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IN THE COURT OF COMMON PLEAS  
CLINTON COUNTY, OHIO

CLINTON COUNTY  
CYNTHIA R. BAILEY, CLERK

2012 NOV 15 PM 1:47

FILED-COMMON PLEAS

Warren Easterling  
Plaintiff,

CASE NO. CVH 2011 0252

-vs-

JUDGMENT ENTRY

Liberty Savings Bank, FSB  
Defendant.

Final Appealable Order

This case came on before the court on September 4, 2012, for a full hearing on two counterclaims filed by Defendant Liberty Savings Bank, FSB ("Defendant Liberty") against Plaintiff Warren Easterling.

Present in court representing Defendant Liberty was Attorney Matthew T. Tipton from the firm of Martin Folino Harmon & Stachler. Also present was Attorney John Stachler who testified on behalf of Defendant Liberty regarding the reasonable attorney fees requested by Defendant Liberty. Plaintiff Mr. Warren Easterling was present and represented himself. He offered no testimony but offered extensive oral argument.

Defendant Liberty's two counterclaims include a request to have Plaintiff Warren Easterling declared a vexatious litigator pursuant to RC 2323.52, and a request that Defendant Liberty be granted attorney fees, costs and expenses pursuant to RC 2323.51 for the frivolous conduct engaged in by Mr. Warren Easterling.

After conducting the hearing and carefully reviewing the testimony, the evidence and the arguments of both parties, the court finds Mr. Warren Easterling to be a vexatious litigator pursuant to RC 2323.52. Due to the fact that in July of 2012, the Green County Common Pleas Court found Mr. Easterling to be a vexatious litigator and imposed most sanctions allowed pursuant to RC 2323.52 (D)(1), this court declines to impose any repetitive or additional sanctions in order to avoid confusion over which common pleas court is to handle all requests by Warren Easterling regarding his rights to continue or initiate legal actions in any Ohio trial court.

As to Defendant Liberty's claim of frivolous conduct, the court finds that Plaintiff Warren Easterling has engaged in frivolous conduct which has adversely affected Defendant Liberty. Mr. Warren Easterling is therefore ordered to pay Defendant Liberty \$4,038.53, an amount that represents reasonable attorney fees incurred in defending against the frivolous conduct.

This is a final appealable order. No other claims in this case remain pending. Plaintiff Warren Easterling's complaint in this matter was dismissed on January 19, 2011. Both orders are now final appealable orders.

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SUPREME COURT OF OHIO

## HISTORY<sup>1</sup>

In order to come to the findings noted above the court reviewed the recent litigation history between the two parties. Since August 26, 2010, Plaintiff Warren Easterling has filed three cases against Defendant Liberty in this court as outlined below and a fourth case in the Montgomery County Court of Common Pleas all emanating from the same operative facts. This history section will also include mention of a recent “vexatious litigator” finding by the Greene County Common Pleas Court. Although Mr. Easterling has appealed that finding to the Second District Court of Appeals, this court is unaware of any order staying the sanctions ordered by the Greene County Court of Common Pleas. Both parties to this action have made this court aware that the Greene County Common Pleas Court has specifically ruled that Defendant Liberty’s counterclaims in this action may proceed.

### **Case 1**

1) On August 26, 2010, in Case. No. CVH 20100660 (“Case 1”), Plaintiff Warren Easterling filed a pro se complaint against Defendant Liberty. Easterling alleged in the complaint that he, as a mortgage broker, had brought an individual seeking a loan to Defendant Liberty and Liberty took 28 days to review the loan before approving it. Easterling alleged he was entitled to \$7 million in damages from Defendant Liberty in Case 1.

2) On January 19, 2011, this court dismissed Warren Easterling’s amended complaint in Case 1 for failure to state a claim upon which relief could be granted. Plaintiff Warren Easterling did not file an appeal.

### **Case 2/This Action**

3) On April 18, 2011, plaintiff filed this action, Case. No. CVH 20110252 (“Case 2/This Action”). The complaint in Case 2/This Action was virtually identical to the complaint filed in Case 1. Easterling alleged he was entitled to \$7.2 million in damages from Defendant Liberty in Case 2/This Action.

4) On May 16, 2011, Defendant Liberty filed an answer and two counterclaims requesting this court to declare Plaintiff Warren Easterling a vexatious litigator pursuant

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<sup>1</sup> Pursuant to Ohio Supreme Court case law, a court can take judicial notice of its own docket regarding similar actions involving the same parties.<sup>1</sup> As the Ohio Supreme Court has stated in an analogous case, “...a trial court is not required to suffer from institutional amnesia. It is axiomatic that a trial court may take judicial notice of its own docket.” *Indus. Risk Ins. v. Lorenz Equip. Co.*, 69 Ohio St. 3d 576 (1994) at 580. Further, pursuant to Civ.R. 44.1, this court has and will also take judicial notice of Ohio appellate court decisions properly cited by parties. Further, this Court will accept as evidence, pleadings or entries from other common pleas courts, if they are properly certified, and are otherwise admissible.

to RC 2323.52, and award it reasonable attorney fees, expenses and costs pursuant to RC 2323.51 for the frivolous conduct engaged in by the Plaintiff.

5) Also on May 16, 2011 in Case 2/This Action, Defendant Liberty filed a motion requesting this court to dismiss the complaint and grant a judgment on the pleadings. After careful consideration, this court found the Case 2/This Action complaint was indistinguishable from the amended complaint filed in Case 1 which had been dismissed on January 19, 2011. Therefore, the court found that Plaintiff's complaint in Case 2/This Action was barred by the doctrine of res judicata and dismissed the complaint on the basis of res judicata<sup>2</sup> and in the alternative dismissed the complaint in Case 2/This Action for failure to state a cause of action. Case 2/This Action's remaining two counterclaims filed by Liberty are being addressed now in this judgment entry.

#### **Case 3**

6) On October 4, 2011, Plaintiff Warren Easterling filed a 3<sup>rd</sup> action in this court against Liberty, Case No. CVH 20110596 ("Case 3"). Again, the complaint was based upon the same operative facts alleged in Cases 1 and 2. Warren Easterling alleged he was entitled to \$9 million in damages from Defendant Liberty in Case 3.

#### **Case 4**

(7) On May 31, 2012, in the Court of Common Pleas in Montgomery County, Plaintiff Warren Easterling filed a fourth action in which he named Liberty a party defendant and in addition he named three of Defendant Liberty's litigation attorneys as party defendants.<sup>3</sup> The Montgomery County Court of Common Pleas, Case No. 2012 CV 03954 is based on the same operative facts found in Cases 1-3 with additional allegations of fraud against the individual attorneys themselves. Warren Easterling added allegations in Case 4 that the three attorneys committed fraud against Warren Easterling when they filed Defendant Liberty's two pending counterclaims in Case 2/This Action. The eleven page complaint goes on to rehash the operative facts and claims alleged in Cases 1-3. In Case 4 Warren Easterling is requesting that the Montgomery County Common Pleas Court grant him a judgment against the defendants in the amount of \$14 million dollars.

#### **Greene County Common Pleas Court<sup>4</sup>**

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<sup>2</sup> Recently, in a case procedurally similar to the case at hand, the Second Appellate District upheld the trial court and found in a case filed by Warren Easterling, that "Easterling's 2010 complaint was barred by res judicata, it having already been determined, as a matter of law, that his 2009 complaint failed to state a claim upon which relief could be granted." *Easterling v. Union Savings Bank*, 2010 WL 3821841 (Ohio App. 2 Dist.), 2010-Ohio-4753, ¶11. Additionally, the Second Appellate District held in that case "[w]hen the trial court was confronted with a new complaint, by the same plaintiff against the same defendant, setting forth identical claims, it properly applied the doctrine of res judicata to decline to revisit the same legal judgment it had already rendered." *Id.* at ¶ 48. The doctrine of res judicata functions to offer parties finality and to eliminate litigation of the same claims. 63 Ohio Jur. 3d § 373 (2003). Res judicata is "a rule of fundamental and substantial justice or public policy and of private peace." *Id.*

<sup>3</sup> See defendant's Exhibit B, a certified copy of Case No. 2012 CV 03954 noted above.

<sup>4</sup> See Liberty's Exhibit C containing: 1) a certified copy of *Warren Easterling v. Union Savings Bank*, Case No. 2010 CV 12672 (Greene Co. C.P. July 19, 2012) wherein sanctions are imposed against Mr. Easterling who was found to be a vexatious litigator; 2) a certified copy of In RE: WARREN EASTERLING, Case No. 2012 MS 8 (Greene Co. C.P. August 2, 2012) wherein the Greene County Common Pleas Court

8) On July 20, 2012, Plaintiff Warren Easterling was found to be a vexatious litigator by the Greene County Ohio Common Pleas Court in Case No. 2010CV1267. (See the Ohio Supreme Court's website wherein there is a "vexatious litigator" posting of the Greene County Ohio Common Pleas Court entry which outlines its "vexatious litigator sanctions" against Mr. Warren Easterling. The many prohibitions issued by the Greene County Common Pleas Court in July of 2012, include orders that prohibit Mr. Easterling from initiating or continuing any proceedings in Ohio trial courts without first obtaining permission from the Green County Court of Common Pleas.<sup>5</sup>

## DISCUSSION

### **Vexatious Litigator**

RC 2323.52 states:

As used in this section:

\* \* \*

(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. January 19, 2011

Plaintiff's filings in Case 1 after the January 19, 2011 dismissal of Plaintiff's complaint in that case, and all the filings in Case 2 and Case 3 ignored this court's January 19, 2011 order in Case 1 finding that Mr. Easterling had failed to state a claim

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granted Mr. Easterling the right to seek an appeal of the court's order declaring him to be a vexatious litigator and granting sanctions and; 3) Notice of Appeal was filed in the Second District Court of Appeals on August 15, 2012 and given Case No. 12 CA 52.

On October 18, 2012, in its Case No. 12 CA 52, the Second District Court of Appeals, pursuant to R.C. 23223.52(F)(2), granted Warren Easterling leave to appeal the July 2012 Greene County Common Pleas Court finding that he was a vexatious litigator.

<sup>5</sup>On August 14, 2012, the Greene County Common Pleas Court upon application of Plaintiff Warren Easterling, granted Mr. Easterling leave to continue with legal proceedings involving Liberty's counterclaims in Case 2/This Action.

upon which relief could be granted. Plaintiff obviously disagreed with this court's January 19, 2011 dismissal but he failed to appeal the dismissal of Case 1. Instead of filing an appeal, Plaintiff Warren Easterling filed the same action again a second time under a second case number in Case 2. After his complaint in Case 2 was dismissed on July 14, 2011, based upon res judicata and in the alternative failure to state a claim, Mr. Warren Easterling filed the same action a third time on October 4, 2011 in Case 3.

The court finds that the refiling of an identical action that has been dismissed once is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. The court further finds that the refiling of an identical action that has been dismissed twice is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

In his filings in this court after the January 19, 2011 dismissal of Case 1, Warren Easterling continued to raise the same claims (supported by the same flawed arguments) that were addressed in Case 1. Liberty has been forced to defend itself against all the numerous legal filings at great expense.<sup>6</sup>

The consistent repetition of arguments and legal theories that have been rejected by a trial court numerous times can constitute vexatious litigation. *Farley v. Farley*, Franklin App. No. 02AP-1046, 2003-Ohio-3185, at ¶ 46. A review of Plaintiff Warren Easterling's numerous filings in Case 1 after its January 19, 2011 dismissal, his numerous filings in Case 2 and his numerous filings in Case 3 clearly and convincingly demonstrates vexatious conduct on the part of Warren Easterling. The filings after January 19, 2011, which include outrageous requests for millions of dollars of damages, obviously served merely to harass or maliciously injure Liberty. It is found that Mr. Warren Easterling habitually, persistently and without reasonable grounds engage in vexatious conduct in this court and that this conduct began after Case 1 was dismissed on January 19, 2011.<sup>7</sup>

#### **Vexatious Litigator Sanctions pursuant to RC 2323.52**

**Pursuant to RC 2323.52 (D)(1)**, this court has the right, in its discretion, to impose the following sanctions on Mr. Warren Easterling based upon the finding that he is a vexatious litigator:

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<sup>6</sup> See Liberty's Exhibit D that consists of invoices for legal services rendered to Liberty between January 21, 2011 and August 6, 2012 in an effort to combat Mr. Warren Easterling's onslaught of frivolous filings.

<sup>7</sup> Examples of vexatious filings by Mr. Easterling in the past several years in other courts may be numerous but have not been relied upon to make any findings in this case. While Mr. Easterling may have filed numerous law suits against elected judges, retired judges, and other court personnel, this court need not take judicial notice of such cases that have reached the Ohio appellate courts, because Mr. Warren Easterling has done enough damage to the legal system here in Clinton County alone to support the findings and conclusions outlined in this decision.

(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

\* \* \* \*

(3) A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)(1) 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 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.

\* \* \* \*

As stated above, Plaintiff Warren Easterling has recently been found to be a vexatious litigator by the Greene County Common Pleas Court. That court imposed upon Plaintiff Warren Easterling many of the sanctions allowed by RC 2323.52. Repeating those sanctions in this case would serve no useful purpose and would create confusion as to which Ohio common pleas court was responsible for the pre-review of all of Warren Easterling's Ohio trial court filings as required by RC 2323.52(F)(1). In addition this court's resources are stretched thin at the present time and it is not in a position to monitor all of Mr. Warren Easterling's state wide trial court filings. Therefore, pursuant to RC 2323.52 (D)(1), in its discretion, this court declines to impose any additional sanctions on Mr. Easterling.

This order finding Mr. Warren Easterling a vexatious litigator, but declining to impose sanctions is a final appealable order.

### **Frivolous Conduct – Attorney Fees**

Defendant Liberty seeks attorney's fees pursuant to RC 2323.51 for the frivolous conduct engaged in by Mr. Warren Easterling. That statute allows the court to grant reasonable attorney fees, court costs and other reasonable expenses to a party who has been adversely affected by the frivolous conduct of another party in a civil action.

2323.51 states in part:

(A) As used in this section:

\* \* \* \*

(2) "Frivolous conduct" means either of the following:

(a) Conduct of [a] \* \* \* party to a civil action \* \* \* that satisfies *any* of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

\* \* \* \*

Above this court found that Plaintiff Warren Easterling's civil litigation actions involving Defendant Liberty obviously served merely to harass or maliciously injure

Defendant Liberty and that Plaintiff Warren Easterling's actions were not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. Those findings serve not only as the basis to find Warren Easterling a vexatious litigator but also those findings form a basis to find that Plaintiff Warren Easterling engaged in frivolous conduct which is sanctionable pursuant to RC 2323.51. Therefore, the court finds that Warren Easterling has engaged in frivolous conduct as defined in RC 2323.51.

R.C. 2323.51(B) allows the court to grant a party who has been adversely affected by frivolous conduct an award of reasonable attorney fees, court costs and other reasonable expenses.

At the September 4, 2012 hearing Attorney John Stachler testified as to the reasonable attorney's fees his firm has charged Defendant Liberty for the defense of the frivolous claims filed by Plaintiff Warren Easterling. Defendant's Exhibit D details the attorney fees incurred by Liberty. It includes an itemized list of the legal services rendered and the time expended in rendering the services. The court allowed Plaintiff Warren Easterling wide latitude in his cross examination of Mr. John Stachler.

After careful consideration of the testimony, other evidence, and the arguments of counsel and Mr. Easterling, the court finds that the evidence presented by Defendant Liberty supports the following finding and order. It is found that Plaintiff Warren Easterling engaged in frivolous conduct and he shall pay to Liberty an amount of \$46,038.53 which represents the reasonable attorney fees incurred by Defendant Liberty in defending against Warren Easterling's frivolous conduct. It is noted that the \$46, 038 figure does not include fees for final hearing preparation, the hearing itself and any post hearing legal work that may be necessitated by post judgment filings.

**This is a final appealable order and this judgment makes the earlier dismissal of Plaintiff's claims in this action a final appealable order.**

Plaintiff shall pay the cost of this action.

Enter this 8<sup>th</sup> day of November 2012.

*J.W. Rudduck*

**John W. Rudduck, Judge**

I, CYNTHIA R. BAILEY, CLERK OF THE COURT OF COMMON PLEAS CLINTON COUNTY, STATE OF OHIO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL NOW ON FILE IN MY OFFICE.

**Journalized this 15<sup>th</sup> day of Nov, 2012.**

Cindy Bailey, Clerk of Court

**BY:** *Bobbie J. Stachler*  
Deputy Clerk

Instructions to the Clerk:

Pursuant to RC 2323.52 you shall send a certified copy of this order to the Ohio Supreme Court for publication in a manner that the Ohio Supreme

WITNESS MY HAND AND SEAL OF SAID COURT THIS  
15 DAY OF NOVEMBER 2012  
CYNTHIA R. BAILEY, CLERK

BY *Cynthia R. Bailey* Deputy



*Court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.*