

V-65226-07

IN THE PROBATE COURT OF WAYNE COUNTY, OHIO

ROBERT MARTIN

Plaintiff

vs.

NATIONAL CITY BANK

Defendant

CASE NO. V-65226-07 07 JUL 26 2007

JUDGE LEISY 2007 JUL 26 PR 2 US

RAYMOND E. LEISY, JUDGE

JUDGMENT ENTRY

This matter comes on this day before the Court upon a Complaint filed by Robert Martin for "Concealment-Breach of Duty-Bad Faith-Declaratory Judgment"; "The Right to Jury Trial Endorsement;" and a "Class Certification." An Answer and Counterclaim filed by National City Bank; and a "Notice of intent to Trustees' counsel to correct erroneous bad faith defenses in his answer to the complaint."

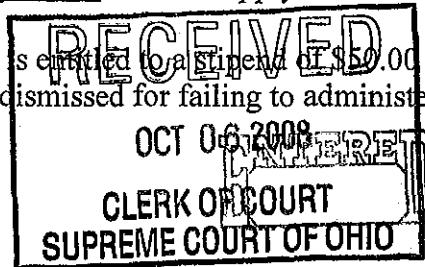
Since there is no provision within the Civil Rules for Ohio concerning a "Notice to correct", the Court will take this as an answer to the counterclaim.

Upon her death on August 22, 2002, Geraldine Cook, mother of plaintiff, established a Trust consisting of two parts styled as "A" and "B". There was a trust instrument outside of the will in existence at the time of her death which was effectuated by her death. The A Trust was for the benefit of her son, Robert Martin, and the B Trust for the benefit of her daughter, Donna J. Waggoner.

In 2003, Robert Martin filed a Motion alleging essentially the same matters as in this complaint. This Court issued a Judgment Entry on the merits on December 19, 2003. The Ninth District Court of Appeals (03CA0079, August 14, 2004) overruled an Appeal by Robert Martin and vacated the Trial Court Order as matters must come before the Court by Complaint and not by Motion.

Since August 14, 2004, Robert Martin has filed more Motions and Complaints, all have been Dismissed by this Court based on procedural defects. Defendant urges this Court to Dismiss this Complaint based on res judicata and declare Robert Martin a vexatious litigator. Since the Ninth District Court vacated this Court's original Order and did not rule on the merits of Plaintiff's case, res judicata does not apply.

By the terms of the Trust, Robert Martin is entitled to a stipend of \$50.00 per month. Mr. Martin wishes to have the Trustees dismissed for failing to administer the



trust correctly and terminate the trust for that reason, with the corpus distributed to Robert Martin.

Robert Martin makes many allegations concerning the mismanagement of the Trust by National City Bank and conversion of the assets for their own use. Nothing in the pleadings or exhibits support the contention. Just the opposite, the exhibits attached by Robert Martin to his pleading support the position that National City Bank has invested the corpus of the Trust in reputable instruments and communicated regularly and properly with Robert Martin as the Trust instrument requires.

This Court finds that there is no proof nor merit in the complaint of Robert Martin nor grounds to remove National City Bank as Trustee.

While this Court was considering the Complaint and Answer, Robert Martin filed a "Right to Jury Trial Endorsement" and "Class Certification" and a request that legal counsel be appointed by the Court for the class action matter.

It is within the discretion of the Court to set a jury trial on a declaratory judgment complaint. Renee v. Sanders (1953) 160 Ohio St. 279, 116 N.E. 2d 420. Also, Ohio Civil Rule 38(B) requires a demand for a jury trial be endorsed on the complaint or within fourteen days of the last pleading directed to such issue. The Court declines to impanel a jury in this matter and the Court further finds that the endorsement is not properly filed.

With regard to the class action certification, this Court finds that the class is not properly identified and is ambiguous at best.

With regard to the counterclaim of National City to declare Robert Martin a vexatious litigator based on harassment and conduct not warranted under existing law and which cannot be supported by a good faith argument for an extension, modification, or reversal of existing law pursuant to R.C. 2323.52(A)(2). The Court refers to Robert Martin's claim for relief contained in paragraph number 26 of his complaint: "Double costs be assessed against the trustee for concealing/embezzling estate property keeping such for their own use and self dealing warranting restitution of \$35,046.09 plus ten percent interest; loss of mandatory stipends of \$2,700.00 plus ten percent interest and ongoing; \$250,000.00 plus ten percent interest; \$25,000.00 (insurance) plus ten percent interest times two" as a statement which makes no legal sense.

The complaint, numbered in paragraphs, generally does not allege facts, but sets out conclusions. The paragraphs which do allege facts indicate actions by National City Bank which are permissible pursuant to the Trust agreement. The plaintiff disagrees with the actions taken by National City, but does not demonstrate facts nor cite any cases on point which would indicate that the actions complained of are contrary to law or any way violate the fiduciary duties charged to the defendant.

The complaint and prayer for relief is confusing at best. This Court has carefully considered the arguments as best as is possible of Robert Martin and find that they have no merit.

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This Court notes the tension between pro se plaintiffs and access to the Courts. As pointed out by the Ninth District Court in Martin v. National City Bank (August 11, 2004) E-65226-02, Ninth District Court of Appeals, Ohio "This Court like the Court in Erie, will not waive the requirements imposed by the Rules of Civil Procedure simply because one of the litigants is proceeding pro se." Martin, supra at page 10.

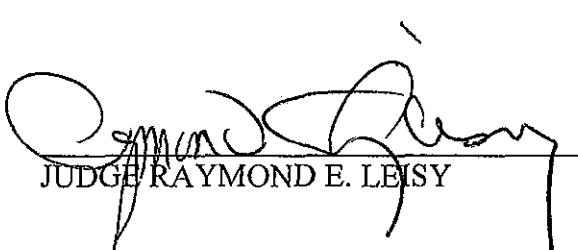
Robert Martin states in his right to jury trial endorsement when he states "pro se litigants are presumed (sic) to know legal procedure as an attorney". Clearly, Mr. Martin is not an attorney nor does he present actionable claims. Both defendants and this Court are required to spend time and research to both understand and construe Mr. Martin's Motions and Complaints and then rule on them. This litigation has reached the point at which R.C. 2323.52 clearly applies.

The Court has carefully considered the requirements of R.C. 2323.52 with regard to the fact that Robert Martin's complaints, motions, demands and answers are only serving to dissipate the trust by causing National City Bank to incur extensive and needless legal expenses. This Court therefore finds Robert Martin to be a vexatious litigator.

It is therefore ORDERED, ADJUDGED AND DECREED that the Complaint of Robert Martin is DISMISSED with prejudice.

It is further ORDERED, ADJUDGED AND DECREED that the request for a jury trial is DENIED. The Motion to certify this matter as a Class Action is DENIED.

It is further ORDERED, ADJUDGED AND DECREED that Robert Martin is a vexatious litigator and shall not institute any proceedings in the Court of Claims, Court of Common Pleas, Municipal Court, or County Court; or pursue any claims presently filed in any such Court, other than the right to appeal this decision, without leave of this Court pursuant to R.C. 2323.52(F)(1). The Motion for costs by National City Bank is DENIED.



JUDGE RAYMOND E. LEISY

cc Robert Martin
Roger D. Proper, Jr. and Andrew P. Lycans

I, the undersigned clerk of the Probate Court with and for said Wayne County, Ohio do hereby certify that the foregoing is a true and correct copy of the original on file in this office.

RAYMOND E. LEISY, JUDGE
By _____
Deputy Clerk
Date OCT 1 2008

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