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FILED
IN COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO
2008 FEB 11 1:40

GARRY A. NEMETH

PLAINTIFF

-vs-

TERI L. NEMETH

DEFENDANT

DENISE M. KAMINSKI
CLERK OF COURTS
GEAUGA COUNTY
CASE NO: 08M588

: JUDGE DAVID L. FUHRY

: MAGISTRATE DOROTHY H. LEE

: JUDGMENT ENTRY

:

A18

This matter is before the Court upon Plaintiff Garry A. Nemeth's Motion for Summary Judgment. Defendant failed to file a response to the Motion.

The instant action was filed by Mr. Nemeth after a protracted and litigious divorce. The complaint alleges that Mrs. Nemeth has "habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions" and that Mr. Nemeth has defended against the alleged conduct. Mrs. Nemeth, acting pro se, answered and filed a counterclaim, essentially claiming that Mr. Nemeth, not she should be declared a vexatious litigator.

After the filing and disposition of many pleadings and motions by Mrs. Nemeth at both the trial level and at the appellate level almost all of which were denied, Mr. Nemeth filed his Complaint requesting that Mrs. Nemeth be declared a vexatious litigator on May 28, 2008. He filed his Motion for Summary Judgment on October 23, 2008.

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"Summary Judgment" is a procedural devise to terminate litigation and to avoid formal trial when there is nothing to try.

Summary judgment is proper when three conditions are satisfied: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. In reviewing a motion for summary judgment, the Court must construe the evidence in a light most favorable to the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d356, 358-359.

A "vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions..." R.C. 2323.52(A) (3).

"Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following: (a) The conduct 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, or (c) The conduct is imposed solely for delay." RC 2323.52(A) (2).

This Court is very cognizant that granting summary judgment is an extreme measure since it prevents one from "his day in court." The Clermont County Court of Common Pleas recently observed "declaring (parties) vexatious litigants is an extreme

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between the filings made by the (parties) and their intended claims." *McClure vs. Fischer Attached Homes*, 145 Ohio Misc.2d 38, 2007-Ohio-7259 at page 33.

In this case there is no nexus between the filings made by Mrs. Nemeth and their intended claims. A review of the record in this case reveals that in an apparent attempt to prove bias, inequality, unfairness and even conspiracy, Mrs. Nemeth has filed an unwarranted amount of pleadings. The pleadings filed by Mrs. Nemeth include allegations of fraud, perjury, forgery, child abuse and even attempted murder on the part of the guardian ad litem, the magistrate and court personnel. In addition the pleadings in large part repeatedly argue settled issues that had been disposed of by the this Court long ago.

In *Farley vs Farley*, the Tenth District court found Mr. Farley a vexatious litigator after he "filed a barrage of actions, pleadings, memoranda, letters and motions that obviously served to merely harass his wife and his wife's counsel, not to mention the trial court and its employees." *Farley v Farley*, 2003 Ohio 3185 at P 44 (Ohio App. 10th Dist.)

Similarly Mrs. Nemeth has consistently repeated arguments and legal theories rejected by this court. And, despite this Court's decisions she continues to raise perceived claims of unfairness, and conspiracy. This Court finds that Mrs. Nemeth had no good faith basis to raise the decided-issues and her actions served no purpose other than to delay the proceedings.

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In paragraph 5 of the Per Curiam Memorandum Opinion in Case No. 2008-G-2832, Judges Cynthia Westcott Rice, Colleen Mary O'Toole and Timothy P. Cannon stated that they "agreed with the trial court's comment in the judgment entry that appellant has demonstrated a limited grasp of the Civil Rules. We would further observe that appellant's eight appeals from the trial court's rulings on her post-decree motions, which we dismiss today, appear to be based on the most tenuous of grounds and, at least potentially frivolous. While appellant has chosen to represent herself in these matters, the law requires she be held to the same requirements as a party represented by counsel."

Attached to Mr. Nemeth's Motion for summary judgment is the affidavit of Attorney Carolyn Paschke. The affidavit is sufficient under Civ. R. 56(E) since the documents relied on by her in making her affidavit include certified copies of the docket sheets that were referenced in the motion for summary judgment and in the affidavits.

The facts and evidence attached to the motion lead to only one conclusion. There is no genuine issue of material fact. Mrs. Nemeth is a vexatious litigator as defined in R.C. 2323.52 and interpreted in the Courts of Ohio. Defendant's repetitive filings serve only to harass, vexate, confuse and frustrate her opponent(s) and to stall the imposition of judgments rendered against her. The motion for summary judgment is granted.

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IT IS THEREFORE ORDERED that Mrs. Nemeth is prohibited from doing one or more of the following without first obtaining the leave of this 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 above prior to the entry of the order.
- (c) Making any application, other than an application for leave to proceed as set forth herein, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified above.

IT IS FURTHER ORDERED that Mrs. Nemeth pay the costs for which judgment is entered and execution may issue.

IT IS SO ORDERED.



JUDGE DAVID L. FUHR

cc: Carolyn Paschke, Esq.
Terri Nemeth, Defendant
Robert E. Zuldant, Jr., Esq.

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Clerk of Courts
Genesee County

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THIS IS TO CERTIFY THAT THE FOREGOING IS
A TRUE AND CORRECT COPY OF THE DOCUMENT
ON FILE IN THIS OFFICE ENTERED 12/29/08
WITNESS MY HAND AND SEAL OF SAID COURT
THIS 9th DAY Feb., 20 10
DENISE M. KAMINSKI, CLERK OF COURTS
BY Frank Toupin DEPUTY CLERK