The Supreme Court of Ohio

CASE ANNOUNCEMENTS

May 22, 2024

[Cite as *05/22/2024 Case Announcements #11*, 2024-Ohio-1933.]

MERIT DECISIONS WITHOUT OPINIONS

2024-0392. Bibb v. Franklin Cty. Probate Court.
In Mandamus. On respondent's motion to dismiss. Motion granted. Sua sponte, relator, Ronald Bibb, found to be a vexatious litigator under S.Ct.Prac.R. 4.03(B). Accordingly, Ronald Bibb prohibited from continuing or instituting legal proceedings in this court without first obtaining leave. Any request for leave shall be submitted to the clerk of this court for the court's review. Cause dismissed.

Deters, J., concurs, with an opinion joined by Fischer, DeWine, and Donnelly, JJ.

Kennedy, C.J., concurs in part and dissents in part, with an opinion.

Stewart and Brunner, JJ., concur in part and dissent in part and would not declare relator to be a vexatious litigator.

DETERS, J., concurring.

{¶ 1} I concur in this court's judgment dismissing relator Ronald Bibb's mandamus complaint and declaring him to be a vexatious litigator. I write separately to address the concern of the opinion concurring in part and dissenting in part that declaring Bibb to be a vexatious litigator is unconstitutional.

{¶ 2} S.Ct.Prac.R. 4.03(B) permits this court—either sua sponte or on the motion of a party—to declare a party to be a vexatious litigator if that party "habitually, persistently, and without reasonable cause engages in frivolous conduct." "An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." S.Ct.Prac. R.

4.03(A). If this court determines that a party is a vexatious litigator, it may impose filing restrictions on the party. S.Ct.Prac.R. 4.03(B).

{¶ 3} There is no question that Bibb qualifies as a vexatious litigator. By my count, since December 2023, he has filed 44 original actions in this court. Among the parties that Bibb has named as respondents in the actions are the Federal Election Commission, a federal district-court judge, a law firm, the Ohio House of Representatives, an electricity utility company, the Social Security Administration, the Central Intelligence Agency, the Democratic National Committee, the Republican National Committee, the Kentucky Department of Tourism, the United States Coast Guard, and the United States Secretary of Defense. We have dismissed nine of those complaints or petitions. Today, we dispose of another 14 actions filed by Bibb, none of which is "reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law," S.Ct.Prac. R. 4.03(A). The dissenting opinion acknowledges that Bibb's complaint in this case has no merit.

{¶ 4} In another case in which we declared a party to be a vexatious litigator, Justice Fischer wrote of this court's "duty to ensure that the Ohio judicial system functions to benefit all Ohioans." *State ex rel. Tingler v. Franklin Cty. Prosecutor's Office*, 169 Ohio St.3d 1449, 2023-Ohio-640, 204 N.E.3d 552, ¶ 2 (Fischer, J., concurring). As Justice Fischer noted, "[v]exatious litigators * * * throw a wrench into our well-oiled system and disrupt the wheels of justice." *Id.* Thus, "we have a duty to name as vexatious litigators those individuals who abuse the court process and engage in frivolous conduct so that we may put an end to repeated and frivolous conduct that substantially burdens our court system and deprives litigants of the prompt handling of their cases." *Id.* at ¶ 3.

{¶ 5} In *Tingler*, this court unanimously declared the relator to be a vexatious litigator and ordered that he be "prohibited from continuing or instituting legal proceedings in this court without first obtaining leave." *Id.* Now, the dissent says that this court was wrong to do so. Filing restrictions, the dissent argues, contravene Article IV, Section 2(B)(3) of the Ohio Constitution, which prohibits promulgating rules "whereby any person shall be *prevented* from invoking the original jurisdiction of the supreme court." (Emphasis added.) The dissent's argument equates placing additional filing requirements on a known filer of frivolous actions with preventing such a person from invoking this court's original jurisdiction. Respectfully, I disagree.

{¶ 6} "Prevent" means "to keep from happening or existing" or "to deprive of power or hope of acting or succeeding." *Merriam-Webster's Collegiate Dictionary* 984 (11th Ed.2003). A vexatious litigator is not "deprive[d] of power or hope of acting or succeeding," *id.*, or entirely kept from invoking the court's original jurisdiction. He may still file a complaint in mandamus or for one of the other extraordinary writs. First, however, he must comply with any restrictions—for example, the restriction of first seeking leave as required by this court. *See* S.Ct.Prac.R. 4.03(B).

{¶ 7} Filing requirements are commonplace, even for litigants who do not have a history of abusing the court system. *See, e.g.*, S.Ct.Prac.R. 3.04 (filing fees for original actions); S.Ct.Prac.R. 3.05 (security deposits for original actions); S.Ct.Prac.R. 12.02(B) (requiring affidavit in support of complaints in original actions); R.C. 2731.04 (listing procedural requirements for complaints for writs of mandamus). Despite prescribing filing requirements, none of these rules or statutes offend the Ohio Constitution's provision that no law or rule shall prevent any person from invoking this court's original jurisdiction. *See* Ohio Constitution, Article IV, Section 2(B)(3). Nor does S.Ct.Prac.R. 4.03(B).

{¶ 8} Requiring that a vexatious litigator like Bibb seek leave before "continuing or instituting legal proceedings in [this court]," S.Ct.Prac.R. 4.03(B), serves to filter out baseless claims. A similar filtering function has survived constitutional scrutiny in the context of a statute that, while inapplicable to this court, is analogous to our rule. *See Mayer v. Bristow*, 91 Ohio St.3d 3, 12-15, 740 N.E.2d 656 (2000).[1] At issue in *Mayer* was a statute "designed to prevent vexatious litigators from gaining direct and unfettered access" to the court system. *Id.* at 14. Like S.Ct.Prac.R. 4.03(B), that statute required vexatious litigators to obtain leave from the trial court before proceeding in that court. *Mayer* at 14. That restriction—which operated as a "screening mechanism"—did not "preclude vexatious litigators from proceeding forward on their legitimate claims." *Id.* So the *Mayer* court concluded that the restriction did not violate the Ohio Constitution's requirement that " '[a]ll courts shall be open.' " *Id.* at 12, quoting Ohio Constitution, Article I, Section 16; *id.* at 16. Likewise, our rule—S.Ct.Prac.R. 4.03(B)—does not unconstitutionally prevent invocation of our original jurisdiction.

1. This court unanimously reaffirmed *Mayer* just last year. *See State ex rel. Simpson v. Melnick*, 171 Ohio St.3d 315, 2023-Ohio-783, 217 N.E.3d 778, ¶ 7 ("The situation here does not warrant any deviation from our holding in *Mayer* that R.C. 2323.52 'is constitutional in its entirety,' *Mayer* at 16").

{¶ 9} The dissenting opinion's reliance on *State ex rel. Toledo v. Lynch*, 87 Ohio St. 444, 449, 101 N.E. 352 (1913), is misplaced. *Lynch* was decided in the context of this court's longstanding practice of declining to exercise jurisdiction over original actions on the sole basis that lower courts had concurrent jurisdiction.[2] *Lynch* at 445-446. This court has since clarified that Article IV, Section 2(B)(3) precludes us from declining to exercise jurisdiction over a complaint "on the ground that [the requested writ] is available in the Common Pleas Court." *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 160, 228 N.E.2d 631 (1967).

{¶ 10} The restrictions placed on a vexatious litigator under S.Ct.Prac.R. 4.03(B) do not run afoul of our Constitution. Rather, S.Ct.Prac.R. 4.03(B) fulfills a necessary role by "protect[ing] our court system and ensur[ing] that other litigants—those who follow our rules and procedures—receive timely resolution of their cases," *Tingler*, 169 Ohio St.3d 1449, 2023-Ohio-640, 204 N.E.3d 552, at ¶ 4 (Fischer, J., concurring). I agree with the majority's decision to declare Bibb to be a vexatious litigator.

FISCHER, DEWINE, and DONNELLY, JJ., concur in the foregoing opinion.

KENNEDY, C.J., concurring in part and dissenting in part.

{¶ 11} Article IV, Section 2(B)(3) of the Ohio Constitution is straightforward: "No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court."

{¶ 12} Notwithstanding that directive, this court promulgated S.Ct.Prac.R. 4.03(B). This rule permits this court to declare a party to be a vexatious litigator if the party "habitually, persistently, and without reasonable cause engages in frivolous conduct" in litigating in this court. S.Ct.Prac.R. 4.03(B). If this court finds a party to be a vexatious litigator, we may then "impose filing restrictions on the party," which include "prohibiting the party from continuing or instituting legal proceedings in [this court] without first obtaining leave, prohibiting the filing of actions in [this court] without the filing fee or security for costs required by S.Ct.Prac.R. 3.04 and 3.05, or any other restriction [this court] considers just." *Id.*

{¶ 13} Today and in the past, this court has imposed filing restrictions on relators, ordering them to be "prohibited from continuing or instituting legal proceedings in this court

2. In fact, it was this practice that inspired a member of the 1912 Constitutional Convention to propose the language of Article IV, Section 2(B)(3). 1 *Proceedings and Debates of the Constitutional Convention of the State of Ohio* 1831 (1912).

without first obtaining leave." *See, e.g., State ex rel. Tingler v. Franklin Cty. Prosecutor's Office*, 169 Ohio St.3d 1451, 2023-Ohio-641, 204 N.E.3d 554. We were wrong to do that, and I was wrong to join those decisions. Those orders contravened Article IV, Section 2(B)(3), which broadly safeguards the right of "any person" to invoke the original jurisdiction of this court. " 'Any person' means *every* person" (emphasis sic), *State v. Wells*, 146 Ohio St. 131, 137, 64 N.E.2d 593 (1945), including those who engage in frivolous litigation. And this court has recognized that the language of Article IV, Section 2(B)(3) "will not permit this court either to adopt or adhere to a rule which requires permission to invoke the exercise of its original jurisdiction." *State ex rel. Toledo v. Lynch*, 87 Ohio St. 444, 449, 101 N.E. 352 (1913).

{¶ 14} Relator, Ronald Bibb, is therefore protected by Article IV, Section 2(B)(3) of the Ohio Constitution, and we lack power to impose filing restrictions preventing him from invoking our original jurisdiction by requiring that he obtain leave to commence or continue an action in this court.

{¶ 15} The concurrence makes a few points that need responses. First, it points to various filing requirements for original actions in this court's rules of practice and in R.C. 2731.04 that impose filing fees, S.Ct.Prac.R. 3.04, require security deposits and affidavits, S.Ct.Prac.R. 3.05 and S.Ct.Prac.R. 12.02(B), or set procedural requirements such as that a mandamus petition must be filed in the name of the state on relation of the petitioner, R.C. 2731.04. But these filing requirements do not prevent a litigant from invoking the original jurisdiction of this court. The filing-fee and security-deposit requirements are waived for litigants who cannot afford to pay them. S.Ct.Prac.R. 3.06(A). And those who can afford to pay the filing fee and the security deposit are not prevented by the filing fee and the security deposit from filing in this court. Neither the affidavit requirement nor the caption requirement—i.e., captioning the original action "State ex rel."—poses any barrier to invoking our original jurisdiction. *See* R.C. 2731.04.

{¶ 16} In contrast to those filing requirements, S.Ct.Prac.R. 4.03(B) expressly provides for "filing restrictions." A party who has been declared to be a vexatious litigator must ask this court for permission to invoke our original jurisdiction, when the purpose of Article IV, Section 2(B)(3) was to end the practice of requiring leave to file original actions in this court, *see generally Lynch*, 87 Ohio St. at 447-449, 101 N.E. 352.

{¶ 17} Second, the concurrence relies on *Mayer v. Bristow*, 91 Ohio St.3d 3, 740 N.E.2d 656 (2000), to support its contention that S.Ct.Prac.R. 4.03(B) "does not unconstitutionally prevent invocation of our original jurisdiction," concurring opinion, ¶ 8. In *Mayer*, this court construed the vexatious-litigator provisions of R.C. 2323.52 as it applies to trial courts. In *State ex rel. Henderson v. Sweeney*, this court held that R.C. 2323.52 does not apply to this court. 146 Ohio St.3d 252, 2016-Ohio-3413, 54 N.E.3d 1245, ¶ 8.

{¶ 18} In *Mayer*, this court held that R.C. 2323.52 does not violate a litigant's rights to due process and open courts. *Mayer* at 18-20. But in answering the question whether the statute was unconstitutional, this court stated the standard of review as follows: "[W]hether the challenged procedure is properly tailored to prevent further abuse of court processes without unduly burdening the submission of legitimate claims." *Id.* at 14. Such a weighing process may be proper in analyzing the rights to due process and open courts, but Article IV, Section 2(B)(3) does not permit us to balance the pros and cons of allowing a vexatious litigator to invoke our original jurisdiction. Instead, we have recognized for more than a century that Article IV, Section 2(B)(3) means what it says—"No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court." *See Lynch* at 449.

{¶ 19} Third, the concurrence's attempt to distinguish *Lynch* fails. It says that "*Lynch* was decided in the context of this court's longstanding practice of declining to exercise jurisdiction over original actions on the sole basis that lower courts had concurrent jurisdiction." (Emphasis added.) Concurring opinion at ¶ 9. But Article IV, Section 2(B)(3) prohibits this court from adopting a rule that prevents *any person* from invoking this court's original jurisdiction, including a person who files frivolous original actions.

{¶ 20} I do not doubt the concurrence's proposition that S.Ct.Prac.R. 4.03(B) is practically necessary to protect the court system from vexatious litigators. But as this court in *Lynch* explained, "[t]he duty of subordination to the law rests nowhere more impressively than upon a tribunal which is not otherwise subordinate. The adjudications of a court of last resort must so enforce and so obey the provisions of fundamental law as to make popular government possible. To make it practicable is the duty of the electors," *Lynch*, 87 Ohio St. at 449, 101 N.E. 352. And the electors may amend Article IV, Section 2(B)(3) if they so choose.

{¶ 21} So for these reasons, I am not persuaded by the concurrence's defense of S.Ct.Prac.R. 4.03(B).

{¶ 22} In the end, Bibb's mandamus complaint in this case is without merit, so I concur in this court's judgment dismissing it. But I would not declare Bibb to be a vexatious litigator, and I dissent from the part of this court's judgment doing so.