

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

ANNA CATUDAL,

Plaintiff,

vs.

CHANCE CATUDAL,

Defendant.

CASE NO. 13 cv 11630

JUDGE COLLEEN O'DONNELL

**DECISION AND ENTRY GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED
JUNE 4, 2014**

**DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, FILED
OCTOBER 13, 2014**

ORDER DESIGNATING DEFENDANT AS A VEXATIOUS LITIGATOR

ENTRY VACATING PRETRIAL AND TRIAL DATES

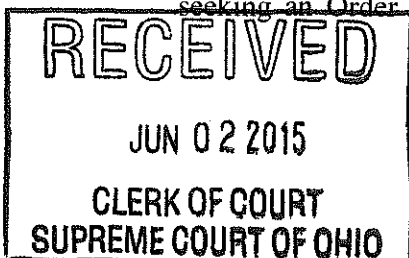
This matter comes before the Court upon the parties' cross motions for summary judgment. These motions are now ripe for this Court's consideration.

I. Background

This action arises from Plaintiff's request to have the Court declare Defendant, her ex-husband, a vexatious litigator. Plaintiff's Amended Complaint seeks an Order declaring Defendant a vexatious litigator pursuant to R.C. 2323.52, and also includes a count seeking money damages from Defendant. (*See Amended Complaint.*)

Defendant filed a Counterclaim against Plaintiff, setting forth claims for civil conspiracy, loss of parental consortium, negligent infliction of emotional distress, and intentional infliction of emotional distress. (*See Amended Counterclaim.*)

Plaintiff now moves for summary judgment as to Count One of her Amended Complaint seeking an Order declaring Defendant to be a vexatious litigator. Defendant also moves for



summary judgment, arguing that he is entitled to judgment as a matter of law that his behavior is not vexatious conduct.

II. Summary Judgment Standard

Under Civ.R. 56(C), summary judgment is appropriate when the moving party is entitled to judgment as a matter of law because there is no dispute of material fact. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). The party moving for summary judgment must inform the trial court of the basis for the motion and point to parts of the record that demonstrate the absence of a genuine issue of material fact, *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996), and it must do so in the manner required by Civ.R. 56(C). *Castrataro v. Urban*, 10th Dist. Franklin No. 03AP-128, 2003-Ohio-4705, ¶ 14. Once the moving party has met this burden, the non-moving party's reciprocal burden to point to parts of the record demonstrating an issue of material fact is triggered. *Dresher* at 293.

III. Analysis

R.C. § 2323.52 provides the authority for a common pleas court to designate a person as a vexatious litigator. R.C. 2323.52(A)(3) defines "vexatious litigator" as:

[A]ny 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 conduct" is defined as conduct of a party in civil actions 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.

R.C. 2323.52(A)(2)(a)-(c).

R.C. 2323.52(B) outlines the procedure to institute a civil action seeking a vexatious litigator designation:

A person * * * who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court 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 person * * * 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.

The Tenth District Court of Appeals has held that a vexatious litigator designation may be based upon a person's behavior in a single civil action or multiple civil actions. *Farley v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, ¶ 48.

Here, Plaintiff appears to rely upon all three prongs under R.C. 2323.52(A)(2) to argue that Defendant should be designated as a vexatious litigator. Plaintiff submitted a listing of cases Defendant initiated in the Franklin County Common Pleas Court, showing that Defendant has initiated multiple cases against Plaintiff; a docket sheet from the parties' domestic relations case in the Franklin County Common Pleas Court, Domestic Relations Division, showing a large number of motions filed; entries from the domestic case wherein Judge Kim Browne admonished Defendant that his conduct was consistent with a vexatious litigator designation; a Judgment Entry on Defendant's affidavit of disqualification with regard to the domestic proceedings, where Chief Justice Maureen O'Connor noted that Defendant has a history of abusing the

affidavit of disqualification process relating to the domestic case; a Judgment Entry in the divorce case wherein Judge Browne found Defendant to be a vexatious litigator; and the Tenth District Court of Appeal's decision overturning that vexatious litigator designation on solely procedural grounds.

As noted above, before designating Defendant as a vexatious litigator, Judge Browne warned Defendant that his conduct could lead to that result:

The entirety of [Defendant's] behavior is problematic and very likely to lead to an official "vexatious litigator" designation pursuant to §2323.52 of the Revised Code as his conduct is clearly (1) undertaken merely to harass or maliciously injure another Defendant, the former GAL and the Court; (2) not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; *and in many cases* (3) imposed solely to delay the enforcement parenting rights and responsibilities as set forth in the Decree of Divorce. As of right now, no such proceedings have been instituted against [Defendant]; however, he is hereby warned that should he continue to file further incoherent, frivolous filings having absolutely no basis in law he most certainly risks be so deemed.

November 7, 2012 Judgment Entry, Case No 10DR-12-4934.

Upon careful consideration of all the evidence before it, the Court finds that Defendant has engaged in vexatious conduct as set forth in R.C. 2323.52(A)(2)(a)-(c), and thus a vexatious litigator designation is appropriate under R.C. 2323.52(A)(3). Accordingly, Plaintiff's Motion for Summary Judgment is **GRANTED** and Defendant's Motion for Summary Judgment is **DENIED**.

Pursuant to R.C. 2323.52(D)(1), Defendant is prohibited from doing the following without first obtaining leave of 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.

Thus, Defendant is prohibited from continuing his Amended Counterclaim against Plaintiff in this matter.¹ This matter will be set for a hearing on Plaintiff's request for attorney fees via a separate entry. The May 26, 2015 pretrial conference and the June 8, 2015 trial are hereby **VACATED**.

IT IS SO ORDERED. Copies to all parties.

¹ The Court notes that Defendant is already prohibited from continuing any legal proceedings in this Court via a January 27, 2015 Order Declaring Defendant a Vexatious Litigator in Franklin County Court of Common Pleas Case No. 13 CV 8050.

Franklin County Court of Common Pleas

Date: 05-13-2015
Case Title: ANNA CATUDAL -VS- CHANCE CATUDAL
Case Number: 13CV011630
Type: DECISION/ENTRY

It Is So Ordered.



Colleen O'Donnell

/s/ Judge Colleen O'Donnell

Electronically signed on 2015-May-13 page 6 of 6

THE STATE OF OHIO Franklin County, ss	MARVELLEN O'SHAUGHNESSY, Clerk OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <u>Decision & Entry</u>	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COUNTY THIS <u>13</u> DAY OF <u>May</u> , A.D. 20 <u>15</u>	
By <u>SM</u>	Deputy

Court Disposition

Case Number: 13CV011630

Case Style: ANNA CATUDAL -VS- CHANCE CATUDAL

Motion Tie Off Information:

1. Motion CMS Document Id: 13CV0116302014-06-0499980000

Document Title: 06-04-2014-MOTION FOR SUMMARY
JUDGMENT

Disposition: MOTION GRANTED