

IN THE COURT OF COMMON PLEAS
BROWN COUNTY OHIO

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BROWN COUNTY, OHIO

2015 DEC 18 PM 12: 59

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CASE NO. 2015-0409

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BROWN COUNTY, OHIO
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SHERIFF DWAYNE WENNINGER

PLAINTIFF,

V.

RUSTY EUGENE MOOTISPAW

DEFENDANT

:
:
:
:
:

JUDGE SCOTT T. GUSWEILER

MAGISTRATE ZUK

DECISION ON PETITION TO

DECLARE DEFENDANT

VEXATIOUS LITIGATOR

This cause having been heard on the Petition filed by the Brown County Sheriff to declare the Defendant a vexatious litigator under Ohio Revised Code Section 2323.52. The Plaintiff, was present through and represented by Attorneys Frank D. Hatfield and Daniel T. Downey. The Defendant Rusty Eugene Mootispaw was present, having been returned from the Chillicothe Correctional Institute where he is serving a sentence of fifteen years to life for a murder conviction from Fayette County. The Defendant appeared Pro Se. The matter was assigned to the Court's Civil Magistrate for hearing and decision.

Vexatious Litigator litigation is governed by Ohio Revised Code Section 2323.52 which provides as follows:

§ 2323.52. Civil action to declare person vexatious litigator

(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.

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(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.

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation 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, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation 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.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(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.

(2) If the court of common pleas finds 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 to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims.

(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.

(2) 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.

(G) During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person 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 appeals, court of common pleas, municipal court, or county court.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme 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.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

The Plaintiff contends that the Defendant is a vexatious litigator due to repeated filings of various suits in this Court which have all been found to be without merit. In order to determine the validity of Plaintiffs claims of vexatious litigation, the Court must review what was done and how it was done by the Defendant.

FINDINGS OF FACT

1. Both parties have requested that the Court take Judicial Notice of its' own Docket and proceedings. Those requests are granted. The Court has done so.
2. There was an issue with respect to the Defendants failure to answer requests for admission. The Defendant contended that he did not receive them in a timely fashion. The Court decided that the Case would proceed upon the evidence as presented in open Court and the unanswered requests for admissions were not considered by the Court. The Case was decided only upon the evidence admitted in the Trial.
3. The Defendant has filed seven separate Suits in this Court(2014-0407,2014-0480, 2014-0481,2014-0708,2015-0017,,2015-0516 and 2015-0547. All have been dismissed by the Court. Only one Decision has been appealed.
4. The Defendant has filed multiple attempts to have the Common Pleas Judge disqualified from his cases. All such attempts were found to be without merit by the Ohio Supreme Court.
5. The Defendant admitted during testimony that he had no evidence of any actions on the part of the Judge designed to sabotage his Cases.
6. The Defendant admitted that he filed a Motion to Strike a non-existing Motion.
7. The Defendant admitted that he denied facts in Pleadings that he knew to be true.
8. The Defendant admitted that he filed Motions for relief to which he knew he was not entitled (Motions for Appointment of Counsel).
9. The Court of Common Pleas of Fayette County previously found that Defendant filed a Complaint that was "without merit and frivolous in nature and serves only to perpetuate his harassment of the defendant (David Kiger)and others by the filing of vexatious litigation"(Exhibit 1).

10. The Defendant exhibits no real understanding of the Legal System and no real interest in learning from his errors in presenting matters before this Court and other Courts.
11. On two separate occasions the Twelfth District Court of Appeals have found Defendant Mootispaw's filing to be without merit; Mootispaw v. Eckstein (CA96-02-004 and State v. Mootispaw CA 2004-02-007) In the latter, the Court noted, " Time and again, the trial court and this court have found those arguments(Mootispaw's) to be meritless".
12. This Court finds by clear and convincing evidence that the Defendant, Rusty Eugene Mootispaw is a vexatious litigator within the meaning of Ohio Revised Code Section 2323.52. The Court also notes that if the burden of proof would be "beyond a reasonable doubt", that burden would also be satisfied. The Defendant Mootispaw is the person for whom the vexatious litigation statute was enacted. A picture of a vexatious litigator would bear the visage of the Defendant.

CONCLUSIONS OF LAW

The Court having found the Defendant, Rusty Eugene Mootispaw, to be a vexatious litigator makes the following Orders:

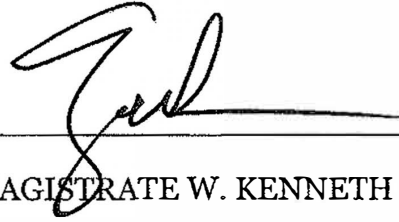
The Defendant is prohibited from:

- (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 section 2323.52 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 (2323.52).

In order for the Defendant to file any action in any Court in Ohio he must comply with all the requirements of 2323.52 and obtain leave of Court to file any action. The failure to obtain such leave shall result in an immediate dismissal of any such action.

Notice of the finding of the Defendant, Rusty Eugene Mootispaw, to be a vexatious litigator shall be sent by the Brown County Clerk of Courts to the Ohio Court of Claims, The Twelfth District Court of Appeal and The Supreme Court of Ohio.

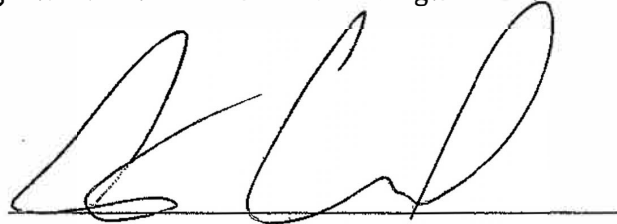
Costs to be paid by Defendant.



MAGISTRATE W. KENNETH ZUK

ENTRY APPROVING AND ADOPTING DECISION OF THE MAGISTRATE

IT IS HEREBY ORDERED that the attached MAGISTRATE'S DECISION filed in this matter is approved and shall be the Order of the Court effective fourteen (14) days after the filing of the Decision of the Magistrate unless objections to the Decision of the Magistrate are appropriately and timely filed.



JUDGE SCOTT T. GUSWEILER

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53 (D)(3)(a)(ii), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

TO THE CLERK: Please send copies of this Decision and Entry to ; Mr. Frank D. Hatfield and Mr. Daniel T. Downey at Fishel Hass Kim Albrecht LLP 400 South Fifth Street, Suite 200, Columbus, Ohio 43215 and to Mr. Rusty Eugene Mootispaw #A164741, Chillicothe Correctional Institution, 15802 State Route 104 North, P.O. Box 5500, Chillicothe, Ohio 45601. Notice shall also be sent to the Ohio Court of Claims, the Twelfth District Court of Appeals and The Supreme Court of Ohio.