

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ROBERT GRUNDSTEIN,	:	
	:	
Relator,	:	No. 110719
	:	
v.	:	
	:	
JUDGE JOHN J. RUSSO,	:	
	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: September 24, 2021

Writs of Prohibition and Mandamus
Motion No. 548433
Order No. 548841

Appearances:

Robert Grundstein, *pro se*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Nora E. Poore and Leslie Shafer, Assistant Prosecuting Attorneys, *for respondent*.

MARY EILEEN KILBANE, J.:

{¶ 1} Relator, Robert Grundstein, seeks leave to file and prosecute an original action in this court for writs of prohibition and mandamus against respondent, Judge John J. Russo. Under R.C. 2323.52(F)(2), we deny leave to proceed and dismiss the complaint Grundstein filed without leave.

I. Background

{¶ 2} In 2005, a judge issued an order in an underlying civil case finding Grundstein to be a vexatious litigator. *Grundstein v. eWolf's Corp.*, Cuyahoga C.P. No. CV-513849. He appealed this finding, but the appeal was dismissed as untimely. *Grundstein v. eWolf's Corp.*, 8th Dist. Cuyahoga No. 87313 (Dec. 15, 2005). Grundstein has sought to overturn the order finding him a vexatious litigator ever since. Those challenges have come in the form of appeals, filings in the trial court — including motions for relief from judgment, and original actions in this court, the Supreme Court of Ohio, and actions in federal court.

{¶ 3} This court has previously summarized some of the efforts in the common pleas court:

Request for relief from judgment (filed December 27, 2005), motion to reconsider (filed June 14, 2006), Ohio Civ.R. 60 motion for relief from judgment under R.C. 2323.52 based on new case law (filed September 4, 2008), motion to vacate order (filed September 30, 2008), motion to vacate judgment under Ohio Civ.R. 60(B)(4) and (5) (filed June 4, 2010), motion to modify order (filed September 2, 2010), motion to vacate (filed December 13, 2010), motion for leave to proceed and file declaratory relief (filed August 19, 2011), motion for leave to proceed to file declaratory relief (filed December, 5, 2011), motion for leave to proceed to file complaint and request end of filing restrictions (filed January 9, 2012), and motion for leave to proceed to terminate filing restrictions (filed January 13, 2012).

Grundstein v. eWolf's Corp., 8th Dist. Cuyahoga No. 102384, 2015-Ohio-2163, ¶ 5.

Each of these motions was denied. *Id.*

{¶ 4} Grundstein also challenged or attempted to challenge his vexatious litigator status numerous times before this court. *Grundstein v. Greene*, 8th Dist.

Cuyahoga No. 87623, 2006-Ohio-2205 (request for leave to proceed in an original action for writs of prohibition and mandamus denied); *Grundstein v. eWolf's Corp.* (appeal from denial of motion for relief from judgment).

{¶ 5} The Supreme Court of Ohio has denied numerous motions for leave to proceed to challenge his status as a vexatious litigator, to the point where the Supreme Court of Ohio has separately declared Grundstein a vexatious litigator. *State ex rel. Grundstein v. Court of Appeals, Eighth Appellate Dist.*, 121 Ohio St.3d 1494, 2009-Ohio-2511, 907 N.E.2d 320 (granting motion to declare Grundstein a vexatious litigator under the Rules of Practice for the Supreme Court of Ohio). Since that time, Grundstein has filed numerous motions for leave to proceed that have all been denied. *In re Grundstein*, 125 Ohio St.3d 1419, 2010-Ohio-2013, 926 N.E.2d 310; *In re Grundstein*, 125 Ohio St.3d 1451, 2010-Ohio-2586, 927 N.E.2d 1130; *In re Grundstein*, 125 Ohio St.3d 1455, 2010-Ohio-2650, 928 N.E.2d 454; *In re Grundstein*, 128 Ohio St.3d 1401, 2011-Ohio-732, 941 N.E.2d 1203; *In re Grundstein*, 129 Ohio St.3d 1416, 2011-Ohio-3483, 950 N.E.2d 564; *In re Grundstein*, 129 Ohio St.3d 1416, 2011-Ohio-3483, 950 N.E.2d 564; *In re Grundstein*, 135 Ohio St.3d 1450, 2013-Ohio-2084, 987 N.E.2d 705; *In re Grundstein*, 137 Ohio St.3d 1417, 2013-Ohio-5158, 998 N.E.2d 514; *In re Grundstein*, 143 Ohio St.3d 1412, 2015-Ohio-2883, 34 N.E.3d 926; and *In re Grundstein*, Slip Opinion No. 2021-Ohio-2504.

{¶ 6} Further, Grundstein has challenged his vexatious litigator status in federal court. *Grundstein v. Ohio*, N.D. Ohio No. 1:06 CV 2381, 2006 U.S. Dist.

LEXIS 87880 (Dec. 5, 2006). There, he unsuccessfully challenged his vexatious litigator status through attacks on the constitutionality of Ohio's vexatious litigator statute. Even though he was unsuccessful, he continued to file similar cases in the federal district court, which also resulted in the district court imposing filing restrictions. *Grundstein v. Eighth Dist. Court of Appeals*, 6th Cir. No. 10-3109, 2011 U.S. App. LEXIS 26787 (Nov. 1, 2011). There, the Sixth Circuit affirmed an order of the district court denying relief and imposing future filing restrictions.

{¶ 7} Against this backdrop, respondent entertained a motion filed by Grundstein in 2016 and conducted a hearing in 2017. A review of the publicly available docket in *Grundstein v. Docket Entry of July 25, 2005*, Cuyahoga C.P. No. SD-16-077588,¹ reveals that Grundstein filed something to initiate proceedings under R.C. 2323.52(F)(1) to relieve himself of his vexatious litigator status.

{¶ 8} The statute, as it existed in 2016, and as it provides today states:

A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and

¹ The Supreme Court of Ohio has approvingly cited cases holding that a court may take notice of a docket that is publicly available on the internet. *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, 874 N.E.2d 516, ¶ 8, citing *Doe v. Golden & Walters, P.L.L.C.*, 173 S.W.3d 260, 265 (Ky.App.2005); *Leatherworks Partnership v. Berk Realty, Inc.*, N.D. Ohio No. 4:04 CV 0784, 2005 U.S. Dist. LEXIS 27887, 2 (Nov. 15, 2005). The docket for the underlying case, Cuyahoga C.P. No. SD-16-077588, is publicly available on the Cuyahoga County Clerk of Courts Website. www.coc.cuyahogacounty.us.

that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in division (F) (1) of this section, the period of time commencing with the filing with that court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

Further, R.C. 2323.52(E) indicates that unless an order finding an individual to be a vexatious litigator contains an expiration period, it remains in force indefinitely.

{¶ 9} Again, despite this, Grundstein asked respondent to relieve him of his vexatious litigator status, which the judge did in an order dated June 12, 2017. Later, respondent learned that Grundstein had not been truthful during the hearing on the motion. He scheduled a new hearing and sent notice to Grundstein. Grundstein submitted to the jurisdiction of the court by filing motions to continue the hearing, filing other motions, and attending the hearing scheduled by respondent. A hearing was conducted on April 3, 2019, where respondent heard arguments from Grundstein and nonparty Cuyahoga County. Then, on April 12, 2019, respondent entered an order vacating his 2017 order, and reinstating the 2005 order finding Grundstein to be a vexatious litigator.

{¶ 10} Over two years later, on August 6, 2021, Grundstein filed this combined original action and motion for leave to proceed, seeking to vacate respondent's 2019 order. He claimed that there was no action before respondent and therefore, no authority or jurisdiction for respondent to find Grundstein a

vexatious litigator. Respondent filed a brief in opposition to Grundstein's motion for leave to proceed and complaint on August 23, 2021. Respondent attached the docket from the case before him mentioned above, and the motion filed by Grundstein in 2016 that initiated the action. In a reply brief, filed August 28, 2021, Grundstein again asserted that there was no action before respondent and respondent could not find him to be a vexatious litigator.

II. Law and Analysis

{¶ 11} R.C. 2323.52(F)(2) states,

A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

This court may grant leave to proceed if “the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.”

{¶ 12} Grundstein has styled his complaint, “Motion for leave to proceed and Application for writ of Prohibition/Mandamus.” The only portion of the filing that addresses the requirements imposed by R.C. 2323.52 is a single line: “Relator asks this court for leave to file this writ for extraordinary relief.” Grundstein also does not go into any of the procedural history of the underlying case, even though it is germane to the merits of his complaint. He claims that respondent did not have personal jurisdiction over him or subject-matter jurisdiction to find him to be a vexatious litigator. He omits the fact that he filed something that initiated the above-referenced case before respondent, participated in a hearing on the motion and other hearings, and filed other motions. He further omits the fact that respondent’s order actually does not find him to be a vexatious litigator, but reinstates a previous order that did so after respondent was informed that Grundstein failed to disclose pertinent facts during the 2017 hearing. Respondent’s 2019 decision, which was not included with Grundstein’s motion or complaint but of which we take judicial notice, states in part,

Had the court been made aware of the glaring and disconcerting deficiencies with Mr. Grundstein’s attempt to become licensed in Vermont at the time of the 06/12/2017 hearing, the court would have certainly not found good cause and not found it to be in the interest of justice to remove Mr. Grundstein’s vexatious litigator status. For this reason, the court hereby sua sponte vacates its own ruling in its inherent discretion as the court finds that Mr. Grundstein’s dishonest conduct in failing to disclose operative facts underlies the very core of conduct that is deemed vexatious in that it was not warranted and not supported by good faith. In so vacating the 06/12/2017 order, this court hereby re-instates Mr. Grundstein as a vexatious litigator under R.C. 2323.52 as ordered on 10/12/2005 by Judge Lillian J. Greene in

case number CV-03-513849 in the Cuyahoga County Court of Common Pleas.

{¶ 13} These are not the only omissions or misstatements in Grundstein’s filing. In his complaint, Grundstein makes the claim that “[r]elator passed the Vermont and Washington D.C. Bars. *Vermont* found Relator to be of good character and found ‘no reason to doubt his honesty, ethics, candor and character’, but wanted to know why he is on the list of vexatious litigators.” (Emphasis added.) However, this unattributed quotation is contradicted by the publicly available court decisions regarding Grundstein’s attempts to be licensed to practice law in Vermont. *In re Grundstein*, 206 Vt. 575, 2018 VT 10, 183 A.3d 574 (Vt.2018). The Vermont Supreme Court explained the procedural history of Grundstein’s application process:

On May 9, 2016, the member reported to the [Vermont Character and Fitness] Committee that he was unable to certify applicant’s good moral character and fitness. The member noted that applicant offered confusing explanations for his disbarment in Washington State and his conviction for alteration of a court document. The member was also concerned that the Washington disbarment notice stated that applicant had repeatedly violated court orders and filed meritless pleadings. A three-member panel of the Committee held a hearing on the matter on October 20, 2016. Applicant attended the hearing and was represented by counsel. In a written decision issued on January 30, 2017, the Committee declined to certify applicant’s good moral character and fitness.

Id. at ¶ 2. *See also id.* at ¶ 19, fn. 2.

{¶ 14} In fact, “Vermont,” in the form of its highest court, specifically rejected a statement made by the Vermont Character and Fitness Committee that it had no reason to doubt Grundstein’s “‘honesty, ethics, or truthfulness.’” The

Vermont Supreme Court found the opposite based on the misrepresentations made in and omissions from his character and fitness application. *Id.* at ¶ 39, fn. 10.

{¶ 15} Grundstein has misrepresented statements or omitted pertinent information from statements made in his complaint and motion for leave to proceed. Based on this, the above significant and lengthy history of frivolous filings, and Grundstein's other significant omissions from his motion and complaint, Grundstein has failed to demonstrate that the action does not constitute an abuse of process and that there are reasonable grounds for this action.

{¶ 16} Further, Grundstein has failed to pay the filing fee to initiate this action or file an affidavit of indigence as required by Loc.App.R. 45(C). Failure to pay the filing fee or provide an affidavit of indigence may be grounds for dismissal. *State ex rel. Mickey v. McFaul*, 8th Dist. Cuyahoga Nos. 77320 and 77321, motion No. 12565, 1999 Ohio App. LEXIS 6256, 3 (Dec. 23, 1999). He has also not properly captioned the complaint to be brought in the name of the state on behalf of the relator as required by R.C. 2731.04 for an application for writ of mandamus.

{¶ 17} Accordingly, Grundstein’s motion for leave to proceed is denied. The complaint is dismissed. Grundstein has also failed to pay the filing fee required to initiate the present action or file an affidavit of indigency. Therefore, Grundstein shall bear the costs of this action. The clerk is directed to serve on the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

MARY EILEEN KILBANE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
LISA B. FORBES, J., CONCUR