

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
ERIE COUNTY

Ottawa County Prosecuting Attorney

Court of Appeals No. E-22-041

Appellee

Trial Court No. 2022-CV-0282

v.

Charles Tingler

**DECISION AND JUDGMENT**

Appellant

Decided: August 10, 2023

\* \* \* \* \*

James J. VanEerten, Ottawa County Prosecuting Attorney,  
for appellee.

Charles Tingler, Pro se.

\* \* \* \* \*

**SULEK, J.**

{¶ 1} Appellant Charles Tingler appeals the judgment of the Erie County Court of Common Pleas, which declared him to be a vexatious litigator under R.C. 2323.52. Tingler contends that the trial court erred when it denied his Civ.R. 12(B)(6) motion to dismiss the complaint. However, because the complaint alleged operative facts that, if true, would be sufficient to satisfy R.C. 2323.52, the trial court did not err in denying Tingler's motion to dismiss.

## **I. Facts and Procedural Background**

{¶ 2} On June 27, 2022, the Ottawa County Prosecutor initiated the present matter by filing a complaint against Tingler, seeking to have him declared a vexatious litigator under R.C. 2323.52. The complaint alleged that Tingler has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions.” Specifically, the complaint alleged that in the year 2022, Tingler, representing himself pro se, has filed 25 civil actions or appeals in the Ottawa County Court of Common Pleas and the Sixth District Court of Appeals, two miscellaneous civil matters in the Ottawa County Municipal Court, five cases in the Ohio Court of Claims, three cases in Erie County, and at least one case in Huron County. In addition, Tingler “has also filed numerous post-conviction motions in his felony criminal cases seeking various forms of post-conviction relief.” The complaint also alleged that Tingler’s civil actions “serve merely to harass or maliciously injure governmental entities and the elected and/or appointed officials to which they relate,” and “were not warranted under existing law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.” Finally, the complaint alleged that the Ottawa County Prosecutor has expended significant time, effort, and resources defending against Tingler’s civil actions and will be obligated to continue to do so unless Tingler is prohibited from engaging in further vexatious conduct.

{¶ 3} On June 29, 2022, Tingler moved to dismiss the complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief could be granted. In his motion, Tingler argued:

Most if not all of the civil cases that the relator (sic) cites in support of his complaint are cases that are pending, meaning they have not been adjudicated on the merits. Furthermore, there's only two cases pending that are civil that prosecutor VanEerten is a party, that being a writ of mandamus seeking to compel him to prosecute for an abuse of discretion, and a malicious prosecution claim. There are also miscellaneous cases requesting criminal prosecution in connection with a citizen's criminal complaint filed in accordance with Ohio Revised Code sections 2935.09 and 2935.10. Respondent (sic) maintains that he is instituting all of these actions with the belief that they are warranted under existing law, can be supported by a good faith argument for an extension, modification, or reversal of existing law, and can be supported by a good faith argument for the establishment of new law.

The Ottawa County Prosecutor did not file an opposition to Tingler's motion to dismiss.

{¶ 4} On August 11, 2022, the trial court summarily denied Tingler's motion.

{¶ 5} Thereafter, on September 8, 2022, the Ottawa County Prosecutor moved for a default judgment, noting that Tingler had not filed an answer within 28 days after

service of the complaint or within 14 days after service of the order denying his Civ.R. 12(B)(6) motion to dismiss.

{¶ 6} On September 13, 2022, the trial court awarded default judgment to the Ottawa County Prosecutor and declared Tingler to be a vexatious litigator under R.C. 2323.52.

## **II. Analysis**

{¶ 7} Tingler has moved for, and been granted, leave to appeal the trial court's September 13, 2022 judgment declaring him to be a vexatious litigator. Tingler does not present an appellate brief that conforms with App.R. 16 and does not present an assignment of error for review. Nevertheless, Tingler's argument on appeal is that the trial court erred when it denied his Civ.R. 12(B)(6) motion to dismiss the complaint.

{¶ 8} Appellate courts review de novo a trial court's decision granting a Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief may be granted. *Curcio v. Hufford*, 2022-Ohio-4766, 204 N.E.3d 1107, ¶ 12 (6th Dist.), citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5. "A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint." *Med. Mut. of Ohio v. FrontPath Health Coalition*, 2023-Ohio-243, 207 N.E.3d 16, ¶ 12 (6th Dist.), quoting *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). In reviewing a Civ.R. 12(B)(6) motion, the court presumes that the complaint's factual

allegations are true and makes all reasonable inferences in the nonmoving party's favor. *Curcio* at ¶ 12; *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). To dismiss the complaint, "it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought." *Id.*, quoting *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, 956 N.E.2d 814, ¶ 12.

{¶ 9} Here, the complaint sought a declaration that Tingler is a vexatious litigator pursuant to R.C. 2323.52. Under that section,

"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.

R.C. 2323.52(A)(3). "'Vexatious conduct' means conduct of any 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." R.C. 2323.52(A)(2)(a) and (b).

{¶ 10} R.C. 2323.52(B) provides that a prosecuting attorney who has defended against “habitual and persistent vexatious conduct” “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 prosecuting attorney “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.” *Id.*

{¶ 11} The complaint in this case sufficiently alleged a cause of action to have Tingler declared a vexatious litigator. Consistent with R.C. 2323.52, the complaint alleged that Tingler’s approximately 36 civil actions during the year 2022—not counting his motions for post-conviction relief—were habitual and persistent, served merely to harass another party to the action, and were not warranted under existing law and did not present a good faith argument to extend the law. Assuming those facts are true, the Ottawa County Prosecutor is entitled to have Tingler declared a vexatious litigator.

{¶ 12} In his motion to dismiss, Tingler made two related arguments. First, Tingler argued that the many of the civil actions were still pending and had not been decided on the merits. However, to the extent Tingler argued that he cannot be declared a vexatious litigator on account of civil actions that are still pending, R.C. 2323.52(B) expressly provides otherwise: the vexatious litigator complaint may be filed “while the

civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending \* \* \*.” Thus, Tingler’s first argument has no merit.

{¶ 13} Second, Tingler argued that his civil actions were warranted under existing law or made a good faith argument for an extension. Tingler’s argument, however, challenged the truth of the allegations made in the complaint. Such a challenge is beyond the scope of a Civ.R. 12(B)(6) motion to dismiss, which requires the court to presume that the allegations contained in the complaint are true. Thus, Tingler’s second argument has no merit.

{¶ 14} On appeal, Tingler further argues that his motion to dismiss should have been granted because the Ottawa County Prosecutor did not oppose the motion and the trial court’s decision did not cite any compelling legal authority. Those arguments are likewise without merit. As to the former argument, nothing in the civil rules requires the trial court to grant Tingler’s Civ.R. 12(B)(6) motion merely because the Ottawa County Prosecutor did not file a response. As to the latter argument, because the standard of review is de novo, the trial court’s reasoning—or lack thereof—has no bearing on the outcome of this appeal. *See Hoeflinger v. AM Mart, LLC*, 2017-Ohio-7530, 96 N.E.3d 1247, ¶ 15 (6th Dist.) (“De novo review means that this court conducts an ‘independent review of the trial court’s decision without any deference to the trial court’s determination.’”), quoting *State ex rel. AFSCME v. Taft*, 156 Ohio App.3d 37, 2004-Ohio-493, 804 N.E.2d 88, ¶ 27 (3d Dist.).

{¶ 15} Therefore, because the Ottawa County Prosecutor set forth a complaint sufficiently alleging facts upon which relief could be granted, the trial court did not err in denying Tingler’s Civ.R. 12(B)(6) motion to dismiss. Accordingly, Tingler’s argument on appeal is not well-taken.

### III. Conclusion

{¶ 16} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Tingler is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6<sup>th</sup> Dist.Loc.App.R. 4.

Charles E. Sulek, J.

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JUDGE

William R. Zimmerman, V.J.

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JUDGE

John R. Willamowski, V. J.  
CONCUR.

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JUDGE

Judges William R. Zimmerman and John R. Willamowski, Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio



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