuine unresolved tax issues of material fact”, that this case is a tort claim under 42 U.S.C. 1983, that the case is based upon a gross lack of credible evidence, and that R.C. 2323.52 is not intended to silence the whistle blower on corruption and cover-up by public servants. In essence, Mr. Kluge argues that there is a basis and good faith argument for filing and persistently pursuing his 97-CV-371 lawsuit.

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This Court recognizes Mr. Kluge's frustration and does not want to diminish his position. The judicial system holds that a plaintiff must file a complaint to vindicate his rights. However, courts cannot and should not tolerate abuse of the judicial process. Mr. Kluge has filed several complaints and numerous other papers pertaining to the same issues both in the Perrysburg Municipal Court and Wood County Common Pleas Court. He was afforded an opportunity to assert his arguments in all cases. The respective courts have heard and considered those arguments but found them not well taken on the basis of the law.

The constant theme of Mr. Kluge's arguments since 1995 and in all of his pleadings, motions, and briefs is that an injustice has been perpetrated on him and that he "will not go away until [his] false criminal conviction is vacated." *Exhibit 11*, p.7. Most recently, he stated in the Conclusion Section of his Memorandum that 97-CV-371 will go forward. That is simply wrong and manifests an intention to continue filing motions. That case as well as the underlying case in Municipal Court, indisputably, have been adjudicated and affirmed. The judicial system has limited resources and cannot continuously and indefinitely hear the same case cloaked in different forms.

Mr. Kluge's arguments echo the same issues that he has been asserting in his previous tax cases. The doctrine of *res judicata* prevents this Court from considering those matters. *Res judicata* is designed to assure an end to litigation. *LaBarbera v. Batsch* (1967), 10 Ohio St.2d 106, 113, 227 N.E.2d 55. "Whenever a matter is finally determined by a competent tribunal, it is considered at rest forever." *Bean v. Bean* (1983), 14 Ohio App.3d 358, 361, 471, N.E.2d 785 (citation omitted).

This Court cannot condone Mr. Kluge's conduct in persistently pursuing his unwarranted claim and assertions under 97-CV-371. Mr. Kluge may sincerely believe that he has a cause of action under 97-CV-371. However, this is no longer a question of mistaken interpretation or sincere belief in his arguments. The respective courts have issued their judgments. Regardless of whether an objective or subjective standard is used, this Court finds that Mr. Kluge's conduct

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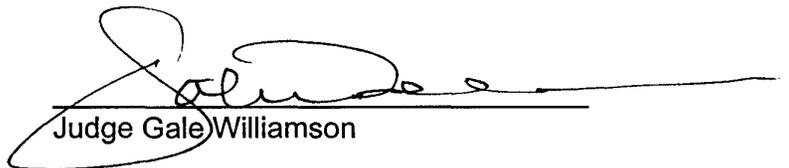
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is vexatious. Mr. Kluge filed eight (8) documents in the Perrysburg Municipal Court captioned in different ways in an attempt to reopen his tax case that has been adjudicated, affirmed and reconsidered. All those motions or complaints were found not well taken. Later, he initiated a lawsuit in the County Common Pleas Court. The same pattern of filing unwarranted documents is evident on the record.

In light of the history presented in this case, the Court finds that Mr. Kluge has engaged in vexatious conduct and must be declared a vexatious litigator pursuant to R.C. 2323.52.

CONCLUSION

Based on the law and the circumstances of this case, this Court finds that Mr. Kluge's actions constitute sanctionable "vexatious conduct" and declares him a vexatious litigator. Plaintiff's Motion for Summary Judgment is found well taken and is granted.


Judge Gale Williamson

xc: Peter Gwyn
Kurt Kluge

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REBECCA E. BHAER

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Peter D. Gwyn
Director of Law

Plaintiff

VS

Kurt G. Kluge

Defendant

Case No. 97-CV-408

JUDGE WILLIAMSON

AMENDED

JUDGMENT ENTRY AND ORDER
GRANTING MOTION FOR
SUMMARY JUDGMENT

Peter D. Gwyn (#0025690)
110 West Second Street
Perrysburg, Ohio 43551
(419) 874-3569

This cause came before this Court on the Motion of the Plaintiff requesting the Court grant him summary judgment pursuant to Rule 56 of the Ohio Rules of Civil Procedure.

Oral arguments having been waived or found unnecessary, the Court reviewed all pleadings, affidavits and memoranda that have been filed in this cause.

The Court on due consideration finds the Motion well taken and that it should be granted for the reasons set forth in the Memorandum Decision attached.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Summary Judgment is hereby granted and that the Defendant Kurt

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Kluge is hereby deemed a vexatious litigator.

IT IS FURTHER ORDERED that the Defendant, Kurt Kluge, is prohibited from doing the following without first obtaining 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 the Court of Claims or in a Court of Common Pleas, Municipal Court or County Court prior to the entry of this Order;

(c) Making any application in any legal proceedings instituted by the Defendant or another person in the Court of Claims, or in a Court of Common Pleas, Municipal Court or County Court.

Costs are assessed to the Defendant.


Judge Gale Williamson

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