

**CERTIFIED
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In the Huron County Court of Common Pleas

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HURON COUNTY
COMMON PLEAS COURT
2020 JAN 27 A 11:27
SUSAN S. HAZEL
CLERK OF COURTS

Huron County Prosecuting Attorney,)
James Joel Sitterly
Plaintiff)

Case No. CVH 2019 0440

-vs-

) Judge Janet R. Burnside, Ret.
(sitting by assignment)

Michael K. Luna)
Defendant)

JOURNAL RECD 01-27-2020
VOL 774 PG 69

) Judgment Entry and Verdict

This matter came on for trial with both parties present and participating. Plaintiff's complaint of 5/30/19 seeks the declaration that Defendant Michael K. Luna is a vexatious litigator under R.C. 2323.52. Evidence was received and arguments had. Defendant Luna appeared *pro se*.

Civ. R. 56(D) findings were previously made by the court and therefore trial was called on all remaining issues, *i.e.*, issues not already determined as a result of summary judgment proceedings. The material facts established without controversy under Civ. R. 56(D) include:

1. Defendant Michael K. Luna filed 14 civil actions within one year of 5/30/19 against unidentified defendants.
2. All 14 actions were dismissed by Luna or by a court within that one year ending 5/30/19.
3. Plaintiff as prosecuting attorney and his office defended or caused to be defended all of the 14 actions bought by defendant.
4. Huron County and its employees spent some unspecified amount of time and money in defense of the 14 legal actions filed by defendant.

FACTUAL BACKGROUND

In March 2017 Luna was indicted for drug trafficking in Huron County Common Pleas Court. After his release on bond, he absconded and was then indicted in this Court for failure to appear. By May 2018 Luna had been returned to the Huron County jail to face the two indictments and he remained in jail

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through his August 2018 sentencing. Huron County Common Pleas Judge James Conway presided over Luna's cases.

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The evidence showed that during the 42 day period from 6/6/18 through 7/17/18, Luna filed 16 separate civil actions against Judge Conway and Huron County Prosecutor James Joel Sitterly, the Huron County sheriff, various Huron County sheriff deputies and jail correction officers involved in his jail stay, and other county employees. The Huron County Clerk of Courts testified these cases represented 10% of her office's civil filings for the "CVH" case type for the entire year of 2018.

On July 16, 2018 Luna accepted a plea bargain in his two criminal cases, entered certain guilty pleas and was later sentenced. After pleading guilty, Luna stopped filing civil cases against these defendants and voluntarily began dismissing virtually all of the cases he had filed. His dismissals appear voluntary because there was no evidence presented to suggest that Luna was required to dismiss these cases as a term or condition of his plea bargain and no evidence was presented to suggest any other compulsion to file the dismissals.

This pattern of conduct strongly supports the conclusion that Luna filed these cases to thwart his prosecution in this Common Pleas Court and to harass Huron County public officials and employees involved in it.

CASES AGAINST PROSECUTOR

In the 37 day time span from 6/7/18 through 7/13/18, Luna filed 4 actions against the Huron County Prosecutor, Plaintiff here, namely, case numbers 0442, 0520, 0525, and 0537. Filed under 28 U.S.C. 1983, the cases contained similar claims that the prosecutor conspired with co-defendants to deprive Luna of his constitutional rights. These suits and others filed by Luna claim Huron County officials and its Common Pleas Court lack jurisdiction over him by virtue of a single, allegedly mis-stated phrase in his first indictment, namely, "sell or offer to sell" marijuana. Luna repeatedly claimed this allegation was impermissibly in the disjunctive and as stated, no valid criminal charge is set forth. Luna appears to argue that "sell or offer to sell" expresses a choice between two mutually exclusive possibilities and stated no valid criminal charge. As a result, he argues, local authorities lacked jurisdiction to prosecute him. He cites non-Ohio case law and very old Ohio case law predating its current criminal code which, he claims,

support his position. The complaints' prayers for relief sought substantial sums from \$500,000 to \$2,000,000.

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CASES AGAINST JUDGE

In the 41 day time span from 6/7/18 through 7/17/18, Luna filed 7 actions against Judge Conway, case numbers 0442, 0497, 0504, 0520, 0525, 0546, and 0547. Three of these cases included the Prosecutor as a co-defendant and therefore 8 separate Luna lawsuits out of the total of 16 lawsuits were against the prosecutor and judge in his two criminal cases.

Filed under 28 U.S.C. 1983, these cases contained similar claims that the judge conspired with co-defendants to deprive Luna of his constitutional rights. These suits likewise re-hashed the argument that Huron County lacked jurisdiction over him because of the improper, "sell or offer to sell", disjunctive language in his indictment. The suits also complained about conditions in jail including alleged lack of notary service and law library access and about Luna's assigned counsel. In case number 0497 against Judge Conway, Luna's assigned counsel was a named co-defendant. Three days after filing this latter case, Luna filed case number 0504 against Judge Conway alleging that his assigned counsel had withdrawn from his case and that Judge Conway was retaliating against Luna by delaying the appointment of new counsel and doing so because of Luna's lawsuits against him. The complaints' prayers for relief sought substantial sums from \$300,000 to \$1,000,000.

CASES AGAINST SHERIFF

In the 42 day time span from 6/6/18 through 7/17/18, Luna filed 9 actions against Huron County Sheriff Todd Corbin, case numbers 0436, 0442, 0455, 0463, 0479, 0497, 0525, 0542, and 0547. Four of these cases included Prosecutor Sitterly or Judge Conway, so the filings against Sheriff Corbin represent an additional net five cases not yet summarized. Number 0436 was a habeas corpus action based on Luna's above-described lack of jurisdiction claim. The eight suits remaining were under 28 U.S.C. 1983 and had similar claims of conspiracy to deprive Luna of his constitutional rights and often re-hashed the lack of jurisdiction claim. They also contained complaints about conditions in jail (lack of notary service and law library access), drug testing, and in-jail disciplinary actions against Luna. Their prayers for relief sought similar sums.

CASES AGAINST JAIL STAFF

In this same time period Luna filed two additional suits against jail correction officers and deputies complaining about in-jail discipline under 28 U.S.C. 1983. These were in addition to the 9 cases filed against Sheriff Corbin.

OTHER EVIDENCE

Testimony established that for all the 42 U.S.C. 1983 actions the defendants referred the lawsuits to their legal counsel but in view of the conflicts of interest created, Judge Conway referred his cases to his insurance counsel and Prosecutor Sitterly referred his cases to his outside counsel. Prosecutor Sitterly's office represented Sheriff Corbin on the habeas corpus petition. All witnesses testified to the extra time and effort Luna's filings required of their offices.

Clerk of Courts Susan Hazel testified to the court costs incurred by Luna in the above lawsuits, all of which remain unpaid. At least 6 separate lawsuits contained the same claim that there was a lack of jurisdiction over him because of invalid, disjunctive language in his drug trafficking indictment. Therefore there are 6 sets of court costs incurred in six cases with duplicative claims and causing duplicative clerk's office time and expense. (The Prosecutor presented evidence of 11 separate Luna lawsuits which make this same claim.)

ANALYSIS

To warrant a vexatious litigator declaration the evidence must establish conduct as defined under R.C. 2323.51(A)(1). Most of Luna's conduct consisted of conduct defined in R.C. 2323.51(A)(1)(b):

"The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature."

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To warrant a vexatious litigator declaration the evidence must establish this conduct was "vexatious" meaning,

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"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.
- (c) The conduct is imposed solely for delay."

R.C. 2323.52(A)(2).

The credible evidence convinces this Court that Luna's conduct in filing so many lawsuits over a short time period against the same defendants with repetitive arguments and duplicative claims "serve[d] merely to harass or maliciously injure [the other parties] to the civil action" and fits the definition of vexatious conduct under R.C. 2323.52(A)(2)(a). An intent to harass and maliciously injure is amply supported, *inter alia*, by Luna's outrageous adjectives and invectives hurled against his various defendants in his complaints. His language did more than allege legal violations; it was insulting, demeaning and confrontational.

The Court also concludes some of his lawsuits were imposed solely for delay and Luna's conduct filing so many lawsuits over a short time period against the same defendants with repetitive arguments and duplicate claims fits the definition of vexatious conduct under R.C. 2323.52(A)(2)(c).

The Court also concludes his litigation conduct in major respects was "not warranted under existing law" or supportable in good faith for a change in the law and that conduct fits the definition of vexatious conduct under R.C. 2323.52(A)(2)(b). This is demonstrated by the following. Assistant Prosecutor Couch testified to the time and effort involved in defending Luna's habeas corpus petition in the trial court and his appeal after the petition was denied. The petition was based on Luna's claim that the defective indictment language deprived the authorities of jurisdiction over him. A habeas petition cannot be based on an invalid or insufficient indictment under well-established Ohio law.

Ironically one case standing for that proposition is *Luna v. Russell*, 70 Ohio St. 3d 561(1994), a case in which the *pro se* petitioner was one named Michael K. Luna. Couch testified about the case and its holding and that it was the same Michael K. Luna before the Court in this case. Couch lacked firsthand knowledge for the latter contention but Luna conceded the point in argument.

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The Prosecutor's point was that Luna of all people should have known his habeas petition lacked legal merit due to his prior habeas case decision. However, R.C. 2323.52(A)(2) does not require that Luna know, or have any reason to believe, that his claims or arguments are not warranted under existing law. Therefore it is no defense for Luna to cite to a string of cases which he claims supports his argument about the disjunctive indictment language. It is no defense for Luna to testify that under his understanding of the law the disjunctive indictment language created an invalid charge against him. Clearly Luna's argument that the indictment was invalid was not warranted under Ohio law and Luna repeatedly stated he was not claiming he had a good faith argument to change the law.

The lack of jurisdiction argument proceeds from Luna's premise that there is no such offense, "sell or offer to sell" in federal or state law. That flies in the face of the actual language of R.C. 2925.03 defining drug trafficking. No modern Ohio case law supports Luna's fantastic claim.

To establish vexatious conduct it is sufficient that filing this habeas petition was not warranted under existing law and could not be supported by a good faith argument for a change in the law. Likewise each of the remaining cases which Luna filed arguing this same lack of jurisdiction due to disjunctive text in his indictment constitute vexatious conduct because the cases and their arguments were not warranted under existing law and could not be supported by a good faith argument for a change in the law. Luna's repetitive conduct of filing lawsuit after lawsuit repeating the lack of jurisdiction claim over the indictment language also supports the conclusion that he was intending to harass the defendants to his cases and impose delay in his prosecution.

The same analysis applies to Luna's repeated resort to claiming Huron County public officials were conspiring against him in his criminal prosecution.

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Finally, to warrant a vexatious litigator declaration the evidence must establish Luna "habitually, persistently, and without reasonable grounds" engaged in vexatious conduct. All of the evidence summarized above compels the Court's conclusion that Luna did so. The sheer number of legal actions instituted by Luna is some evidence of habitual and persistent vexatious conduct and his peculiar pursuit of public officials with duplicative claims and unnecessary insults supports the conclusion was his conduct was also without reasonable grounds.

The Court has only highlighted and summarized some of the evidence that supported Plaintiff's cause of action. The Court's failure to mention other evidence should not be interpreted as a finding that such evidence did not support the Court's findings.

CONCLUSION

The evidence establishes Plaintiff's cause of action to the required standard of proof. Judgment is entered against Defendant and in favor of Plaintiff upon the complaint.

Declaration

Defendant Michael K. Luna is declared to be a vexatious litigator, and consistent with that designation, the Court FINDS AND ORDERS Defendant Michael K. Luna is hereby indefinitely prohibited from doing any of the following without first obtaining leave of this 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 what he has instituted in any Ohio trial court prior to the entry of this Order;
- (c) making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by him or another person in any of the Ohio trial courts listed above; or
- (d) instituting or continuing any legal proceedings in the Court of Appeals without first obtaining leave from the Court of Appeals pursuant to R.C. 2323.52(F)(2).

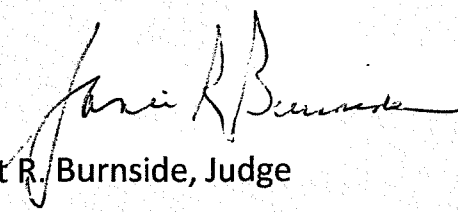
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The Clerk of Courts of Huron County is ORDERED to send a certified copy of this Judgment Entry to the Ohio Supreme Court for publication pursuant to R.C. 2323.52(H).

Defendant shall pay all costs associated with this legal action. This Judgment Entry constitutes a final appealable order under R.C. 2505.02.

Under Civil Rule 58, the Clerk is ordered to deliver notice of this entry and a copy thereof to the parties.

IT IS SO ORDERED.



Janet R. Burnside, Judge

Date: January 13, 2020

THE STATE OF OHIO, HURON COUNTY, ss
I, the undersigned, Clerk of Courts of said
County, hereby certify that the foregoing is a
true and correct copy of the Judgment entry and verdict
filed with me on January 27, 2020
WITNESS my signature and official seal this
27th day of January 2020
by Nancy Simon Deputy
SUSAN S. HAZEL, Clerk

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RANDAL STRICKLER AND
JACOB STEPHENS

COPIES BY REGULAR MAIL TO:
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OHIO SUPREME COURT (CERTIFIED COPY)

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HURON COUNTY COMMON PLEAS COURT

Huron County Courthouse
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Norwalk, Ohio 44857

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Huron Co Prosecuting Attorney :
Plaintiff :
vs : CASE NO. CVH 20190440
Luna, Michael K :
Defendant :

Judgment Entry and Verdict filed 01/27/2020 was served on the following:

PARTIES:		SERVICE CODE:
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Luna, Michael K	3265 Neal Zick Rd Lot 33 Willard, Oh 44890	C

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OTHERS:		
Ohio Supreme Court	Clerk's Office, 65 S Front Street 8 th Floor Columbus OH 43215	C
Judge Janet R. Burnside (courtesy copy)	(hand-delivered to Michelle Sweet, Court Secretary, For Judge Burnside)	D

SUSAN S. HAZEL, CLERK OF COURTS

By: Nancy Assison
Deputy Clerk Date 01/27/2020

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