

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

LOGAN COUNTY
COMMON PLEAS COURT
FILED

2018 AUG 16 AM 11:56

BARB McDONALD
CLERK

CAMPBELL AID OPCO LLC et al,

Plaintiff,

vs.

Case No. CV 18 01 0025

ROSANNA MILLER,

Defendant.

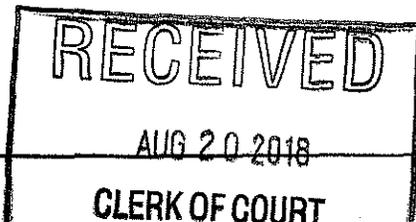
* * *

JUDGMENT ENTRY

This matter is before the Court on Plaintiffs Campbell Aid OPCO, LLC dba Campbell Place ("Campbell Place"), Steven Fansler ("Fansler") and Howard A. Traul, II's ("Traul") (collectively "Plaintiffs"), Motion for Summary Judgment and for Default Judgment declaring Defendant Rosanna Miller ("Miller") a vexatious litigator under R.C. 2323.52, filed May 16, 2018. Plaintiffs' Motion is now ripe for decision. Upon good cause shown, and for the reasons that follow, Plaintiffs' Motion is **GRANTED**.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Campbell Place initiated this action against Miller on January 29, 2018, alleging that Miller is a vexatious litigator, and requesting declaration of same under Revised Code 2323.52. On February 13, 2018, Fansler requested to join as a Co-Plaintiff as he was similarly situated as Campbell Place. Fansler's request was granted by the Court on February 22, 2018. On February 26, 2018, Traul requested to be joined as a Co-



Plaintiff because he was similarly situated as Campbell Place and Fansler. Traul's request was granted on February 27, 2018.

Service was first attempted on Miller by certified mail on January 30, 2018, which was returned unclaimed on April 2, 2018. Service was also attempted via the Fairfield County Sheriff on February 16, 2018, which service failed on April 3, 2018. Service was finally made April 16, 2018 by ordinary mail under Civil Rule 4.6(D). The ordinary mail envelope has not been returned undeliverable.

In this Court's May 3, 2018 Order, this Court determined that Miller was served with the original Complaint on April 16, 2018. It then ordered the matter for a status conference on May 31, 2018. During the May 31, 2018 status hearing, Miller appeared. She was advised that she was in jeopardy of a motion for default judgment or in the alternative, summary judgment. She was given an opportunity to file an answer and directed to review Civil Rules 7, 8 and 9. She was further advised that she would need to follow the rules. It was suggested that she engage an attorney.

On June 6, 2018, Miller filed a pleading titled "Demurrer and/or Motion to Strike and/or Sham." Therein, Miller did not raise the defense of insufficiency of process, or insufficiency of service of process. This Court construed that pleading as a Motion to Dismiss, and denied that Motion in its July 25, 2018 entry. Because Miller failed to raise the defense of insufficiency of process or insufficiency of service of process as required by Civil Rule 12(G) and (H)(1) in her motion, this Court finds that she has waived that defense. *Glozzo v. Univ. Urologists of Cleveland, Inc.*, 114 Ohio St.3d 141, 2007-Ohio-3762, 870 N.E.2d 714, ¶ 8-9 ("the defense of insufficiency of service of process is waived if a motion is made raising other Civ.R. 12(B) defenses and it is not included in

that motion or, if there is no such motion, if it is not raised by separate motion or included in the responsive pleading.”)

On June 15, 2018, Miller filed her “Witness List.” The Court finds that neither Miller’s June 6 pleading nor her June 15 pleading constitute an answer. It has now been over fourteen (14) days since the Court denied Miller’s Motion to Dismiss. Miller has failed to file any further pleading as required under Civil Rule 12(A)(2). The Court therefore finds that Miller has not answered Plaintiffs’ Complaint. As a result of her failure to answer Plaintiffs’ Complaint, the Court finds that all the allegations of Plaintiffs’ Complaint are deemed admitted. *Burdge v. On Guard Sec. Serv., Inc.*, 2006-Ohio-2092, ¶7 (“Ohio R. Civ. P. 8(D) provides that averments in a complaint to which a responsive pleading is required are admitted when not denied in the responsive pleading.”)

As to Miller’s conduct, Plaintiffs argue that they have defended against multiple meritless suits filed by Miller. Miller has continuously filed lawsuits *pro se*, on behalf of others. In support of their position, Plaintiffs filed the Affidavit of Traul, as well as copies of papers and decisions filed in state and federal courts throughout Ohio. Miller has not filed any response to Plaintiffs’ Motion, or offered any evidence for this Court’s consideration under Civil Rule 56(E). The record evidence on summary judgment before this Court shows:

On December 12, 2012, Miller filed a habeas corpus petition in the Ohio Supreme Court against Judge Walters, Attorney Steven R. Fansler, and Campbell Place, purportedly on behalf of Clair R. Miller, in the case captioned *Rosanna L. Miller, on behalf of Clair R. Miller v. Logan County Common Pleas Court Judge Sumner Walters, Stephen Fansler, and Campbell House*, Supreme Court of Ohio Case 2012-

2076. Therein, Miller demanded, among others, that the Court "issue a Writ of Habeas Corpus on an accelerated basis with no hesitation or delay and bring Clair to Rosanna to free and release him from the unlawful, illegal, wrongful restraint and incarceration that will reunite him with family." Ultimately, the Supreme Court of Ohio found Miller's Petition without merit and dismissed it *sua sponte* on February 6, 2013.

On August 26, 2015, Miller filed another petition for habeas corpus against Campbell Place, Attorney Fansler, and Logan County Court Judge Steven Ruyle, this time in the Federal District Court for the Southern District of Ohio, again purportedly on behalf of Clair R. Miller, in the case styled *Rosanna Miller v. Judge Ruyle, et al.*, Case No. 2:15-CV-02755. Therein, Miller again set forth her narrative history version of events, and allegations against Attorney Fansler, Judge Ruyle, and Campbell Place. That case was ultimately dismissed as the court found Miller was committing the unauthorized practice of law.

Following her father's death on November 19, 2015, Judge Rapp found that Miller's actions had the direct effect of precluding the Administrator With Will Annexed from performing his functions as ordered by the Logan County Probate Court and delayed the timely administration of the Estate of Clair R. Miller in *In re Estate of Clair Miller*, Case No. 15 ES 0254.

On November 20, 2017, Miller filed a *pro se* wrongful death Complaint, purportedly as "executor-applicant and/or executor of the estate of Clair R. Miller" and/or "The Miller Living Trust and/or heirs of Clair R. Miller," against nine named defendants, including one physician, four judges, two attorneys, one hospice provider, and Campbell Place, outside the statute of limitations in *Rosanna Miller v. Judge Michael Brady et al.*,

Case No. CV-17-11-0311. All of the defendants in that action, including Plaintiffs here, filed for judgment on the pleadings, claiming, among others, that the Complaint cannot succeed because: (1) Plaintiff's *pro se* Complaint on behalf of an Estate constitutes the unauthorized practice of law and is a nullity; (2) Plaintiff's wrongful death claims are time-barred, as no action was commenced within the applicable statute of limitations; (3) Plaintiff's claims are medical claims and are also time barred; and (4) Plaintiff failed to support her medical claims with a legally sufficient Affidavit of Merit. This Court consolidated and stayed Case No. CV 17-11-0311 pending resolution of the instant matter. Ultimately, Case No. 17-11-0311 was dismissed when Miller failed to appear following Court order.

Following the dismissal of Case No. 17-11-0311, Miller filed an "affidavit of disqualification" with the Ohio Supreme Court, in Case No. 10-AP-040, in the case captioned *In re Disqualification of Hon. William Goslee*. On April 20, 2018, the Ohio Supreme Court found her affidavit without merit and dismissed her case.

II. DISCUSSION

A. Standards Of Review

Initially, Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. *Lawrence v. Ohio State Oil Co.*, 70 Ohio St.2d 1, 2 (1982). It must be awarded with caution, resolving doubt in construing evidence against the moving parties, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. *Id.* Under Civil Rule 56, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written

admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *White v. Westfall*, 183 Ohio App. 3d 807, 810, 2009-Ohio-4490, ¶7, 919 N.E.2d 227, 230 (10th Dist.).

Ohio courts have held that "summary judgment is an appropriate means of resolving a vexatious litigator complaint." *Prime Equip. Group, Inc. v. Schmidt*, 2016-Ohio-3472, 66 N.E.3d 305, 309 (10th Dist.); see also *Mitchell v. Babickas*, 8th Dist. Cuyahoga No. 105294, 2018-Ohio-383, ¶1 (affirming summary judgment and declaring litigant's conduct vexatious under R.C. 2323.52); *Lasson v. Coleman*, 2d Dist., Montgomery No. 21983, 2008-Ohio-4140, ¶1 (same); *Catudal v. Netcare Corp.*, 10th Dist. Franklin No. 15AP-133, 2015-Ohio-4044, ¶8 (same); *Easterling v. Union Savs. Bank*, 2d Dist. Greene No. 2012-CA-52, 2013-Ohio-1068, ¶ 1 (same). There must remain no genuine issue of material fact, regarding the nature of the defendant's conduct and its impact on the cases involved, and the plaintiff on a vexatious litigator complaint must submit appropriate evidence complying with Civil Rule 56. *Schmidt*, 2016-Ohio-3472, at 310.

Additionally, Civil Rule 55 governs the granting of default judgments in Ohio. It provides that default judgment is properly granted "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules." Civil Rule 55(A). Therefore, default judgment should be granted when a defendant fails to file an answer or otherwise defend an action. *Davis v. Immediate Medical Services, Inc.*, 80 Ohio St.3d 10, 14, 1997 Ohio 363, 684 N.E.2d 292 (1997), citing Civ.R. 55(A).

B. Ohio's Vexatious Litigator Statute.

Ohio's vexatious litigator statute, R.C. 2323.52 (the "Statute") has survived due process, equal protection, and as-applied constitutional challenges to its constitutionality under the United States Constitution. See generally *Hall v. Callahan*, 727 F.3d 450 (6th Cir.2013). The purpose of the Statute is clear: it seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. *Mayer v. Bristow*, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000). This type of conduct not only clogs the court dockets and results in increased costs, but oftentimes is a waste of judicial resources. *Id.* The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation. *Id.*; see *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998). The Statute itself allows one aggrieved by the vexatious conduct to "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." R.C. 2323.52(B). Following such action, a trial court may then enter an order prohibiting the vexatious litigator from taking any of the following actions without leave of 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 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.

R.C. 2323.52(D)(1) (emphasis added). Thus, the Statute itself is designed to ensure that vexatious litigators are prohibited from frivolous conduct and abuse of the judicial system.

C. Miller Shall Be Declared A Vexatious Litigator.

Ohio's legislature clearly defined what conduct constitutes vexatious conduct in R.C. 2323.52. "Conduct" is defined broadly and is not limited under the Statute to the filing of meritless lawsuits; rather, it includes:

The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action.

R.C. 2323.52(A)(1); R.C. 2323.51(A)(1)(a). Further, the Statute defines conduct as vexatious when it:

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

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

(c) is imposed solely for delay.

R.C. 2323.52(A)(2). A "vexatious litigator" is defined as one who:

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.

R.C. 2323.52(A)(3).

Additionally, Civil Rule 8(D) provides that averments in a complaint to which a responsive pleading is required are admitted when not denied in the responsive pleading. *Burdge v. On Guard Sec. Serv., Inc.*, 2006-Ohio-2092, ¶7. In other words, if a party fails to deny the specific allegations of a complaint against it, those allegations are considered admitted by the party. *Id.* The effect of an admission of an allegation is that the plaintiff does not have to prove that allegation. *Id.*; *J. Miller Express, Inc. v. Pentz*, 107 Ohio App.3d 44, 48, 667 N.E.2d 1018 (9th Dist. 1995). Here, the Court finds Miller has failed to answer Plaintiffs' Complaint. As a result, the Court finds that all the allegations of Plaintiffs' Complaint are deemed admitted. *Burdge v. On Guard Sec. Serv., Inc.*, 2006-Ohio-2092, ¶7

In addition to and independent of these technical admissions, the Court also finds that the evidence presented on summary judgment is sufficient for a finding in Plaintiffs' favor.

This Court, having considered and construed all of the evidence presented on summary judgment most favorably in Miller's favor, determines and finds that reasonable minds can come to but one conclusion, and that there is no genuine issue of material fact that Miller's conduct meets the definition of a vexatious litigator under R.C. 2323.52. She has harassed Plaintiffs and others by filing papers in this and other courts across Ohio without reasonable grounds. The positions taken in her filings are unwarranted under existing law. Miller's lawsuits and conduct are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Her lawsuits and filings are routinely dismissed

and/or denied. Additionally, she fails, at times, to appear in court for hearings. Miller's conduct and actions throughout have been habitual, persistent, and without reasonable grounds, and instead have been imposed solely to cause delay, harass and/or maliciously injure other innocent parties. As there is no genuine issue of material fact, summary judgment in Plaintiffs' favor is granted. Therefore, in accordance with Revised Code 2323.52, this Court declares Miller a vexatious litigator.

D. Miller Failed To Plead Or Otherwise Defend Under The Civil Rules.

Moreover, under Ohio law, default judgment is properly granted "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules." Civil Rule 55(A). Civil Rule 12(A) requires a defendant to file an answer or otherwise respond to a Complaint within twenty-eight (28) days after service. The Civil Rules provide that service may be made by United States certified or express mail. Civ. R. 4.1(A). Under Civil Rule 4.6(D), "If a certified or express mail envelope is returned with an endorsement showing that the envelope was unclaimed, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued." Civ.R. 4.6(D). *Snyder v. Swick*, 5th Dist. Stark No. 2010CA00066, 2010-Ohio-5138, ¶ 27. The rule continues that "[i]f the attorney, or serving party, after notification by the clerk, files with the clerk a written request for ordinary mail service, the clerk shall send by ordinary mail a copy of the summons and complaint or other document to be served to the defendant at the address set forth in the caption. *Id.* The Civil Rules further require that the "mailing shall be evidenced by a certificate of mailing which shall be completed and filed by the clerk." *Id.* The answer day shall be twenty-eight days after

the date of mailing as evidenced by the certificate of mailing. *Id.* Importantly, service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. *Id.*

Miller has chosen to proceed in this matter without counsel. While the law grants *pro se* litigants reasonable leeway such that their motions and pleadings should be liberally construed, a *pro se* litigant is presumed to have knowledge of the law and correct legal procedures and they are held to the same standards as litigants who are represented by counsel. *In re Estate of Frankart*, 3d Dist. Seneca No. 13-08-33, 2009-Ohio-83, ¶ 12; *Fazio v. Gruttadauria*, 8th Dist. No. 90562, 2008 Ohio 4586 at ¶9. Additionally, this Court notes that *pro se* litigants are not entitled to greater rights, rather, they must accept the results of their own mistakes. *Williams v. Lo*, 10th Dist. No. 07AP949, 2008 Ohio 2804; *City of Whitehall v. Ruckman*, 10th Dist. No. 07AP445, 2007 Ohio 6780.

Here, service was first attempted by certified mail, which was returned unclaimed on April 2, 2018. Thereafter, Campbell Place requested service by ordinary mail, which was issued April 16, 2018. The ordinary mail envelope has not been returned.

In this Court's May 3, 2018 Order, this Court determined that Miller was served with the original Complaint on April 16, 2018. It then ordered the matter for a status conference on May 31, 2018. Miller appeared at the May 31, 2018 status hearing. During that hearing, she was advised that she was in jeopardy of a motion for default judgment or in the alternative, summary judgment. She was given an opportunity to file

an answer and directed to review Civil Rules 7, 8 and 9. She was further advised that she would need to follow the rules. It was suggested that she engage an attorney.

On June 6, 2018, Miller filed a pleading titled "Demurrer and/or Motion to Strike and/or Sham." This Court construed that pleading as a Motion to Dismiss, and denied that Motion in its July 25, 2018 entry. It has now been over fourteen (14) days since this Court denied Miller's Motion. Miller has failed to file any further pleading as required under Civil Rule 12(A)(2). The Court therefore finds that Miller has not answered Plaintiffs' Complaint. The law holds Miller to the same standards as litigants who are represented by counsel. *In re Estate of Frankart*, 2009-Ohio-83, ¶ 12; *Fazio*, 2008 Ohio 4586 at ¶9. She has had notice and been given an opportunity to be heard on Plaintiffs' Complaint. The Court, having reviewed the pleadings filed by Miller, and having construed those pleadings liberally, finds that she has not filed any Answer to Plaintiffs' Complaint. As a result, Miller is in default and judgment in Plaintiffs' favor is appropriate.

III. CONCLUSION

This Court finds Miller has had notice and an opportunity to be heard on Plaintiffs' Complaint. Notwithstanding, she has failed to answer within the time under the Civil Rules. For these reasons, and those stated herein, Miller is hereby found in default and all allegations contained in Plaintiffs' Complaint are deemed admitted. In addition to and independent of her admissions, the Court also finds that the evidence presented on summary judgment is sufficient for a finding in Plaintiffs' favor.

This Court has, as required by Civil Rule 56, construed all of the evidence in the light most favorable to Miller, and still finds no genuine issue of material fact. Miller's conduct demonstrates the very purpose for which R.C. 2323.52 was enacted into law.

She repeatedly misuses the judicial system and employs tactics that serve only to harass and delay without regard for the additional burden on opposing parties and the courts. For these reasons, and those stated herein, Rosanna Miller is hereby declared a vexatious litigator under Revised Code 2323.52.

Consistent with the designation under Revised Code 2323.52, this Court ORDERS that Rosanna Miller is indefinitely prohibited from doing any of the following without first obtaining leave of this Court to proceed:

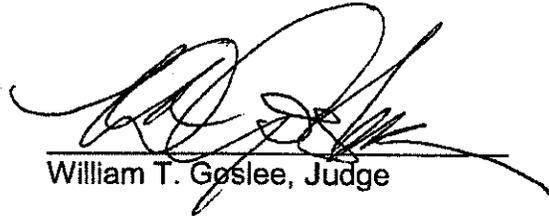
- (a) Instituting legal proceedings in the Court of Claims or in a Court of Common Pleas, Municipal Court or County Court;
- (b) Continuing any legal proceedings that she has instituted in any Ohio trial court prior to the entry of this order; or
- (c) Making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by her or another person in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court.

The Clerk of Courts, Logan County Ohio, is hereby ORDERED to send a certified copy of this Order to the Ohio Supreme Court for publication pursuant to Ohio Revised Code 2323.52(H). Defendant Miller is ORDERED to pay all costs associated with this Case.

This Order constitutes a final judgment in this action. Pursuant to Civil Rule 54(B), The Court finds there is no just reason for delay.

IT IS SO ORDERED.

Date: August 16, 2018


William T. Goslee, Judge

cc: Acacia M. Perko
Terrence Stolly
Steven Fansler
Rosanna Miller

STATE OF OHIO, LOGAN COUNTY
I CERTIFY THAT THIS IS A TRUE COPY
OF THE ORIGINAL entry
ON FILE IN MY OFFICE THIS DATE
August 16 2018
BARB McDONALD, Clerk Common Pleas Ct.
BY Barb-McDonald