

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

CLERK OF COURTS
STARK COUNTY, OHIO

2018 JAN 29 AM 10:39

JOHN D. FERRERO, STARK
COUNTY PROSECUTOR,

Plaintiff,

v.

GARY C. STAATS,

Defendant.

) CASE NO. 2017CV01916
)
)
) JUDGE HAAS
)
) JUDGMENT ENTRY
)
)
)

This matter came on for consideration upon Plaintiff's Motion for Summary Judgment. Defendant also filed a Motion for Summary Judgment. The Court set a briefing schedule and the issues have been fully briefed.

Both parties filed Motions to Strike. Upon review, the Court finds both motions to be not well-taken and **OVERRULES** the same.

This case comes before this Court on the complaint filed by John D. Ferrero, the duly elected prosecutor for Stark County, Ohio, seeking to declare the defendant, Gary C. Staats, (Staats) a vexatious litigator pursuant to R. C. 2323.52(3).

Staats filed an answer to the complaint denying the allegations and a counterclaim challenging the constitutionality of the vexatious litigator statute, R. C. 2323.52, Answer, Counterclaim, Oct. 5, 2017. The plaintiff filed an answer to the Counterclaim, Answer, Oct.18, 2017.

A TRUE COPY TESTE:
LOUIS P. GIAVASIS, CLERK
By *A. Fraga* Deputy
Date 2/12/18

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SCANNED

Factual Background

This Court can take judicial notice of court filings which are readily accessible from the internet. *In re. Helfrich*, Fifth Dist. Locking App. No. 13CA20, 2014-Ohio-1933, ¶35; *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, ¶8, 10 (court can take judicial notice of judicial opinions and public records accessible from the internet).

Mr. Staats is serving a six year prison term after pleading guilty to one count of felonious assault and one count of aggravated burglary in *State v. Staats*, Stark County Common Pleas Court, Case No. 2014CR1179(A).

On or about July 11, 2014, Staats, along with three others, forcibly invaded the home of Barbra Deets. Present in the home were Deets, Ronnie Postlewaite, Teresa Scharon and two other occupants, Staats punched Postlewaite in the face while the others took Postlewaite's cane and beat him over the head. Postlewaite suffered a gash over his right eye which required six stitches to close, a gash to his scalp, which required fifteen staples to close, and bruising to his body.

The August, 2014 term of the Stark County Grand Jury indicted Staats, along with the three others, on felonious assault, a violation of R.C. 2903.11(A)(1) [F2] and aggravated burglary, a violation of R.C. 2911.11(A)(1) [F1], Indictment, August 25, 2014, Docket 2014CR1179(A).

Staats' case was assigned to Judge Curt Werren of the Stark County Common Pleas Court, Complaint, Para. 8; Def. Answer, Para.3(a).

'See also the website of the Ohio Department of Rehabilitation and Corrections: <http://www.drc.ohio.gov/OffenderSearch/details.aspx?id+A661652&prx>.

A licensed criminal attorney was appointed to represent Staats, Docket 8/29/14, Case No. 2014CR1179(A). Staats was provided with discovery by the State and a bill of particulars.

Staats' jury trial was scheduled for Monday, October 6, 2014. On October 3, 2014, Staats appeared before the trial court [Judge Curt Werren] for a pretrial conference. Staats was reminded that he could potentially face nineteen years in prison if convicted on both charges. The State put on the records its offer to Staats - a negotiated plea of guilty and a sentence of six years in prison.

On October 6, 2014, Staats appeared before the trial court for a plea and sentence. He was represented at this hearing by an attorney. Staats first told the trial court that he read and understood the English language, was under no medication that impaired his ability to confer with counsel or affect his "thought processes necessary for a voluntary plea," and that no one threatened or forced him into pleading guilty, Transcript of Plea and Sentence, at 5-7.

At the plea and sentencing hearing, Staats also told the trial court that he was satisfied with his legal counsel and that he signed the written plea form of his own free will, Transcript of Plea and Sentence, at 9-10. Staats also indicated that he understood that pleading guilty was a complete admission to the charges. After the trial court recited his constitutional rights and Staats acknowledged them, he pleaded guilty.

The Change of Plea and Sentence Imposed Judgment Entry contains the following language: "the Court further finds the sentence imposed upon the defendant is authorized by law and has been jointly recommended by the defendant and the prosecution pursuant to Revised Code Section 2953.08(D), Judgment Entry, Oct. 9, 2014, App. B.

Staats was conveyed to prison on or about October 15, 2014. Staats started his pro se filings challenging his plea and sentence in November, 2014. Attached to plaintiffs Complaint as Appendix B is a list of the various filings of Staats which total over 70. Since the filing of the Complaint, Staats has filed three more pleadings.

Vexatious Litigator

Revised Code 2323.25(A)(3) defines a vexatious litigator as follows:

“(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 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. ‘vexatious litigator’ does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.”

“Vexatious conduct” is defined in subsection (A)(2) as follows:

“(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.

“(c) The conduct is imposed solely for delay.”

Pursuant to R.C. 2323.52(B), a prosecutor may bring a claim to deem a litigant as a vexatious either while the litigation is still pending or within one year after the

termination of the civil actions or actions in which the habitual and persistent vexatious conduct occurred.

Constitutionality

The Ohio Supreme Court has declared the vexatious litigator statute constitutional and held that lower courts can properly declare litigators "vexatious" when they abuse the judicial system and clog court dockets with baseless and frivolous litigations.

In *Mayer v. Bristow*, 91 Ohio St.3d 3, 2000-Ohio-109, the Prosecuting Attorney of Richland County filed a complaint in the Common Pleas Court to have defendant Bristow declared a vexatious litigator pursuant to R.C. 2323.52. Like Staats here, Bristow entered a negotiated plea to the underlying criminal offense. Bristow challenged the constitutionality of a trial court's order refusing to allow him to file certain pleadings and restrict his mailings from prison. The Court of Appeals agreed with Bristow and determined that the statute was unconstitutional.

The case reached the Ohio Supreme Court on a certified conflict. Justice Resnick, writing for the majority, tested the vexatious litigator statute against Section 16, Article I of the Ohio Constitution guaranteeing due process and access to courts to all citizens.

The Court concluded that the statute, R.C. 2323.52, is constitutional in its entirety. "R.C. 2323.52, the vexatious litigator statute, is constitutional in its entirety." Syllabus 1. The Court recognized the negative effects of vexatious litigation, saying:

The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those person who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources - resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigations.

Mayer, supra, at 13, quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App. 3d 41,50 (Tenth Dist., 1998).

The law is clear - R.C. 2323.52 is constitutional.

Vexatious Litigator Statute Can Apply to A Criminal Defendant

While the vexatious litigator statute refers to civil litigation and not criminal litigation, filings made by a criminal defendant after conviction and direct appeal are considered actions of a civil nature.

In *Watkins v. Pough*, 11th Dist. Trumbull App. No. 2016-T-0100, 2017-Ohio-7026, the defendant pleaded guilty to murder and was sentenced to fifteen years to life in prison to be served concurrently with a sentence imposed against him in federal court.

After countless appeals and post conviction pleadings filed by Pough, numbering over 60, the prosecutor for Trumbull County filed a complaint to declare the defendant a vexatious litigator. The defendant filed an answer and counterclaim. The prosecutor filed a motion for summary judgment which was granted by the trial court.

The defendant appealed arguing, inter alia, that the vexatious litigator statute applies only to conduct in a civil action. The appellate court rejected this argument and

affirmed the determination of the trial court that the defendant was a vexatious litigator.

The court said:

While it is accurate that the initial filings prior to conviction and the direct appeal in the underlying criminal matter are not considered for the purposes of making a vexatious litigator finding, the subsequent motions, appeals, and original actions were generally of a civil nature. It has been repeatedly held that a 'postconviction proceeding is not an appeal of a criminal conviction but, rather, a collateral civil attack on the judgment.'. *State v. Calhoun*, 86 Ohio St.3d 279, 281, 714 N.E.2d 905 (1999). *Watkins* at ¶41.

A review of just the pleadings Staats has filed since 2016 reveals numerous pleadings which are civil in nature. Staats has filed writs for procedendo, actions in mandamus, petitions for postconviction relief, requests for discovery, requests for public records - the list goes on. Even the filing of this complaint did not stop Staats. He has filed another action in mandamus in the Ohio Supreme Court, another motion for reconsideration in the court of appeals and a request for findings of fact and conclusions of law on his successive and frivolous petition for post conviction relief in the trial court.

The pleadings filed by Staats after his negotiated plea are civil in nature and fall under the umbrella of the vexatious litigator statute.

Staats is a Vexatious Litigator

Staats does not dispute that he has filed over 70 pleadings since his 2014 negotiated plea and sentence.' Indeed, he is proud of it, requesting that the plaintiff admit to the

barrage of pleadings. In his affidavit to the Ohio Supreme Court, he even notes a civil appeal he filed against the Stark County Auditor over a property tax issue.

In *Watkins, supra*, the defendant was found to be a vexatious litigator for filing over 60 motions relating to his conviction and sentence. The Court noted not only the number of motions, but also the defendant's repeated attempts to raise the same issues, the lack of compliance with procedural rules and the amount of time expended on resolving the issues. *Watkins*, ¶43.

In *Harris v. Smith*, Fifth Dist. Richland App. No. 2011CA0108, 2012-Ohio-3547, the Fifth District Court of Appeals determined that 50 lawsuits over a 20 year period against various state agencies supported a determination that the defendant was a vexatious litigator.

In *State ex rel. McGrath v. McClelland*, 8th Dist. Cuyahoga App. No. 97209, 2012-Ohio 157, an inmate was found to be a vexatious litigator for the filing of 23 appeals and 13 original actions over a ten year period. "It must also be noted that McGrath has continually taxed the limited resources of this court through the filing of 23 appeals and 13 original actions over the past 10 years." *McGrath*, at ¶6.

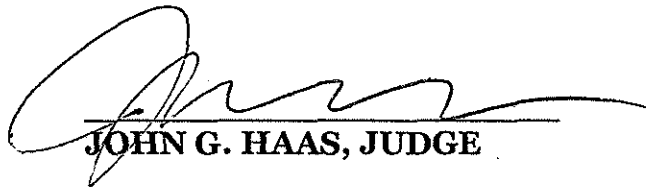
It is not only the number of filings, but the nature of the filings that is important. Staats has repeatedly made the same arguments in the various pleadings attacking the very conviction and sentence that he agreed to in 2014.

He has filed motions to dismiss the indictment as late as 2016 in the trial court, he has filed motions for disclosure of matters before the grand jury in 2016, he has filed public records requests for documents he received prior to this conviction and sentence.

Staats' conduct is habitual, persistent, and without reasonable grounds. Staats' frivolous and meritless filings have resulted in time and effort expended by three courts in this State as well as countless time and effort expended by the plaintiff's office to respond to baseless, repetitive pleadings. In short, Staats has abused the judicial process and should be barred from future filings without leave of court.

Viewing the evidence most strongly in favor of the party against whom the motion is directed, as prescribed by Civ.R. 56(C), the Court finds that no genuine issues of material fact remain for trial and Plaintiff is entitled to judgment as a matter of law. Accordingly, it is hereby

ORDERED, ADJUDGED and DECREED that the Motion for Summary Judgment filed by Defendant is **OVERRULED**. Plaintiff's Motion for Summary Judgment is **GRANTED** in its entirety. **This is a final appealable order and there is no just cause for delay.**


JOHN G. HAAS, JUDGE

To: Atty. Kathleen O. Tatarsky
Mr. Gary C. Staats, pro se

**STARK COUNTY CLERK OF COURTS
NOTICE OF JUDGMENT**

2017CV01916

STARK COUNTY PROSECUTOR VS GARY C STAATS

INDIVIDUALS LISTED BELOW WERE NOTIFIED THAT AN ENTRY WHICH MAY BE A FINAL APPEALABLE ORDER HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT ON Jan 29 2018.

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