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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MAX ROTHAL	:	**CASE NO. CV 2002-06-3147**
Plaintiff,	:	**Judge Patricia A. Cosgrove**
vs.	:	**ORDER**
BARBARA SMITH	:	
Defendant.	:	

After notice to the parties, this Court converted the motion for judgment on the pleadings into a motion for summary judgment. Briefs in opposition have been filed to all motions.

Defendant filed a notice of appeal to this Court's conversion of the motion for judgment on the pleadings to a motion for summary judgment. The appeal was dismissed because it was not a final appealable order. Rothal v. Smith (May 14, 2003), Summit App. No. 21544.

Plaintiff, Max Rothal, Director of Law for the City of Akron, filed a complaint against Defendant Barbara Smith asserting that Defendant is a vexatious litigator. This action is brought pursuant to R.C. 2323.52. Plaintiff asserts that Defendant, acting pro se, has repeatedly engaged in litigious activities against the City of Akron, its departments, agents, employees, and others in the Court of Common Pleas of Summit County.

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Plaintiff asserts that Defendant has been permanently enjoined and prohibited from filing *pro se* lawsuits in the United States District Court, Northern District of Ohio without the prior written leave of the United States District Court in Case Number 5: 94 CV 1064.

Plaintiff requests that Defendant be declared a vexatious litigator pursuant to R.C. 2323.52 and that Defendant be enjoined indefinitely from instituting, pro se, any legal proceeding in the court of common pleas, municipal court, county court or court of claims without first obtaining leave from the court. Plaintiff further requests that Defendant be enjoined from continuing any legal proceedings currently in process.

R.C. 2323.52, Ohio's vexatious litigator statute, provides 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 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 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

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> 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 the court of claim sor in a court of common pleas, municipal court, or county court prior to the entry of the order;
> (c) Making any application, other than an application for leave to proceed under division (F) of this section, in any legal proceedings instituted by the vexatious litigator or another person in the court of claims or in a court of common pleas, municipal court, or county court.

R.C. 2323.52 grants authority to the court of common pleas to order a vexatious litigator to obtain its leave before proceeding in the Court of Claims, a court of common pleas, municipal court, or county court. A court of common pleas has no authority under R.C. 2323.52, or pursuant to its own inherent powers to prevent abuse of the judicial process or to restrict the activities of a vexatious litigator in courts other than these specifically enumerated Ohio trial courts. Mayer v. Bristow (2000), 91 Ohio St.3d 3, syllabus. Furthermore, the Supreme Court has found the vexatious litigator statute to be constitutional. Id.

> 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, quoting Central State Transit Auth. v. Timson (1998), 132 Ohio App.3d 41. The Mayer court further held that the statute "establishes a screening mechanism under which the vexatious litigator can petition the declaring court, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless."

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This Court has reviewed the voluminous pleadings submitted by both Plaintiff and Defendant in this case. A review of the pleadings establishes that Defendant repeatedly files the same or similar pleadings against the City of Akron, its departments, agents, employees and other parties despite previous judicial opinions that state that the cause of action or relief requested do not state a claim or have no basis in law or fact. Within one year of the filing of this lawsuit, Defendant has filed the following cases:

> Smith v. Smith, CV 2000-08-3780; Complaint dismissed for jack on jurisdiction on September 27, 2001. Decision not appealed.
>
> Smith v. Akron Health Dept., et al., CV 2000-10-4703; Complaint dismissed on summary judgment; Dismissal upheld on appeal by Smith v. City of Akron (Jan. 15, 2003), Summit App. No. 21103.
>
> Smith v. Akron Dept. of Public Health, et al., CV 2001-11-5463, Administrative Appeal dismissed for lack of jurisdiction; Appeal dismissed by Smith v. City of Akron (Aug. 5, 2003), Summit App. No. 21113.

The sheer volume of cases in which Defendant has been involved prohibits this Court from making a complete listing of all the cases. This Court notes that Defendant has initiated cases in Summit County Common Pleas Court, the Ninth District Court of Appeals and the Supreme Court of Ohio as well as in Federal District Court.

A review of Defendant's pleadings in the three cases mentioned previously reveals that Defendant's pleadings are a compilation of rambling briefs that do little, if anything, to assist the Courts that are confronted with them. In fact, the sheer volume of the briefs filed by Defendant expends an enormous amount of judicial time and resources as each brief must be read and ruled on regardless of the fact that they are completely without merit. The vast majority of Defendant's cases end up dismissed but not without a great deal of time and effort expended by opposing counsel and the Court.

In light of the foregoing, Defendant Barbara Smith is hereby declared to be a vexatious litigator. Barbara Smith is hereby prohibited from doing all of the following without first obtaining leave of the court to proceed:

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1. **Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court or county court;**
2. **Continuing any legal proceedings that the defendant had 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 and**
3. **Making any application, other than an application for leave to proceed under R.C. 2323.52(F) in any legal proceedings instituted by the defendant or another person in the court of claims, or in a court of common pleas, municipal court or county court.**

In the case at bar Defendant has filed numerous petitions, objections and demands. Each and every filing by Defendant is hereby expressly and summarily OVERRULED AND DENIED.

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

IT IS SO ORDERED.

Patricia A. Cosgrove

Judge Patricia A. Cosgrove

cc: Barbara Smith
John R. York

I certify this to be a true copy of the original
Diana Zaleski, Clerk of Courts
Katie Amol Deputy

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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

CITY OF AKRON	)	CASE NO. CV-2002-06-3147
	)	
Plaintiff	)	JUDGE COSGROVE
-vs-	)	
	)	
BARBARA SMITH	)	**ORDER**
	)	
Defendant	)	

On June 11, 2003 this Court declared Defendant Barbara Smith to be a vexatious litigator. That order is a final and appealable order. This Court will not entertain any subsequent filings of Defendant Smith.

JUDGE PATRICIA A. COSGROVE

CC: ATTORNEY JOHN YORK
BARBARA SMITH

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