

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

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| HOUSTON BYRD JR. |) | CASE NO. CV 2022-03-0934 |
| |) | |
| Plaintiff, |) | JUDGE CHRISTINE CROCE |
| |) | |
| vs. |) | |
| |) | <u>JUDGMENT ENTRY & ORDER</u> |
| VALMARK FINANCIAL GROUP LLC |) | |
| |) | |
| Defendant. |) | |

This matter is before the Court upon Defendant’s Motion for Summary Judgment as to its counterclaim filed in this action. Defendant filed a counterclaim requesting that the Court declare Plaintiff to be a vexatious litigator pursuant to O.R.C. §2323.52. Plaintiff filed a “Reply to Defendant’s Memorandum and Plaintiff’s Motion for Summary Judgment” on July 8, 2022.

On July 6, 2022, this Court issued a Judgment Entry & Order granting Defendant’s Motion for Judgment on the Pleadings and dismissing Plaintiff’s Complaint. Therefore, the Court finds that Plaintiff’s Motion for Summary Judgment is moot as he has no claim pending, and Plaintiff’s Motion for Summary Judgment is therefore **denied**.

The Court has been advised, having reviewed Defendant’s Motion for Summary Judgment, Memorandum and Supplemental Memorandum, Plaintiff’s Reply, the pleadings, exhibits and applicable law. The Court finds that the issues have been fully briefed and are ripe for review.

LAW & DISCUSSION

The Supreme Court of Ohio has stated: “Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. It must be awarded

with caution, resolving doubts and construing evidence against the moving party ...” Norris v. Ohio Std. Oil Co. (1982), 70 Ohio St.2d 1, 2. *See also* Viocck v. Stowe-Woodward Co. (1983), Ohio App.3d 7, 11-12.

Pursuant to Civ. R. 56, summary judgment is appropriate when “(1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.” Temple v. Wean United, Inc. (1977), 50 Ohio St. 2d 317, 327. To succeed on a summary judgment motion, the movant bears the initial burden of demonstrating the absence of a genuine issue of material fact on the essential elements of its claim. Dresher v. Burt (1996), 75 Ohio St.3d 280, 292. The moving party must support its motion by pointing to some evidence in the record of the type listed in Civ. R. 56(C). Id. at 292-293.

If the movant satisfies this burden, the nonmoving party has a reciprocal burden to “set forth specific facts showing that there is a genuine issue for trial”. Id. at 293. The evidence presented on a motion for summary judgment is always construed in favor of the party opposing the motion, who is given the benefit of all favorable inferences that can be drawn from it. Williams v. First United Church of Christ (1974), 37 Ohio St.2d 150, 153.

Ohio’s vexatious litigator statute, O.R.C. §2323.52, states in part as follows:

(A) As used in this section:

(1) “Conduct” has the same meaning as in section 2323.51 of the Revised Code.

(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 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. “Vexatious litigator” does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions. For the purposes of division (A)(3) of this section, “civil action” includes a proceeding under section 2743.75 of the Revised Code.

“The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources —resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.” Mayer v. Bristow (2000), 91 Ohio St.3d 3, 13, citing Cent. State Transit Auth. v. Timson (1998), 132 Ohio App.3d 41, 50 (OHCA10).

“A court may take judicial notice of a document filed in another court “nor for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.” State ex rel. Coles v. Granville, 116 Ohio St.3d 231, 2007-Ohio-6057 ¶20, citing Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384, 1388 (2d Cir. 1992) quoting Kramer v. Time Warner, Inc., 937 F.2d 767, 774 (2d Cir. 1991).

In support of its Motion, Defendant provided documents detailing previous law suits

filed by Plaintiff. The Court takes judicial notice of the following actions filed by Plaintiff:

Franklin County Common Pleas Court:

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| 1997, legal malpractice | dismissed |
| 1999, legal malpractice | dismissed |
| 2000, vs. Magistrate, Domestic Relations Court | dismissed |
| 2014, vs. Franklin County CSEA | dismissed |
| 2020, vs. Ohio Inspector General | dismissed |

Licking County Common Pleas Court:

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| 2012, personal injury | dismissed |
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Ohio Court of Claims:

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| 2001, vs. Ohio Department of Jobs & Family Services | dismissed |
| 2003, vs. Supreme Court of Ohio | dismissed |
| 2008, vs. Ohio Department of Jobs & Family Services | dismissed |
| 2016, vs. Supreme Court of Ohio | dismissed |
| 2016, vs. Ohio Attorney General | dismissed |

Tenth District Court of Appeals:

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| 2017, vs. Franklin County Court of Common Pleas | dismissed |
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U.S. District Court for the Northern District of Ohio:

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| 2013, vs. QDRO Office | dismissed |
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U.S. District Court for the Southern District of Ohio:

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| 2012, vs. American Arbitration Association | dismissed |
| 2017, vs. Judge Scott Gwin | dismissed |
| 2018, vs. Maureen O'Connor | dismissed |
| 2021, vs. Christopher Cook, et al. | dismissed |

The Court takes judicial notice of the above filings. In addition, the Court notes that in Case No. 2:21-cv-2288, the U.S. District Court for the Southern District of Ohio found Plaintiff to be a vexatious litigant.

Including the case at bar and those listed above, Plaintiff has filed 18 actions in county, appellate and federal courts throughout Ohio, almost all of which were dismissed for failure to state a claim or failure to prosecute (one appears to have been dismissed on a motion for summary judgment).

Plaintiff argues that he has a Constitutional right to access courts and file anything he wants. The Supreme Court of Ohio stated:

Thus, we conclude that R.C. 2323.52 is not arbitrary or unreasonable, nor does it deny vexatious litigators their constitutional right of access to the courts. Accordingly, we hold that R.C. 2323.52 is constitutional in its entirety under Section 16, Article I of the Ohio Constitution.

Mayer, supra, at 16.

Plaintiff also continues to argue that Defendant is in default in this matter for failing to answer timely – which this Court has already found to be inaccurate in a previous ruling.

Plaintiff assumes that because the Clerks of the various courts in which Plaintiff has filed actions have accepted his complaints and taken his filing fees, the filings must be supported by law. Plaintiff's argument clearly shows that he does not appreciate the duties of a Clerk of Courts versus the duties of a Court.

The Court finds that Plaintiff has filed numerous actions which are not warranted under existing Ohio law and his claims are not supported by a modification or extension of existing law; and has filed actions meant merely to harass or maliciously injure the named Defendant(s).

Having reviewed this matter in the light most favorable to Plaintiff, the Court finds that there are no genuine issues of material fact remaining for trial. Pursuant to the evidence submitted by Defendant, reasonable minds can reach but one conclusion, which is adverse to

Plaintiff. The Court finds that Defendant is therefore entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment is **granted**.

It is therefore ORDERED that Plaintiff, Houston Byrd, is declared a vexatious litigator in the State of Ohio pursuant to O.R.C. §2323.52. Houston Byrd is prohibited indefinitely from doing any of the following without first obtaining leave of Court to proceed:

1. Instituting any legal proceeding in the Court of Claims, or in a Court of Common Pleas, Municipal Court or county court;
2. Continuing any legal proceeding that he may have instituted in the Court of Claims, or in a Court of Common Pleas, Municipal Court or county court prior to the entry of this Order; or
3. Making any application, other than application for leave to proceed under O.R.C. 2323.52(F)(1), in any legal proceedings instituted by himself or any other person in the Court of Claims, or in a Court of Common Pleas, Municipal Court or county court.

This Order shall continue indefinitely.

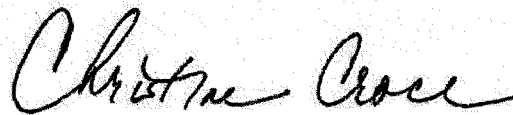
The Summit County Clerk of Courts is hereby directed to send a certified copy of this Judgment Entry & Order to the Supreme Court of Ohio, pursuant to O.R.C. §2323.52(H).

All pending Motions not previously ruled upon are hereby **denied**.

Costs of this action to Plaintiff.

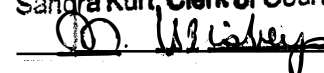
There is no just cause for delay. This is a final appealable Order.

IT IS SO ORDERED.



JUDGE CHRISTINE CROCE

I certify this to be a true copy of the original
Sandra Kurt, Clerk of Courts.

 Deputy Clerk

The Clerk of the Summit County Common Pleas Court shall serve a copy of this Order upon the Pro Se party, Houston Byrd Jr., by U.S. Mail, Certificate of Service, noting return of same.

cc: ATTORNEY STEVEN A. CHANG
ATTORNEY BRIAN P. NALLY

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