

[Cite as *Miller v. Ohio Governor*, 2022-Ohio-320.]

ROSANNA L. MILLER

Requester

v.

OHIO GOVERNOR

Respondent

Case No. 2021-00529PQ

Judge Patrick E. Sheeran

DECISION AND ENTRY

{¶1} On November 3, 2021, a Special Master recommended dismissal of Requester Rosanna L. Miller’s Complaint in this public-records case, because, as stated by the Special Master, the Court “learned that on August 16, 2018, the Logan County Common Pleas Court issued an order declaring Miller a vexatious litigator pursuant to R.C. 2323.52 and directing that she may not institute or continue any legal proceedings in listed Ohio courts including the Court of claims. *Campbell Aid OPCO, LLC v. Miller*, Logan C.P. No. CV-18-01-0025 (Aug. 16, 2018) (Copy attached).” (Recommendation For Dismissal, 1.)¹

{¶2} In *Campbell* the Logan County Court of Common Pleas found Miller to be a vexatious litigator under R.C. 2323.52. *Campbell Aid OPCO, LLC v. Miller*, Logan C.P. No. CV 18 01 0025 (Aug. 16, 2018) (Judgment Entry), at 8-10. The Logan County Court of Common Pleas stated:

¹ A copy of *Campbell Aid OPCO, LLC v. Miller*, Logan C.P. No. CV 18 01 0025 (Aug. 16, 2018) is not attached to the Special Master’s Recommendation For Dismissal. The Court takes judicial notice that a copy of *Campbell Aid OPCO, LLC* is available on The Supreme Court of Ohio’s website: See https://www.supremeCourt.ohio.gov/Clerk/vexatious/millerR_081618.pdf (accessed November 4, 2021). See *generally* Evid.R. 201(B) (“[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial Court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”) and (C) (authorizing a Court to take judicial notice whether requested or not).

Consistent with the designation under Revised Code 2323.52, this Court ORDERS that Rosanna Miller is indefinitely prohibited from doing any of the following without first obtaining leave of this Court to proceed:

- (a) Instituting legal proceedings in the Court of Claims or in a Court of Common Pleas, Municipal Court or County Court * * *.

Campbell Aid OPCO, LLC at 13.

{¶3} Miller has filed written objections to the Special Master's recommendation "as the actions by Logan County was a Strategic Lawsuit Against Public Participation (SLAPP) to block Requesters efforts to get justice for the murder and abuse of her parents and theft of their private family TRUST." Miller asks the Court "to reverse its Recommendation To Dismiss and proceed to produce a certified copy of the Original wet ink Oath of Office for Governor Mike DeWine, which every Ohioan has a right to access." (Objections, December 6, 2021.) Miller states, "If in the interest to serve justice, the violations set forth in this Objection should be directed to a governing authority for investigation." (Id.) Notably, in the objections Miller does not dispute that the Logan County Common Pleas Court previously declared her to be a vexatious litigator and indefinitely prohibited her from instituting a legal proceeding in this Court without first obtaining leave of the Logan County Common Pleas Court. And in the objections Miller does not represent that the Logan County Common Pleas Court has granted her leave to institute the present action.

{¶4} Respondent Ohio Governor has filed a response to Miller's objection. The Governor asks the Court to overrule Miller's objection and adopt the Special Master's recommendation without modification.

{¶5} R.C. 2323.52 governs a civil action that declares a person to be a vexatious litigator. R.C. 2323.52(l) provides:

Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted,

continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate Court of common pleas or Court of appeals to do so under [R.C. 2323.52(F)], the Court in which the legal proceedings are pending *shall* dismiss the proceedings or application of the vexatious litigator.

(Emphasis added.) See *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), paragraph one of the syllabus (holding that, in statutory construction, the word “shall” is required to be construed as mandatory unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage). The Court does not discern a clear and unequivocal legislative intent in R.C. 2323.52(I) that the word “shall” should receive a construction other than its ordinary usage. Accord *Huntington Natl. Bank v. Lomaz*, 11th Dist. Portage No. 2005-P-0075, 2006-Ohio-3880, ¶ 14, citing *State ex rel. Botkins v. Laws*, 69 Ohio St.3d 383, 385, 632 N.E.2d 897 (1994) (“[t]he use of the word ‘shall’ in R.C. 2323.52(F) and (I) indicates that those statutory sections, requiring a vexatious litigator to obtain leave of a Court of appeals to maintain any proceedings therein, and requiring the Court to dismiss any non-compliant proceeding, are mandatory”).

{¶6} Pursuant to R.C. 2743.75(D)(2), “[n]otwithstanding any provision to the contrary in this section, upon the recommendation of the special master, the Court of claims on its own motion *may* dismiss the complaint at any time.” (Emphasis added.) See *Dorian*, 27 Ohio St.2d 102 at paragraph one of the syllabus (holding that, in statutory construction, the word “may” is required to be construed as permissive unless there appears a clear and unequivocal legislative intent that it receives a construction other than its ordinary usage). The Court does not discern a clear and unequivocal legislative intent in R.C. 2743.75(D)(2) that the word “may” should receive a construction other than its ordinary usage. Thus, under R.C. 2743.75(D)(2), despite any

provision to the contrary in R.C. 2743.75, upon a special master's recommendation, this Court may sua sponte dismiss a complaint at any time.

{¶7} Upon consideration of the Special Master's recommendation, Miller's objections, and the Ohio Governor's response, the Court finds that the Special Master's recommendation is well taken. This Court has no other legal option: the statutory language of R.C. 2323.52(I) requires dismissal of this case unless the vexatious litigator receives permission from the Common Pleas Court to file a suit. In the absence of that permission, or in the absence of a higher Court (e.g. the Court of Appeals) overturning the vexatious litigator finding, this Court simply cannot hear this case, regardless of its merit or its lack of merit. As a result, this Court **OVERRULES** Miller's written objections and sua sponte **DISMISSES** Miller's Complaint pursuant to R.C. 2323.52(I) and 2743.75(D)(2). Court costs are assessed to Miller. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge