

In the Court of Common Pleas, Lucas County, Ohio
Division of Domestic Relations

FILED
LUCAS COUNTY

Renee Mathews
c/o Mary E. Smith, Esq.
1200 Edison Plaza
300 Madison Avenue
Toledo, OH 43604
DOB: 04/19/1961
SSN: XXX-XX-3472

Case No. DR2004-0530

2013 NOV -5 AM 8: 15

DOMESTIC RELATIONS
BERNIE QUILTER
CLERK OF COURTS

Judge Zimmelman

Plaintiff

JUDGMENT ENTRY WITH PERMANENT ORDER

vs.

Mark R. Zaciek
452 Glen Coe Street
Temperance, MI 48182
DOB: 11/29/1955
SSN: XXX-XX-9921

Defendant

The Court has conducted a review of the findings of fact and Decision of the Magistrate. The Court finds that there is no error of law or other defect upon the face of the Decision and, pursuant to **Ohio Civil Rule 53(D)(4)** adopts the Decision of the Magistrate signed on **October 29, 2013**, and enters it as the Permanent Order of this Court.

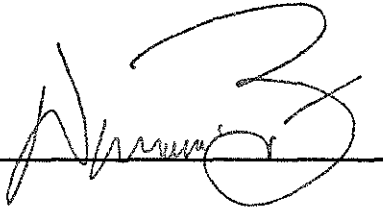
A copy of the Permanent Order shall be filed with the Clerk of Courts, and copies mailed to the parties and/or attorneys of record.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Defendant Mark R. Zaciek is hereby found to be a vexatious litigator pursuant to R.C. 2323.52, and thereby prohibited from doing any of the following without first obtaining leave of court to proceed:
 - (a) Instituting legal proceedings in the Lucas County Common Pleas Court, Domestic Relations Division;
 - (b) Continuing any legal proceedings that Defendant had instituted in this matter prior to the journalization of this Judgment Entry; or,
 - (c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by Defendant or another person.
2. This order shall remain in full force and effect until further order of the Court.
3. The Clerk of Courts shall send a certified copy of this Order to the Supreme Court of Ohio for publication as set forth in R.C. 2323.52(H).

4. Plaintiff is hereby awarded attorney fees in the amount of \$10,170.00 pursuant to R.C. 2323.51 for the costs associated with bringing the instant motion and defending against Defendant's vexatious conduct.

Judge



NOTICE TO ATTORNEYS AND PARTIES

Objections must be filed pursuant to **Ohio Civil Rule 53(D)(3)(b)** and **Local Rule 7.14**. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Clerk of Courts LCCSEA Guardian ad litem Plaintiff-Petitioner
 Defendant-Respondent

IN STATE OF OHIO, LUCAS COUNTY, ss

I, BERNIE QUILTER, Clerk of Common Pleas Court and Court of Appeals, do hereby certify this document to be a true and accurate copy of entry from the Journal of the proceedings of said Court filed 11-5-2013 on case number DR 04-0530

IN TESTIMONY WHEREOF, I have hereunto subscribed my name officially and affixed the seal of said court at the Courthouse in Toledo, Ohio, in said County, this 6 day of November A.D., 2013

BERNIE QUILTER, Clerk

By 
Clerk

In the Court of Common Pleas, Lucas County, Ohio
Division of Domestic Relations

FILED
LUCAS COUNTY

Renee Mathews
c/o Mary E. Smith, Esq.
1200 Edison Plaza
300 Madison Avenue
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DOB: 04/19/1961
SSN: XXX-XX-3472

Case No. DR2004-0530

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DOMESTIC RELATIONS
BERNIE QUILTER
CLERK OF COURTS

Judge Zimmelman

Plaintiff

vs.

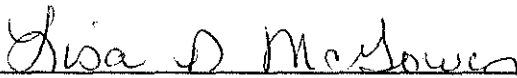
Magistrate's Decision

Mark R. Zaciek
452 Glen Coe Street
Temperance, MI 48182
DOB: 11/29/1955
SSN: XXX-XX-9921

Defendant

Pursuant to **Ohio Civil Rule 53**, the Court has by Order of Reference directed that this matter be referred to a Magistrate.

This matter was heard on September 10, 2013, upon **PETITION/MOTION TO DECLARE MARK R. ZACIEK A VEXATIOUS LITIGATOR AND FOR ATTORNEY FEES** filed February 4, 2013, and appearances were made by Plaintiff with Attorney Smith and Defendant, pro se.



Magistrate 10/29/13 LM.cb

CD Index Number _____

NOTICE TO ATTORNEYS AND PARTIES

Objections must be filed pursuant to **Ohio Civil Rule 53(D)(3)(b)** and **Local Rule 7.14**. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

Clerk of Courts CSEA Guardian ad litem Plaintiff/Petitioner
 Defendant/Respondent

FINDINGS OF FACT

Service of process has been perfected upon the opposing party pursuant to Rule 4.1(A) of the **Ohio Rules of Civil Procedure** in the following manner: Certified mail.

FINDINGS:

1. This matter was heard on September 10, 2013 upon Plaintiff's Petition/Motion to Declare Mark R. Zaciek a Vexatious Litigator and for Attorney Fees filed February 4, 2013.
2. The Final Judgment Entry of Divorce was filed with the Court on December 6, 2005. The case was settled by agreement of the parties, both of whom were represented by counsel at the final hearing.
3. On October 15, 2010, Defendant, pro se, filed a "Request for Damages for Contempt", alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 12.) The motion was heard and dismissed by the Court in a Judgment Entry with Permanent Order file-stamped July 1, 2011.
4. On January 26, 2011, Defendant, pro se, filed a "Motion to Show Cause: Contempt of Paragraph 7(T) of Local Parenting Time Schedule", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 18.) The motion was heard and dismissed by the Court on March 14, 2011. (Plaintiff's Exhibits 21 and 22.)
5. On February 28, 2011, Defendant, pro se, filed an "Amendment to Show Cause filed 1/26/2011 1) Request for Damages 2) Request that Court Compell (sic) Plaintiff, again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 20.) The motion was heard and dismissed by the Court on March 14, 2011. (Plaintiff's Exhibits 21 and 22.)
6. On March 23, 2011, Defendant, pro se, filed two motions, a "Motion to Show Cause: Contempt Violation of Paragraph 7J & 7T of the Local Parenting Schedule," and a "Motion to Show Cause: Contempt of Paragraph 7C of the Local Parenting Schedule and Recovery of Transportation Costs", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibits 23 and 24.) Both motions were heard and dismissed by the Court on April 28, 2011. (Plaintiff's Exhibits 26 and 27.)

7. On June 27, 2011, Defendant, pro se, served a subpoena on Plaintiff for her to appear in Court to present evidence on the issue of whether Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 31.)
8. On July 26, 2011, Defendant, pro se, served a subpoena on Plaintiff for her to again appear in Court to present evidence on the issue of whether Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 35.)
9. On June 22, 2012, Defendant, pro se, filed a "Motion to Show Cause: Contempt Plaintiff Violated Local Parenting Time Schedule Item 7(t)", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 45.) The motion was dismissed by the Court on July 30, 2012. (Plaintiff's Exhibits 51 and 52.) The Court's decision specifically identified four (4) times this same issue had been litigated in this Court.
10. On June 22, 2012, the Sixth District Court of Appeals dismissed Defendant's appeal on the same issue. (Plaintiff's Exhibit 46.)
11. On July 9, 2012, Defendant, pro se, served a subpoena on Plaintiff for her to again appear in Court to present evidence on the issue of whether Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 49.)
12. On August 24, 2012 and August 30, 2012 the Court denied Defendant's requests to compel Plaintiff to comply with his July 9, 2012 subpoena.
13. On September 13, 2012, Defendant, pro se, served another identical subpoena on Plaintiff for her to again appear in Court to present evidence on the issue of whether Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 59.)
14. On September 13, 2012, Defendant, pro se, filed a "Motion to Show Cause: Civil Contempt Plaintiff Violated Paragraphs 7(j) & 7(t) of the Local Parenting Schedule", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 60-A.) The motion was heard and dismissed by the Court on November 28, 2012. (Plaintiff's Exhibits 64 and 65.)
15. On October 26, 2012, Defendant, pro se, served another, identical subpoena on Plaintiff for her to again appear in Court to present evidence on the issue of whether Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 61.)

16. On November 16, 2012, Defendant, pro se, filed "The Defendant Requests that the Court Issue a Decision Sua Sponte for the Motion submitted by Defendant on 01/07/10 The Defendant Requests a Motion to Show Cause: Civil Contempt Plaintiff Violated Local Parenting Schedule 7(j)", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 63.) The motion was dismissed by the Court on November 29, 2012. (Plaintiff's Exhibits 66 and 67.)
17. On December 20, 2012, Defendant, pro se, filed a "Request for Hearing to Determine Damages for Plaintiff's Filing of Fraudulent Document with this Court on September 10, 2007 and Her Violation of the Local Parenting Time Schedule Item 7(c) on September 18, 2007", again alleging that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007. (Plaintiff's Exhibit 68.) Defendant's request was dismissed by the Court, with prejudice, on February 12, 2013. (Plaintiff's Exhibit 70.)
18. Prior to Defendant's repeated filing of motions relating to his allegation that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007, Defendant also filed numerous motions with the Court and the Lucas County Child Support Enforcement Agency alleging that Plaintiff drank alcohol while driving the minor child; therefore, his outstanding child support obligation should be vacated.
19. At the September 10, 2013 hearing on Plaintiff's petition/motion to declare him a vexatious litigator, Defendant offered no legal justification for his actions. The Defendant's only "defense" was that Plaintiff "could have avoided all of his legal actions" if she would simply settle the case. Defendant's settlement demanded the payment of \$2,303,000 from Plaintiff to Defendant. (Plaintiff's Exhibit 44.)
20. Plaintiff has incurred \$10,170 in legal fees to defend against Defendant's numerous motions, requests, subpoenas, objections, and appeals. (Plaintiff's Exhibit 72.)
21. A review of the Court record reveals that Defendant has filed twenty-four (24) post-trial motions. This total does not include the objections, subpoenas or appeals Defendant has filed in this case.
22. The following Exhibits were admitted into evidence without objection:

| | |
|--------------------------|--|
| Plaintiff's Exhibit 12 - | Defendant's Request for Damages for Contempt file-stamped October 15, 2010; |
| Plaintiff's Exhibit 18 - | Defendant's Motion to Show Cause: Contempt of Paragraph 7(T) of Local Parenting Time Schedule file-stamped January 26, 2011; |

- Plaintiff's Exhibit 20 - Defendant's Amendment to Show Cause Filed 1/26/11, 1) Request for Damages, 2) Request that Court Compell (sic) Plaintiff file-stamped October 15, 2010;
- Plaintiff's Exhibit 21 - Magistrate's Decision file-stamped March 14, 2011;
- Plaintiff's Exhibit 22 - Judgment Entry with Permanent Order file-stamped March 14, 2011;
- Plaintiff's Exhibit 23 - Defendant's Motion to Show Cause: Contempt Violation of Paragraph 7J & 7T of the Local Parenting Schedule file-stamped March 23, 2011;
- Plaintiff's Exhibit 24 - Defendant's Motion to Show Cause: Contempt of Paragraph 7C of the Local Parenting Schedule and Recovery of Transportation Costs file-stamped March 23, 2011;
- Plaintiff's Exhibit 25 - Defendant's Urgent! Urgent!! Urgent!!! Urgent!!!! Urgent!!!!!! Objection to Magistrate's Decision on April 20, 2011 file-stamped April 21, 2011;
- Plaintiff's Exhibit 26 - Magistrate's Decision file-stamped April 28, 2011;
- Plaintiff's Exhibit 27 - Judgment Entry with Permanent Order file-stamped April 28, 2011;
- Plaintiff's Exhibit 31 - Defendant's Subpoena to Plaintiff file-stamped June 27, 2011;
- Plaintiff's Exhibit 35 - Defendant's Subpoena to Plaintiff file-stamped July 26, 2011;
- Plaintiff's Exhibit 44 - Defendant's Settlement Letter to Plaintiff;
- Plaintiff's Exhibit 45 - Defendant's Motion to Show Cause: Contempt Plaintiff Violated Local Parenting Time Schedule Item 7(t) file-stamped June 22, 2012;
- Plaintiff's Exhibit 46 - Decision and Judgment of the Sixth District Court of Appeals file-stamped June 22, 2012;
- Plaintiff's Exhibit 49 - Defendant's Subpoena to Plaintiff file-stamped July 9, 2012;

- Plaintiff's Exhibit 51 - Magistrate's Decision file-stamped July 30, 2012;
- Plaintiff's Exhibit 52 - Judgment Entry with Permanent Order file-stamped July 30, 2012;
- Plaintiff's Exhibit 59 - Defendant's Subpoena to Plaintiff file-stamped September 13, 2012;
- Plaintiff's Exhibit 60A - Defendant's Motion to Show Cause: Civil Contempt Plaintiff Violated Paragraphs 7(j) & 7(t) of the Local Parenting Time Schedule;
- Plaintiff's Exhibit 61 - Defendant's Subpoena to Plaintiff file-stamped October 26, 2012;
- Plaintiff's Exhibit 63 - The Defendant Requests that the Court Issue a Decision Sua Sponte for the Motion Submitted by Defendant on 01/07/10 The Defendant Requests a Motion to Show Cause: Civil Contempt Plaintiff Violated Local Parenting Schedule 7(j) file-stamped November 16, 2012;
- Plaintiff's Exhibit 64 - Magistrate's Decision file-stamped November 28, 2012;
- Plaintiff's Exhibit 65 - Judgment Entry with Permanent Order file-stamped November 28, 2012;
- Plaintiff's Exhibit 66 - Magistrate's Decision file-stamped November 29, 2012;
- Plaintiff's Exhibit 67 - Judgment Entry with Permanent Order file-stamped November 29, 2012;
- Plaintiff's Exhibit 68 - Defendant's Request for Hearing to Determine Damages for Plaintiff's Filing of Fraudulent Document with this Court on September 10, 2007 and her Violation of the Local Parenting Time Schedule Item 7(c) on September 18, 2007 file-stamped December 20, 2012;
- Plaintiff's Exhibit 70 - Order file-stamped February 12, 2013; and,
- Plaintiff's Exhibit 72 - Attorney fee statement of Mary E. Smith, Esq.

CONCLUSIONS OF LAW

1. Plaintiff has petitioned the Court to declare Defendant a vexatious litigator and to enjoin him from filing further actions against her. Plaintiff's cause of action is filed pursuant to R.C. 2323.52, which, in pertinent part, provides:

(A) * * *

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(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.

(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. * * *

- (B) A person, * * * who has defended against habitual and persistent vexatious conduct * * * in a court of * * * common pleas, * * * 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. * * *

* * *

- (D) (1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, * * * the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

- (a) Instituting legal proceedings * * * in a court of common pleas * * *;

- (b) Continuing any legal proceedings that the vexatious litigator had instituted in the court of claims or in a court of common pleas, municipal court, or county court 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.
- 2. Defendant has repeatedly raised the argument, by motion or subpoena, that Plaintiff failed to timely notify him before relocating with their minor child to Marion, Ohio, in August, 2007, and has repeatedly sought relief for this argument. The Court has repeatedly ruled on Defendant's argument.
- 3. Defendant's conduct serves merely to harass or maliciously injure Plaintiff, and is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, and thereby constitutes vexatious conduct pursuant to R.C. 2323.52(A)(2).
- 4. Defendant has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in this civil action and thereby constitutes a vexatious litigator pursuant to R.C. 2323.52(A)(3).
- 5. The Ohio Supreme Court has observed that the purpose of R.C. 2323.52 is 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, 740 N.E.2d 656, quoting *Cent. Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41, 50. Whether a person is a vexatious litigator is not determined by the number of actions filed, but by the nature of that conduct. *Borger v. McErlane*, 1st Dist. No. C-010262, 2001 WL 1591338 (Dec. 14, 2001).
- 6. The Court finds that it has proper jurisdiction to grant Plaintiff's motion to declare Defendant a vexatious litigator. *Farley v. Farley*, 10th Dist. No. 02AP-1046, 2003-Ohio-3185.
- 7. R.C. 2323.51 provides for an award of attorney fees to a party who has been adversely affected by frivolous conduct in a civil action. Frivolous conduct in a civil action is defined as that which "obviously serves to harass or maliciously injure another party" or "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. 2323.51(A)(2)(a)(b). Defendant's pleadings and conduct meet the foregoing criteria of R.C. 2323.51.

IT IS THE DECISION OF THE COURT:

1. Defendant Mark R. Zaciek is hereby found to be a vexatious litigator pursuant to R.C. 2323.52, and thereby prohibited from doing any of the following without first obtaining leave of court to proceed:
 - (a) Instituting legal proceedings in the Lucas County Common Pleas Court, Domestic Relations Division;
 - (b) Continuing any legal proceedings that Defendant had instituted in this matter prior to the journalization of this Judgment Entry; or,
 - (c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by Defendant or another person.
2. This order shall remain in full force and effect until further order of the Court.
3. The Clerk of Courts shall send a certified copy of this Order to the Supreme Court of Ohio for publication as set forth in R.C. 2323.52(H).
4. Plaintiff is hereby awarded attorney fees in the amount of \$10,170.00 pursuant to R.C. 2323.51 for the costs associated with bringing the instant motion and defending against Defendant's vexatious conduct.

STATE OF OHIO, LUCAS COUNTY, ss
I, BERNIE QUILLTER, Clerk of Common Pleas Court
and Clerk of Appeals, hereby certify the contents of this true
and accurate copy of entry from the Journal of the proceedings
of the Court filed 11-5-2013 on case number
DR04-0530

IN TESTIMONY WHEREOF, I have hereunto
subscribed my name officially, and affixed the seal of said court
in the Court Room in Toledo, Ohio, in said County, this 5th
day of November, A.D., 2013

BERNIE QUILLTER, Clerk

SEAL

By AK
Deputy