

IN THE SUPREME COURT OF OHIO

DERRICK D. BLASSINGAME,

:
:
: On Appeal from the Hamilton
: County Court of Appeals
: First Appellate District of Ohio

v.

AFTAB PUREVAL, ET. AL.,

: APPEAL NO. C-210495
: TRIAL NO. A-2101923

Respondents-Appellees.

:
: Case No. 22-1225
:
:

MEMORANDUM IN SUPPORT OF JURISDICTION OF
RELATOR-APPELLANT DERRICK D. BLASSINGAME

DERRICK D. BLASSINGAME, PRO SE

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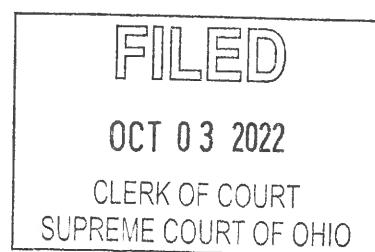
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SUPREME COURT OF OHIO

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1. Proposition of Law:	
A. Ohio Constitution. Article I of the Ohio Constitution states, “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.” “Suing a municipality is a form of petitioning the government for a redress of grievances and is thus protected by the First Amendment.” <i>O’Boyle v. Sweetapple.</i>	
B. FIRST AMENDMENT OF THE UNITED STATES: “Congress make no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances.”	
C. Retaliating by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.” <i>Zilich v. Longo</i> , 34 F.3d 359, 364 (6 th Cir. 1994); <i>accord R.S.W.W., Inc. v. City of Keego Harbor</i> , 397 F.3d 427 (6 th Cir. 2005)	
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**EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

DERRICK BLASSINGAME functions as a governmental watchdog through the exercise of his First Amendment rights of freedom of speech, freedom of the press, freedom of association and freedom to petition the government for redress

2. DERRICK BLASSINGAME has been a resident of the City of Cincinnati since 1986.
3. Since 2002, DERRICK BLASSINGAME has been involved in the community in the City of Cincinnati, including working for various community-based organizations.
4. While not being designated as a community activist for several years now, DERRICK BLASSINGAME continues to have an interest in his community and its politics, including the government of the City of Cincinnati and other cities he has lived in.
5. For several years now, DERRICK BLASSINGAME has served as a governmental watchdog over his local government of the City of Cincinnati. In the view of some people, Derrick Blassingame is a formidable, muckraker who strongly believes the government must be for the people at all times.
6. In furtherance of his effort to serve as a governmental watchdog and in furtherance of his First Amendment right, Derrick Blassingame regularly attends meetings of Cincinnati City Council and other municipal governments in cities he's lived in including its committees.
7. In furtherance of his effort to serve as a governmental watchdog and in furtherance of his First Amendment rights, Derrick Blassingame regularly obtains public records of the City of Cincinnati through the tendering public records requests under Ohio law.
8. In furtherance of his efforts to serve as a governmental watchdog and in furtherance of his First Amendment rights, Derrick Blassingame publishes his opinions on various social media platforms and publications both locally and nationally.

9. At times, though, Derrick Blassingame is highly critical of the governmental officials of the City of Cincinnati and other cities he's lived.
10. The criticism published and public comments of Derrick Blassingame has caught the attention and raised the ire of various governmental officials with the City of Cincinnati, Hamilton County, Ohio, and the State of Ohio.
11. As an additional part of his effort to serve as a governmental watchdog, Derrick Blassingame also seeks to ensure that the City of Cincinnati and its governmental officials including county and state officials comply with the law and do not exceed the authority given to them under Ohio law or the Cincinnati Charter.
12. One means provided for under Ohio law by which taxpayers may ensure and compel municipalities and their governmental officials to comply with the law and to not exceed the authority given them under Ohio law or the Cincinnati Charter is through a process known as a taxpayer lawsuit.
13. Founded and based in the common law, a taxpayer lawsuit essentially provides that "a taxpayer has a right to call upon a court of equity to interfere to prevent the consummation of a wrong such as occurs when public officers attempt to make an illegal expenditure of public money, or to create an illegal debt, which he, in common with other property holders of the taxing district may otherwise be compelled to pay." *State ex rel. Masterson v. Ohio State Racing Comm'n*, 162 Ohio St. 366, 369, 123 N.E. 2d 1 (1954),
14. In Ohio, the General Assembly has enacted a statutory scheme by which a taxpayers in a municipal corporation may also bring an action to guard against and prevent, *inter alia*, "the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal

corporation in contravention of the laws or ordinance[s] governing it, or which was procured by fraud or corruption.” Ohio Revised Code § 733.56.

15. On a few occasions, Derrick Blassingame has sought to vindicate the public interest and prevent the abuse of the corporate powers by governmental officials with the City of Cincinnati, Hamilton County, Ohio, and the State of Ohio and, following the procedures set forth in Ohio law, brought forth actions on behalf of the State of Ohio after his written requests for such actions were rejected by city officials.
16. “Suing a municipality is a form of petitioning the government for a redress of grievances and is thus protected by the First Amendment.” *O’Boyle v. Sweetapple*, 187 F/ Supp.3d 1365, 1370 (S.D. Fla. 2016); *accord In re Lipitor Antitrust Litigation*, 868 F.3d 231, 272 (3d Cir. 2017) (“[f]iling a lawsuit essentially petitions the government for redress”).
17. Retaliating by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.” *Zilich v. Longo*, 34 F.3d 359, 364 (6th Cir. 1994); *accord R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427 (6th Cir. 2005) (“[t]o the extent that Goose Island alleges that government officials retaliated against it for accessing the courts, that claim arises under the First Amendment”).
18. Thus, bringing statutory taxpayer actions and other civil actions against a municipal corporation, including the county, state, the City of Cincinnati, is a form of petitioning the government for a redress of grievances and is protected by the First Amendment.
19. The City of Cincinnati and the Hamilton County Prosecutors Office acting on behalf of governmental officials take offense to Derrick Blassingame fully exercising his First Amendment rights and then proceed to retaliate against him for exercising his First

Amendment rights by filing a motion in the Hamilton County Court of Common Pleas to have him declared a vexatious litigator.

20. Defendants and its governmental officials have taken strong offense and objection to the efforts of Derrick Blassingame to serve as a governmental watchdog and critic – be it through Mr. Blassingame speaking out at city council meetings, publishing his opinion on social media or the suing of the City of Cincinnati, Hamilton County, State of Ohio, and private companies. Such public criticism against Mr. Blassingame has included attacking him while in entering or exiting public buildings, denying him the right to speak at public meetings, banning him from the public library for using public computer terminals to litigate pending matters before the courts, requiring him to wear a facial covering even though he has a medical exemption approved by a medical professional and denying him access to public records among other actions taken to prevent Derrick Blassingame from exercising his First Amendment rights.
21. On information and belief, the vexatious litigator statutes in the State of Ohio have been unequally enforced as more minorities have been declared vexatious litigators than other racial or ethnic group in the State of Ohio. The Vexatious Litigator Statute is disproportionately enforced when African Americans exercise their First Amendment Rights and attempt to petition the courts for a redress of their grievances.
22. This case raises a substantial constitutional question and is one of public or great general interest because of the silencing of citizens whom government officials disagree with by punishing them for exercising their First Amendment rights to prevent these individuals from using the courts as means of petitioning the government and moving to have these individuals declared vexatious litigators in violation of the Ohio Constitution. Article I of

the Ohio Constitution states, “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”

STATEMENT OF THE CASE AND THE FACTS

On September 11, 2020, Mr. Blassingame filed for a Writ of Mandamus in the Hamilton County Court of Common Pleas seeking an order from the court for public records held by the Hamilton County Clerk of Courts.

On September 17, 2020, Mr. Blassingame was granted leave to proceed in forma pauperis after being examined by a Common Pleas Court magistrate on his eligibility for in forma pauperis status. Mr. Blassingame is an unhoused individual and has experienced hardships since Coronavirus Pandemic.

On October 8, 2021, the Court Granted the Defendant's Motion to Dismiss [without prejudice] citing Mr. Blassingame's failure to correctly caption the case on behalf of the State of Ohio.

On June 4, 2021, Mr. Blassingame noting the Court dismissed the matter in Blassingame *v. Pureval A2003176* without prejudice refiled the writ of mandamus with the corrected caption as required by law.

On August 9, 2021, Respondent's filed a Motion to Declare Mr. Blassingame a Vexatious Litigator.

On September 2, 2021, the Court entered and Order Declaring Mr. Blassingame a Vexatious Litigator with holding a hearing as to the merits of each pending case before the Courts. As a result of this order Mr. Blassingame was prohibited from continuing any litigation without filing a motion for leave to proceed pursuant to R. C. 2323.52. Mr. Blassingame filed several Motions for Leave to Proceed but they were ignored and later dismissed by the Court. The Respondents has argued that the number of dismissals is evidence that Mr. Blassingame is a vexatious litigator among other unsupported accusations. However, it is evidence of the

government attempting to deny Mr. Blassingame's First Amendment rights by not allowing him to petition the government for a redress of grievances.

On August 26, 2022, the Hamilton County Court of Appeals, First Appellate District, affirmed the judgement of the Common Pleas Court citing their judgment entry is not an opinion of the court. The Court of Appeals denied Mr. Blassingame's request to permit him to filing a brief outside of the Courts rules and as a result of the arguments contained therein Mr. Blassingame dissents from the court's decision.

PROPOSITION OF LAW

- 1. THE FIRST APPELLATE DISTRICT ERRED IN AFFIRMING THE COURT OF COMMON PLEAS DECISION TO DECLARE MR. BLASSINGAME A VEXATIOUS LITIGATOR.** *State ex rel. Masterson v. Ohio State Racing Comm'n*, 162 Ohio St. 366, 369, 123 N.E. 2d 1 (1954),
- 2. THE FIRST APPELLATE DISTRICT ERRED IN AFFIRMING THE COURT OF COMMON PLEAS DECISION TO DECLARE MR. BLASSINGAME A VEXATIOUS LITIGATOR BY FAILING TO RECOGNIZE OF UPHOLD COURT PRECEDENT THAT** “Suing a municipality is a form of petitioning the government for a redress of grievances and is thus protected by the First Amendment.” *O'Boyle v. Sweetapple*, 187 F/ Supp.3d 1365, 1370 (S.D. Fla. 2016); *accord In re Lipitor Antitrust Litigation*, 868 F.3d 231, 272 (3d Cir. 2017) (“[f]iling a lawsuit essentially petitions the government for redress”).
- 3. THE FIRST APPELLATE DISTRICT ERRED IN AFFIRMING THE COURT OF COMMON PLEAS DECISION TO DECLARE MR. BLASSINGAME A VEXATIOUS LITIGATOR BY FAILING TO RECOGNIZE OR UPHOLD COURT PRECEDENT THAT** Retaliating by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.” *Zilich v. Longo*, 34 F.3d 359, 364 (6th Cir. 1994); *accord R.S.W.W., Inc. v. City of Keego Harbor*, 397 F.3d 427 (6th Cir. 2005) (“[t]o the extent that Goose Island alleges that government officials retaliated against it for accessing the courts, that claim arises under the First Amendment”).
- 4. THE FIRST APPELLATE DISTRICT ERRED IN AFFIRMING THE COURT OF COMMON PLEAS DECISION TO DECLARE MR. BLASSINGAME A**

VEXATIOUS LITIGATOR BY FAILING TO RECOGNIZE OF UPHOLD
ARTICLE I OF OHIO'S CONSTITUTION WHICH STATES, "All courts shall be
open, and every person, for an injury done him in his land, goods, person, or reputation,
shall have remedy by due court of law, and shall have justice administered without denial
or delay. Ohio Courts have held that bringing statutory taxpayer actions and other civil actions against a municipal corporation, including the county, state and a city is a form of petitioning the government for a redress of grievances and is protected by the First Amendment.

5. The government has an enormous amount of power and resources at its disposal. Mr. Blassingame on the other hand is an unhoused, indigent citizen seeking to exercise his First Amendment rights and has been prevented from doing so because he was declared a vexatious litigator. The Respondents – in its capacity as government officials has abused and misapplied R.C. Section 2323.52 not as a means to protect the court's interest but to prevent Mr. Blassingame from exercising his First Amendment rights to petition the government for a redress of grievances for injuries done him in his person and reputation. On one occasion, the City of Cincinnati destroyed evidence that would have led to a not guilty verdict in a criminal case in the Hamilton County Court of Common Pleas and in another case, the City of Cincinnati maliciously prosecuted Mr. Blassingame for criminal allegations he was later acquitted by the court. Ohio law permits private of action for destruction of evidence and malicious prosecution. In furtherance of Mr. Blassingame's First Amendment rights, he petitions the courts for a redress of grievances and has been blocked from litigating those matters due to being declared a vexatious litigator.

6. Should elected officials be permitted to move to have an individual declared a vexatious litigator when they petition the government for a redress of grievances. The message the First Appellate District has sent is that government officials who do not want to be bothered by citizens they disagree with – who has petitioned the courts for a redress of grievances can simply move the court to have the individual declared a vexatious litigator.

CONCLUSION

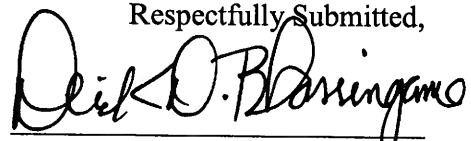
For the above stated reasons, this Court should accept jurisdiction.

“Suing a municipality is a form of petitioning the government for a redress of grievances and is thus protected by the First Amendment.” *O’Boyle v. Sweetapple*.

Retaliating by public officials against the exercise of First Amendment rights is itself a violation of the First Amendment.” *Zilich v. Longo*.

Mr. Blassingame is not a vexatious litigator. The First Appellate District erred in affirming the Hamilton County Court of Common of Pleas order declaring Mr. Blassingame, a governmental watchdog seeking to exercise his First Amendment rights a vexatious litigator. The First Appellate District affirmed the misapplication of R.C. 2323.52 and thus should be reversed.

Respectfully Submitted,



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DATE: 09/26/2022

IN THE SUPREME COURT OF OHIO

DERRICK D. BLASSINGAME,	:	
	:	
Relator-Appellant,	:	On Appeal from the Hamilton
	:	County Court of Appeals
	:	First Appellate District of Ohio
	:	
v.	:	APPEAL NO. C-210495
	:	TRIAL NO. A-2101923
	:	
AFTAB PUREVAL, ET.AL.,	:	Case No. _____
	:	
Respondents-Appellees.	:	
	:	

APPENDIX TO

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT DERRICK D. BLASSINGAME**

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



DERRICK D. BLASSINGAME,	:	APPEAL NO. C-210495
Relator-Appellant,	:	TRIAL NO. A-2101923
vs.	:	<i>JUDGMENT ENTRY.</i>
AFTAB PUREVAL,	:	
and	:	
CHRISTOPHER WAGNER,	:	
Respondents-Appellees.	:	D135818271

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relator-appellant Derrick D. Blassingame appeals pro se the trial court's order declaring him a vexatious litigator and dismissing his complaint for a writ of mandamus against the respondents-appellees. For the following reasons, we overrule all five of Mr. Blassingame's assignments of error and affirm the judgment of the trial court.

In September 2020, Derrick D. Blassingame filed a complaint ("*Pureval I*") for a writ of mandamus against the respondents-appellees in their capacity as public officials seeking to compel them to provide public records that would supposedly establish a pattern of discriminatory debt collection practices. Mr. Blassingame failed to properly caption that complaint, and the trial court dismissed the case accordingly. Mr. Blassingame immediately appealed that judgment. That appeal was pending when Mr. Blassingame filed an identical complaint ("*Pureval II*") that was properly captioned.

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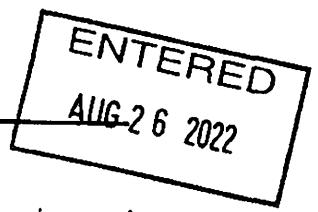
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The respondents-appellees moved to dismiss *Pureval II* for failure to state a claim. A little over one month later, after Mr. Blassingame failed to respond to the motion to dismiss, the respondents-appellees filed a motion to declare Mr. Blassingame a vexatious litigator. The trial court granted the respondents-appellees' motion and dismissed *Pureval II* with prejudice. Mr. Blassingame appealed *Pureval II* later that month, challenging his designation as a vexatious litigator. We subsequently dismissed *Pureval I* for failure to file an appellant brief. Now the sole question is whether the trial court erred by declaring Mr. Blassingame a vexatious litigator in *Pureval II* (as Mr. Blassingame does not assign error to the dismissal of *Pureval II*).

Mr. Blassingame's first assignment of error challenges the denial of (1) his request for oral argument on the motion to declare him a vexatious litigator and (2) his motion for the recusal of the trial judge.

We review the denial of a request for oral argument for an abuse of discretion. *Losey v. Diersing*, 12th Dist. Clermont No. CA2012-06-048, 2013-Ohio-1108, ¶ 13. The respondents-appellees correctly point out that Mr. Blassingame never requested oral argument below. But even if Mr. Blassingame had requested oral argument, we see no basis for concluding that the trial court would abuse its discretion in denying such a request here, nor does Mr. Blassingame point us any reason that the trial court's decision would constitute an abuse of discretion under these circumstances.

Turning to Mr. Blassingame's motion to recuse the trial judge, he insists that the trial judge should have recused because he was biased against him. However, "[t]his court does not have the authority to determine whether a trial judge was biased or prejudiced. * * * The exclusive means for judicial review of a judge's potential bias or prejudice is to file an affidavit of disqualification with the Ohio Supreme Court pursuant to R.C. 2701.03." *Taft, Stettinius, & Hollister, LLP v. Calabrese*, 2016-Ohio-4713, 69 N.E.3d 72, ¶ 29 (1st Dist.), citing *Beer v. Griffith*, 54 Ohio St.2d 440, 441, 377 N.E.2d 775 (1978). Accordingly, we cannot find that the trial court erred by failing to grant Mr.



Blassingame's request for recusal of the trial judge, and thus overrule Mr. Blassingame's first assignment of error in full.

We discuss the second and fourth assignments of error together because they ostensibly raise the same issue—whether the trial court could determine that Mr. Blassingame was a vexatious litigator under R.C. 2323.52 on this record. R.C. 2323.52 provides:

(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 * * *.

"R.C. 2323.52 allows a party that has repeatedly encountered vexatious conduct to have the offending person declared a 'vexatious litigator.' " *City of Madeira v. Oppenheimer*, 1st Dist. Hamilton No. C-200458, 2021-Ohio-2958, ¶ 5. "In determining whether a party is a vexatious litigator, the trial court may consider the party's conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought." *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 41. "We review a vexatious-litigator determination for an abuse of discretion." *State ex rel. Newell v. Cuyahoga Cty. Court of Common Pleas*, 165 Ohio St.3d 341, 2021-Ohio-3662, 179 N.E.3d 84, ¶ 19.

The motion to declare Mr. Blassingame a vexatious litigator identified 13 lawsuits (including *Pureval I*) he filed in 2020 and 2021. At the time, ten of those lawsuits had

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already been dismissed. Five of these lawsuits were dismissed for want of prosecution. One was dismissed for failure to state a claim, and another was dismissed for lack of subject-matter jurisdiction. Others were dismissed for various procedural defects such as improper venue and failure to file an amended complaint. Mr. Blassingame does not dispute the fact that he filed these lawsuits or the disposition of those claims.

We believe that the trial court could find that Mr. Blassingame engaged in vexatious conduct based on his conduct in these cases. Even though most of these lawsuits were disposed of before the trial court reached the merits, Ohio courts have recognized that a pattern of failing to prosecute claims and filing procedurally defective complaints over a short period of time may constitute vexatious conduct. *See, e.g., Herron v. Bramel*, 7th Dist. Columbiana No. 17 CO 0008, 2018-Ohio-1029, ¶ 19-21, 25 (repeated filing of identical complaints in the same court over a short period of time, supposedly to correct deficiencies in prior filings, constituted vexatious conduct where the plaintiffs were informed that the court lacked subject-matter jurisdiction over the action); *Ealy v. McLin*, 2d Dist. Montgomery No. 21934, 2007-Ohio-4080, ¶ 25-26 (filing baseless complaints and failing to prosecute those complaints constituted vexatious conduct). In fact, the *Ealy* court affirmed the trial court's finding that the plaintiff's "failure to prosecute the actions establishes that the suits serve merely to harass and are imposed solely for delay." *Id.* Like in *Ealy*, here the trial court could infer that Mr. Blassingame's repeated failure to prosecute his claims establishes that his suits were merely intended to harass or cause delay. Accordingly, we cannot find that the trial court abused its discretion by declaring Mr. Blassingame a vexatious litigator under R.C. 2323.52. We overrule the second and fourth assignments of error.

As for Mr. Blassingame's third assignment of error, he argues that his designation as a vexatious litigator forecloses his access to the courts in violation of his constitutional rights. He cites just one authority to support this theory—*Martin-Trigona v. Shaw*, 986 F.2d 1384 (11th Cir.1993). While that case recognized that injunctions against abusive and vexatious litigation may not "completely foreclose[]" litigants from "any access to

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the court," the Eleventh Circuit ultimately affirmed the district court's injunction against the plaintiff's "abusive litigation." *Id.* Thus, *Martin-Trigona* merely establishes that, at least under the law of the Eleventh Circuit, a vexatious litigator statute may not completely foreclose a litigant's access to the courts. But R.C. 2323.52 does not completely foreclose Mr. Blassingame's access to the courts. It merely "prohibit[s] the vexatious litigator from instituting, continuing, or making an application in any legal proceeding without first seeking leave of the trial court making the designation." *Oppenheimer*, 1st Dist. Hamilton No. C-200458, 2021-Ohio-2958, at ¶ 5. Because Mr. Blassingame has failed to cite authorities to support his theory that his vexatious litigator status violates his constitutional right to access the courts, he has failed to advance a cognizable argument. *See* App.R. 16(A)(7) ("The appellant shall include in its brief * * * [a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies."). We overrule his third assignment of error for that reason.

Mr. Blassingame's fifth assignment of error rehashes the theories he raised in his other assignments of error. That is, (1) his designation as a vexatious litigator violates his constitutional right to access the courts, (2) the record does not support his designation as a vexatious litigator, and (3) the trial judge should have recused for judicial bias. Based on our resolution of those issues above, we overrule the fifth assignment of error.

In light of the foregoing, we overrule all five assignments of error and affirm the judgment of the common pleas court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

ENTERED
AUG 26 2022

BERGERON, P.J., CROUSE and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on 08/26/2022,
per order of the court Beth A. Myers
Presiding Judge