

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

TERMINATION NO	
12/15/08	BY JK

Nancy H Rogers, Attorney General,

Plaintiff,

Case No 07CVH10-14469

-v-

JUDGE PFEIFFER

Rayshan Watley,

Defendant

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 DEC 15 PM 1:55
CLERK OF COURTS

DECISION AND ENTRY GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT FILED OCTOBER 2, 2008

AND

DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT FILED JANUARY 14, 2008

AND

ENTRY DENYING DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND
SANCTIONS FOR FILING FRIVOLOUS CIVIL ACTION PURSUANT TO R C 2323 51
AND CIV R 11 FILED OCTOBER 2, 2008

AND

ORDER DECLARING DEFENDANT A VEXATIOUS LITIGATOR

Rendered this 15th day of December, 2008

PFEIFFER, J

This matter is before the Court on Defendant's Motion for Summary Judgment filed January 14, 2008, Plaintiff's Motion for Summary Judgment filed October 2, 2008, and Defendant's Motion for Attorney's Fees and Sanctions for Filing Frivolous Civil Action Pursuant to R C 2323 51 and Civ R 11 filed October 2, 2008

Plaintiff's Complaint seeks an order declaring Defendant a vexatious litigator pursuant to R C 2323 52 Plaintiff contends that Defendant has instituted at least 77 civil actions and appeals against public officials in various Ohio courts and further that the lawsuits have served merely to harass or maliciously injure the individuals being

sued, were not warranted under existing law, and have not been supported by a good faith argument for an extension, modification, or reversal of existing law. The parties have both filed for summary judgment on the Complaint. The relevant facts are as follows:

For ease of discussion, the Court will begin by setting forth the relevant statutory provisions at issue. R.C. 2323.52(A)(3) defines a vexatious litigator as

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.

Under R.C. 2323.52(A)(2), vexatious conduct is defined as

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.

Finally, R.C. 2323.52(B) states that

[a] person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas,

municipal court, or county court may 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. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

Plaintiff requests that the Court take judicial notice of the fact that the docket sheet maintained by the Franklin County Clerk of Courts reflects that, from October 2001 through July 2008, Defendant has filed forty lawsuits in this Court or the Tenth District Court of Appeals, while the docket sheet for the Court of Claims indicates he has filed thirty-seven cases in that forum from July 2000 through May 2007. Plaintiff does not provide evidence demonstrating the nature and outcome of all of the lawsuits, choosing instead to set forth selective examples from the cases believing that to be sufficient to support a vexatious litigator designation.

Plaintiff provides pleadings and decisions from several lawsuits to demonstrate that Defendant has repeatedly filed meritless lawsuits alleging violations of his medical privacy. The evidence demonstrates that Defendant filed a lawsuit against the Ohio Department of Rehabilitation and Correction (ODRC) in the Court of Claims alleging that ODRC had violated his right to privacy by disclosing his privileged mental health records to an Assistant Attorney General. Watley v Ohio Dept of Rehab & Corr, Case No 2001-08579 (Plaintiff's Ex 2). On May 23, 2002, the Court of Claims issued a decision granting the ODRC summary judgment on the grounds that Defendant had waived any

privilege by filing two federal civil actions alleging ODRC employees had deprived him of mental health services and treatment and violated the Eight Amendment. The Court of Claims ruled that ODRC's counsel was entitled to Defendant's medical information for purposes of defending the federal lawsuits. (Id.)

In another Court of Claims action, Watley v. Ohio Dept. of Rehab. & Corr., Case No. 2003-02012, Defendant alleged that ODRC violated his right to medical privacy by allowing a corrections officer to remain in the room during his medical examinations and further by allowing the corrections officer, who was not a licensed medical practitioner, to take his temperature and blood pressure and to record his weight. (Plaintiff's-Ex. 3)

On April 30, 2003, the Court of Claims granted ODRC judgment on the pleadings, finding that ODRC's decision to allow a corrections officer to remain in the room during an inmate physical examination is not actionable as decisions relating to prison security involve a high degree of official discretion and are protected by the doctrine of sovereign immunity. In support, the Court of Claims relied upon Reynolds v. State (1984), 14 Ohio St.3d 68, 70 and Deavors v. Ohio Dep't of Rehab. & Corr. (May 20, 1999), Franklin App. No. 98AP-1105. Citing to Deavors, the Court of Claims further determined that Defendant's claim should more properly be raised through a 42 U.S.C. 1983 action, over which it would have no jurisdiction. (Id.)

In Watley v. Ohio Dept. of Rehab. & Corr., Case No. 2006-06671, filed in the Court of Claims on October 18, 2006, Defendant sought monetary damages based on allegations that corrections officers were either present or "a foot away" during inmate medical examinations and that the officers were disclosing and making jokes about inmate medical concerns. Defendant alleged that these acts violated his right to

medical privacy and further were in contravention of a settlement reached in a federal case whereby medical privacy was to be kept at a maximum and corrections officers were not to be present when medical concerns were being disclosed (Plaintiff's Ex 4) Defendant voluntarily dismissed this action on July 6, 2007 (Plaintiff's Ex 5) Plaintiff, through Assistant Attorney General Christopher P Conomy, avers that ODRC had already expended significant efforts and resources in defense of the claims (Christopher P Conomy Affidavit, ¶10)

In Watley v Ohio Dept of Rehab and Corr., Case No 2006-06337, filed December 4, 2006, Defendant asserted that ODRC improperly allowed corrections officers to dispense medications and also violated its duty to ensure that his medical information remained confidential. Additionally, Defendant alleged that ODRC employees failed to dispense him certain medications and then falsified documents to state that he had refused his medicine. He further alleged that corrections officers committed medical malpractice by dispensing him another inmate's medication (Plaintiff's Ex 6)

This lawsuit proceeded to a trial on the issue of liability. On October 15, 2008, a Court of Claims Magistrate issued a decision finding that Defendant failed to prove by a preponderance of the evidence that ODRC employees refused to or improperly administered his medication. The Magistrate further concluded that ODRC was entitled to discretionary immunity regarding its decision to implement a policy regarding the issuance of medication to inmates who pose a security risk. The Magistrate also concluded that Defendant's allegation concerning his right to medical privacy presented

a constitutional claim arising under 42 U S C 1983 and that such a claim is not actionable in the Court of Claims (Third Affidavit of Christopher Conomy, Ex 1)

In Watley v Ohio Bd of Nursing, Case No 2007-01584, Defendant alleged that on numerous occasions his prescription medication was distributed to him by unlicensed ODRC employees and that the Ohio Board of Nursing had failed to investigate his allegations of the unauthorized practice of nursing. On November 26, 2007, a Court of Claims Magistrate issued a decision recommending that summary judgment be granted in favor of the Ohio Board of Nursing, finding that the Board was entitled to immunity pursuant to R C 2743 02(A)(3) (Plaintiff's Ex 7)

Other inmates also filed lawsuits against ODRC asserting the same medical privacy claims raised by Defendant Abdulrahmon v Ohio Dept of Rehab & Corr., Case No 2007-01576, Easley v Ohio Dept of Rehab & Corr., 2007-01592, Stefak v Ohio Dept of Rehab & Corr., Case No 2007-03862 (Plaintiff's Exs 9, 11, 13) Attorney Conomy avers that he has become familiar with Defendant's handwriting as a result of having defending the lawsuits initiated by Defendant (Conomy Aff, ¶19) Attorney Conomy opines that the complaints filed by the other inmates were written in Defendant's handwriting (Id at ¶¶20, 25, 32)

Plaintiff asserts that Defendant has also filed numerous lawsuits asserting meritless defamation claims. In Watley v Ohio Dept of Rehab & Corr., Case No 2006-05926, Defendant alleged that two interoffice memos prepared by an institutional inspector contained defamatory statements. Specifically, Defendant contended that the inspector falsely accused him of submitting fraudulent complaints on behalf of other inmates (Plaintiff's Ex 15) On September 14, 2007, a Court of Claims Magistrate

issued a decision recommending that summary judgment be granted in favor of ODRC as the statements in the interoffice memos were not made with actual malice and were protected by a qualified privilege (Id)

In Watley v Ohio Dept of Rehab & Corr, Case No 2006-06680, Defendant alleged that a corrections officer authored a false conduct report accusing him of "head-butting" another inmate On August 28, 2007, a Court of Claims Magistrate recommended that summary judgment be granted in favor of ODRC as Defendant had presented no evidence to show that the report was made with actual malice, and thus, it was protected by a qualified privilege (Plaintiff's Ex 16)

In Watley v Ohio Dept of Rehab & Corr, Case No 2006-07741, Defendant alleged that an ODRC employee falsely stated that he was issued a conduct report for participating in an attempted riot In moving for summary judgment, ODRC conceded that the report contained a misstatement as Defendant was actually issued a conduct report for other violations, including causing, or attempting to cause, serious physical harm to another, causing, or attempting to cause, the death of another, and encouraging or creating a disturbance ODRC asserted that the misstatement was a simple error and that the report was written in good faith On August 1, 2007, a Court of Claims Magistrate recommended that summary judgment be granted in favor of ODRC as there was no showing of actual malice, and thus, the statements were privileged as a matter of law (Plaintiff's Ex 17)

Finally, in Watley v Ohio Dept of Rehab & Corr, Case No 2007-02378, Defendant alleged that a corrections officer authored a false conduct report accusing him of disrespecting a corrections officer, creating a disturbance, and extortion Within

the conduct report, the corrections officer stated that Defendant had shouted at him "Hey Felts, I'm writing Stefek's lawsuit unless you drop my charges, Bitch" (Plaintiff's Ex 18) On September 14, 2007, the Court of Claims granted ODRC's Motion for Summary Judgment, finding that the conduct report was not made with actual malice and that the statements contained therein were protected by a qualified privilege (Id)

To further support her case, Plaintiff relies upon an Affidavit Defendant executed in Case No 2006-06337 and captioned "Affidavit of Rayshon Watley listing all the cases he has filed in the last 5 years" (Plaintiff's Ex D) In this Affidavit, Defendant admits to having filed forty-two lawsuits, which he characterizes as follows 1) assault (four cases), 2) illegally held in isolation, 3) excessive force, 4) denial of medical care and/or mental health treatment (seven cases), 5) medical privacy (two cases), 6) medical negligence, 7) denial of parole eligibility (five cases), 8) excessively charging for medical care (two cases), 9) theft of property (three cases), 10) denial of recreation (four cases), 11) mail being withheld (two cases), 12) denial of diet (three cases), 13) retaliation (three cases), 14) violation of due process (three cases), and 15) denial of programs (Id)

Plaintiff contends that Defendant also engages in vexatious conduct by filing notices of appeal and then failing to prosecute them In support, Plaintiff provides evidence of four appeals that were dismissed as Defendant had failed to timely file a brief or other required documents (Plaintiff's Exs 19-22) Finally, Plaintiff notes that Defendant has filed a lawsuit against the former Attorney General and Attorney Conomy alleging violations of constitutional rights and libel for filing this action to declare him a

vexatious litigator Watley v. Dann, Case No 08CVH07-10566 (Conomy Aff, ¶6, Ex 1)

In opposing Plaintiff's Motion for Summary Judgment and seeking summary judgment in his own favor, Defendant avers the following

I have never filed a civil action to harass or maliciously to injure a person

I have never had an order from a court declaring any civil action I have filed was done to harass or maliciously to injure someone

Every civil action I have filed had legal grounding under existing law

I have never had a civil action dismissed as having no legal ground [or being] unwarranted under existing law

I have never filed a civil action to harass prison officials and other public officials to punish them for my incarceration

I am not a vexatious litigator

I have never filed a civil action against a county prosecutor or judge

I have never abused my forma pauperis status and disregard for proper procedure

I am not going to engage in vexatious conduct

I have never assisted or advised other inmates to pursue frivolous lawsuits

I have never had a civil action dismissed in bad faith

(Defendant's Affidavit ¶¶1-11)

Plaintiff argues that the undisputed evidence demonstrates that Defendant is a vexatious litigator. Plaintiff notes that Defendant has not denied that he has filed

seventy-seven actions in the courts of Franklin County, Ohio and has lost every one of those cases. Plaintiff contends that it is clear Defendant has repeatedly filed claims that are not warranted under existing law. Additionally, Plaintiff contends that Defendant has engaged in frivolous conduct under R.C. 2323.51, which applies specifically to inmates, by filing substantially similar claims. Defendant disagrees and argues that he cannot be labeled a vexatious litigator simply for being a prolific filer. Defendant disagrees that his lawsuits involved substantially similar claims and argues that none of his lawsuits have been found to be frivolous or unwarranted under existing law.

Under Civ. R. 56, summary judgment is proper when "(1) [n]o genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." Temple v. Wean United, Inc. (1977), 50 Ohio St.2d 317, 327. Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party. Murphy v. Reynoldsburg (1992), 65 Ohio St.3d 356, 360. Nevertheless, summary judgment is appropriate where a party fails to produce evidence supporting the essentials of its claim. Wing v. Anchor Media, Ltd. of Texas (1991), 59 Ohio St.3d 108 at paragraph three of the syllabus.

The Court will begin with two evidentiary matters. One, Plaintiff relies upon uncertified copies of docket sheets to prove that Defendant has filed seventy-seven civil actions, arguing that the Court can take judicial notice of their contents. Regardless,

Defendant has not objected to consideration of this evidence,¹ nor is there any dispute concerning the number of lawsuits he has filed

Second, Plaintiff asserts that medical privacy lawsuits filed by other inmates were written in Defendant's handwriting. Plaintiff supports this contention with Attorney Conomy's averment that he has become familiar with Defendant's handwriting as a result of having defended the lawsuits initiated by Defendant. It has been held that "a lay witness may furnish an expression on handwriting comparison if he shows a long time familiarity with the person's penmanship." City of Mentor v Riskin (Dec 3, 1999), Lake-App No 98-L-203. Additionally, in State v Silverman, Franklin-App -No -2006-- Ohio-3826, the Tenth District ruled that lay witnesses could provide an opinion as to whether certain checks contained the appellant's signature as their "opinions were rationally based on their perceptions given that they worked with the appellant for several years and verified that they recognized the appellant's handwriting." *Id.* at ¶¶95-96. Here, Attorney Conomy has not laid a sufficient foundation from which it could be concluded that he has "a long time familiarity" with Defendant's handwriting. Thus, the Court will not consider this evidence or the allegation that Defendant wrote the complaints filed by other inmates.

Turning to the substantive issues, the Ohio Supreme Court has stated that

[t]he purpose of the vexatious litigator 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. Such conduct clogs the court dockets, results in

¹ Defendant notes only that "the last ten cases were not even filed by" him. However, Plaintiff has not represented that every case appearing on the docket sheets were filed by Defendant. Obviously, the last page of the print out necessarily included filings by individuals whose names followed Defendant in the alphabet.

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 litigation.

Mayer v Bristow (2000), 91 Ohio St 3d 3, 13 (quoting Cent Ohio Transit Auth v Timson (1998), 132 Ohio App 3d 41 (reversed, in part, on other grounds))

The high court further expressed

* * * vexatious litigators oftentimes use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow upon the administration of justice. Thus, the people, through their representatives, have a legitimate, indeed compelling, interest in curbing the illegitimate activities of vexatious litigators.

The relationship between these goals and the methods employed in R C 2323.52 to achieve them is substantial. At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings. It provides authority to the court of common pleas to require, as a condition precedent to taking further legal action in certain enumerated Ohio trial courts, that the vexatious litigator make a satisfactory demonstration that the proposed legal action is neither groundless nor abusive. Thus, "the vexatious litigator statute bears a real and substantial relation to the general public welfare because its provisions allow for the preclusion of groundless suits filed by those who have a history of vexatious conduct."

Id at 13-14 (Citations omitted) (Emphasis added)

"R C 2323 52 is obviously designed to prevent vexatious litigators from gaining direct and unfettered access to our trial courts. Otherwise, its enactment would have no meaning." *Id.* at 14

Also particularly noteworthy is the Tenth District Court of Appeals' decision in Farley v. Farley, Franklin App. No. 02AP-1046, 2003-Ohio-3185, where the appellant was declared to be a vexatious litigator based on his conduct in just one civil action. The Tenth District determined that appellant's

repetitive arguments and unrelenting pleadings on issues already decided have congested the judicial process and hindered the trial court's and receiver's lawful duties. His persistent and tedious grievances inserted into every pleading of every type have amounted to an unnecessarily massive record. His tormenting of every party whom he sees as aiding his wife has risen to the level of compulsiveness.

(*Id.* at ¶49)

Significantly, the Tenth District quoted with approval the following passage from Borger v. MrErlane, Hamilton App. No. C-01026, 2001-Ohio-4030

* * * vexatious conduct, as defined in R C 2323 52(A)(2)(a), requires proof that [the appellant's] conduct serves merely to harass or maliciously injure another party to the civil action. It is not necessary, therefore, that [the appellant] intends for her conduct to be harassing, or that she not sincerely believe in the justness of her cause. Rather, it is sufficient that her conduct served the purpose, or has the effect, of harassing [the appellee] by obligating her to respond to a legal action for which there is no objective, reasonable grounds.

Id. at ¶51 (Emphasis in original)

Plaintiff argues that the record demonstrates Defendant's lawsuits "obviously serve merely to harass or maliciously injure another party" and are further "not

warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law" R C 2323 52(A)(2)(a) and (b) After careful consideration and in applying the appropriate standard of review and principles of law, the Court agrees

Defendant avers that he has never filed a civil action to harass prison officials or to punish them for his incarceration. However, as held by the Farley court, a finding of vexatious conduct is not dependent upon whether the litigant intended for his conduct to be harassing. Rather, the focus is whether the conduct serves the purpose of or has the effect of harassing others by obligating them to respond to lawsuits-for-which-there-are-no-objective-reasonable-grounds. Thus, the Court does not look to Defendant's subjective aim and instead examines the effect his lawsuits have had upon the opposing parties and the judicial system. Defendant further argues that he cannot be labeled a vexatious litigator simply for being a prolific filer. However, the Ohio Supreme Court has characterized vexatious litigators as individuals who "use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system." Mayer, supra at 13 (Emphasis added)

Defendant does not dispute that, during an approximate seven year period, he has filed over seventy lawsuits in this Court, the Court of Claims, and the Tenth District and further that he has not prevailed on any of those cases. His lawsuits have been filed against state agencies and public employees and officials, thus necessitating the

expenditure of public resources in providing defenses. The vast majority of his cases have been filed against ODRC or its employees. He has admittedly sued ODRC for assault, illegal isolation, excessive force, denial of medical care and/or mental health treatment, violation of right to medical privacy, medical negligence, denial of parole eligibility, excessively charging for medical care, theft of property, denial of recreation, mail being withheld, denial of diet, retaliation, violation of due process, and denial of programs. The undisputed evidence in the record establishes that every perceived slight results in a lawsuit and that this endless litigation is Defendant's form of entertainment. His habitual and persistent filings have had the effect of harassing ODRC and its employees and constitute vexatious conduct under R C 2323 52(A)(2)(a).

Additionally, the evidence supports a finding that some of his 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." R C 2323 52(A)(2)(b). For instance, Defendant sued ODRC for providing an Assistant Attorney General with his medical records when clearly any privilege was waived through his filing of two federal lawsuits placing his medical condition in controversy and when his medical information had been produced as part of discovery in the federal actions. Defendant also repeatedly raised privacy claims despite the fact that "prison inmates have no reasonable expectation of privacy" as "[t]his loss of privacy and personal control is basic to our present-day system of corrections." Larkins v Ohio Dept of Rehab & Corr (2000), 138 Ohio App 3d 733, 737.

Defendant further filed but then failed to properly prosecute at least four appeals. He contends that such conduct cannot be held against him as the dismissals were based on procedural deficiencies. But this is still an example of conduct that clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources. Moreover, the evidence demonstrates that Defendant is not a typical pro se litigant in that he is knowledgeable as to the rules of procedure.

Finally, the actions Defendant has taken against Plaintiff and Attorney Conomy demonstrate the vexatious nature of Defendant's conduct. Defendant has filed a separate lawsuit against Plaintiff and Attorney Conomy, accusing them of libel for filing this instant action to declare him a vexatious litigator. He has further filed a Motion for Attorney's Fees and Sanctions² within this action, accusing Plaintiff and Attorney Conomy of acting with malice.

The conduct exhibited by Defendant is the very type of behavior R.C. 2323.52 was designed to thwart. The Court finds that, as a matter of law, Defendant has engaged in vexatious conduct as defined by R.C. 2323.52(A)(2)(a) and (b), and therefore he is a vexatious litigator under R.C. 2323.52(A)(3).

Accordingly, Plaintiff's Motion for Summary Judgment is well-taken and GRANTED, while Defendant's Motion for Summary Judgment and Motion for Sanctions is DENIED. Costs to Defendant.

Pursuant to R.C. 2323.52(D) Defendant Rayshan Watley is prohibited from:

- a) instituting legal proceedings in the Court of Claims or in a court of common pleas, municipal court, or county court;**

² Clearly, Defendant has not incurred any attorney's fees in defense of this action.

- 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; and
- 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.

Beverly U Pfeiffer
 BEVERLY PREIFFER, JUDGE

Copies to

Christopher P Conomy
Counsel for Plaintiff

Rayshan Watley
Defendant

THE STATE OF OHIO }
 Franklin County, ss }
 I, MARVELLEN O'SHAUGHNESSY, Clerk
 OF THE COURT OF COMMON
 PLEAS WITHIN AND FOR
 SAID COUNTY,

HEREBY CERTIFY THAT THE ABOVE AND FORE-
 GOING IS TRULY TAKEN AND COPIED FROM THE
 ORIGINAL *Elly H. ...*
 NOW ON FILE IN MY OFFICE

WITNESS MY HAND AND SEAL OF SAID COUNTY
 THIS *2* DAY OF *March* 2010.
 MARVELLEN O'SHAUGHNESSY, Clerk

By: *[Signature]* *Beverly*