

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

ALECIA L HUSTON)	CASE NO.: CV-2021-06-1809
)	
Plaintiff)	JUDGE ALISON BREAUX
-VS-)	
)	
DWAYNE HUSTON)	<u>ORDER</u>
)	
Defendant)	
)	
	- - -	

This matter comes before the Court on the following motions:

1. Plaintiff Alecia Huston’s Motion to Dismiss Counterclaim filed February 25, 2022;
2. Plaintiff Alecia Huston’s Motion for Summary Judgment filed February 25, 2022;
3. Plaintiff Alecia Huston’s Motion for Attorney Fees filed April 14, 2022;
4. Defendant Dwayne Huston’s Motion for Damages from Slander, Defamation, Emotional Abuse, and Financial Extortion to Huston Children and Defendant filed April 24, 2022;
5. Defendant Dwayne Huston’s Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System filed April 24, 2022;
6. Plaintiff Alecia Huston’s Motion to Dismiss Defendant’s Motion for Damages from Slander, Defamation, Emotional Abuse and Financial Extortion to Huston Children and Defendant filed June 13, 2022;
7. Defendant Dwayne Huston’s Objection to Continued Pathological Judicial Behavior or “Cancel Culture” Extorting Plaintiff’s Mental Illness filed June 19, 2022; and

8. Defendant Dwayne Huston's Notice of Violation of Oath to the Constitution and Treason Against Huston Children and Defendant filed June 28, 2022.

FACTS

Plaintiff Alecia Huston (hereinafter referred to as "Plaintiff") filed the instant action requesting this Court determine Defendant Dwayne Huston (hereinafter referred to as "Defendant") is a vexatious litigator pursuant to R.C. §2323.52.

Plaintiff and Defendant are the parents of three (3) minor children, and were divorced, pursuant to a stipulated Decree of Divorce filed in Summit County Domestic Relations Court, Case No. DR-2015-03-0714 on April 28, 2016. *See* Affidavit of Alecia Huston, ¶2-4 and Exhibits 1 and 2. Pursuant to the Decree of Divorce, Plaintiff was named residential parent of the minor children and Defendant was granted two (2) hours of supervised visitation per week. *See* Affidavit of A. Huston, ¶4 and Exhibit 2.

On October 17, 2016, Defendant, represented by counsel, filed a multi-part motion seeking, in part, modification of child support, modification of requirement for supervised visitation and a change of custody. *See* Affidavit of A. Huston, ¶7 and Exhibits 1 and 3. Defendant's attorney motioned to withdraw as Defendant's attorney because he was unwilling to pursue the case as Defendant requested, and the withdrawal was permitted by Order filed November 4, 2016. *See* Affidavit of A. Huston, ¶8 and Exhibit 1.

On November 1, 2016, prior to the withdrawal of counsel, Defendant, pro se, filed a Motion for Change of Custody and to Protect Children from Plaintiff, which the Domestic Relations Court denied. *See* Affidavit of A. Huston, ¶9 and Exhibits 1 and 4.

Subsequently, an initial hearing was held on the remaining issues raised in Defendant's October 17, 2016 Motion. *See* Affidavit of A. Huston, ¶10 and Exhibit 1. Thereafter, on

November 29, 2016, the Domestic Relations Court issued an Order suspending Defendant's visitation with one (1) of the minor children, requesting an emergency psychological assessment, referred the matter to Family Court Services and appointed a guardian ad litem. *See* Affidavit of A. Huston, ¶11-12 and Exhibit 1.

Defendant obtained new counsel on January 5, 2017. *See* Affidavit of A. Huston, ¶13 and Exhibit 1.

Thereafter, on June 7, 2017, Defendant filed a Supplement to his October 17, 2016 Motion which requested modification and change of custody. *See* Exhibits 1 and 5.

On September 5, 2017, an evidentiary hearing was held on Defendant's October 17, 2016 Motion. *See* Affidavit of A. Huston, ¶14 and Exhibit 1. The Domestic Relations Court issued an order on November 14, 2017 which denied Defendant's request for change of custody, determined there was no change in circumstances and found it was not in the children's best interest to change custody. *See* Affidavit of A. Huston, ¶15 and Exhibit 1.

Defendant's counsel notified the Court she no longer represented Defendant on February 15, 2018. *See* Affidavit of A. Huston, ¶16 and Exhibit 1.

Thereafter, on April 17, 2018, Defendant, *pro se*, filed a Motion for Change of Custody which included a seven (7) page attachment of events, including events that occurred prior to the November 2017 Order. *See* Affidavit of A. Huston, ¶17 and Exhibits 1 and 6. Defendant filed a second motion on April 22, 2018 which requested the Magistrate read a certain report prior to issuing an order. *See* Affidavit of A. Huston, ¶18. In support of the motion, Defendant provided links to audio recordings of conversations he had with Plaintiff during therapy sessions that occurred from 2014 to 2016. *Id.* Defendant then began filing scientific articles and letters to the Domestic Relations Court docket as exhibits to his filings. *Id.* at ¶19.

On May 30, 2018, the Summit County Domestic Relations Court suspended Defendant's parenting time with the children until such time as he re-engaged with a medical professional and completed an anger management assessment. *Id.* at ¶20 and Exhibits 1 and 9. The Magistrate also found Defendant in contempt of court for violating a prior court order prohibiting him from sharing information regarding court and parenting with the children. *Id.* at ¶21 and Exhibit 1. Defendant was sentenced to sixty (60) days in jail, with an opportunity to purge the contempt. *Id.* Defendant failed to purge the contempt and the Domestic Relations Court imposed the sixty (60) day jail sentence on July 24, 2018. *Id.* at ¶22 and Exhibit 1.

Subsequently, on September 27, 2018, Defendant posted to FaceBook regarding "Parent Alienation Syndrome" and alleged the court intentionally keeps families apart and profits from that action. *Id.* at ¶23. In his post, Defendant related his situation to that of Adolf Hitler teaching Germans to hate Jews. *Id.*

On August 18, 2019, Defendant filed a forty-eight (48) page document in the Domestic Relations case entitled "Notice of Abuse of Authority, Failure of Best Interests of Huston Children, Denial Children's Bill of Rights, and Denial of Parental Rights." *Id.* at ¶24 and Exhibit 1. In the Notice, Defendant alleged the Court was manipulated by Plaintiff's attorney, that it abused its judicial authority and requested the Court cease and desist harming the children. *Id.* at ¶25. In support of his motion, Defendant attached several articles from a blog of Dr. Craig Childress. *Id.* at ¶26.

Thereafter, on November 21, 2019, Defendant filed a thirty-four (34) page motion in the Domestic Relations case which requested the Court follow the family solutions recommendations of Dr. Childress, grant fully custody to Defendant, order the children to attend a reunification program and order the children have no contact with Plaintiff, their relatives or friends. *Id.* at ¶27-28 and Exhibits 1 and 7. Defendant's motion quoted his prior

attorney, accused the court system of inflicting harm on the parties as well as financial extortion and fraud, cited to articles written by Dr. Childress to support his arguments and referred to the Domestic Relations Court as the “Family Court Holocaust.” *Id.*

Subsequently, in December 2019, Defendant filed two (2) documents in the Domestic Relations case. *Id.* at ¶¶29-30 and Exhibit 1. The first filing on December 16, 2019 was a forty-six (46) page motion captioned “Motion to Reconsider Judge’s Child Protection Obligations and Order to Deny Defendant’s Proposed Order,” and Defendant cited the Judicial Conduct Cannons and requested the Court cease and desist its actions. *Id.* In the second filing on December 20, 2019, Defendant filed an eighteen (18) page “Notice of Ohio Code of Judicial Conduction Canon 2: Competence & License to Judge Behavioral Science of Children and Families” in which he informed the Judge presiding over the parties’ custody disputes of his legal obligations under the judicial canon. *Id.*

On January 5, 2020, Defendant filed a thirty (30) page “Notice of Violations of the Law and Violations of Boundaries of Competence Ignored by the Court” wherein Defendant alleged the Domestic Relations Court violated its duty of care to the parties’ children. *Id.* at ¶¶31 and Exhibit 1. In the filing, Defendant alleged Plaintiff’s attorneys views are false as are the Court’s and the Court is incompetent to handle the matter. *Id.* In support of the motion, Defendant again cited to articles authored by Dr. Childress. *Id.*

Subsequently, on January 7, 2020, Defendant filed a “Notice of Double Bind to the Pathogen for Ignorance and Sloth an Untenable Position to Argue, and a False One.” *Id.* at ¶¶32 and Exhibit 1. Defendant again argues the Domestic Relations Court is unable to properly consider the issues in the parties’ custody dispute and cited to Dr. Childress’ articles in support. *Id.* That same day, Defendant filed a “Notice of AFCC: Class Action Exposure the Strategy for Change Employing is Gandhi Power of Suffering Absorb Evil to Reveal Evil” wherein he

alleged the Court was not competent to judge the behavior of children and families and violated important legal obligations by doing same, and Defendant cited to Dr. Childress' articles. *Id.* at ¶33 and Exhibit 1.

At a hearing held January 9, 2020, a Magistrate in the Summit County Domestic Relations Court advised Defendant the Court would not consider any evidence submitted from previous reports, experts or recordings. *Id.* at ¶34 and Exhibits 1 and 16. In an Order filed January 15, 2020, the Domestic Relations Court noted Defendant filed for modification of custody three times and cited to previous reports to indicate a change in circumstances. *Id.* at Exhibit 16. The Court granted Defendant an additional fourteen (14) days to provide evidence of change in circumstances occurring from July 26, 2018 to November 21, 2019. *Id.*

Two weeks later, on January 26, 2020, Defendant file a fifty-seven (57) page motion captioned "Motion to Correct Findings or Strike from the Record in Magistrate's Order Reallocation of Parental Rights Parenting Time Case Management Order." *Id.* at ¶35 and Exhibit 1. In the motion, Defendant listed all errors he noted in the record and attempted to correct them based upon his perspective. *Id.*

On February 4, 2020, Defendant filed a thirty-six (36) page "Notice of Change in Circumstances" which included links to an audio recording Defendant made during a visitation with the children prior to 2017, as well as links to Dr. Childress' videos and articles. *Id.* at ¶36 and Exhibits 1 and 10. Defendant continued to argue the Domestic Relations Court was incompetent, and he accused the Magistrate of being delusional. *Id.*

Subsequently, on February 17, 2020, Defendant filed a "Notice of the Pathogen Has Three Defenses—Remain Hidden—Seek Allies—Attack Threats of Exposure to Put Exposure on Defensive" in which Defendant accused the Court of persecuting the parties' children. *Id.* at ¶38 and Exhibit 1.

Thereafter, on February 24, 2020, Defendant filed a “Motion to Strike Plaintiff’s False and Misleading Claims Documented in the Plaintiff’s Response to Defendant’s Change of Circumstances.” *Id.* at ¶39 and Exhibit 1. In the twenty (20) page motion, Defendant revisited events that occurred prior to the November 2017 Order, cited to blog posts by Dr. Childress and argued the Court’s rulings were based upon delusions, fixed false beliefs, lies and manipulations by Plaintiff’s counsel. *Id.*

Defendant’s Motion for Reallocation of Parental Rights filed November 21, 2019 was denied by a Domestic Relations Court Magistrate in an Order filed March 16, 2020. *Id.* at ¶40 and Exhibit 1.

On March 20, 2020, Plaintiff’s counsel filed a motion requesting the Court continue a hearing scheduled for March 27, 2020 due to the COVID-19 pandemic. *Id.* at ¶41 and Exhibit 1. Defendant responded in opposition on March 23, 2020, filing a seven (7) page objection and citing a blog post of Dr. Childress. *Id.*

The following day, March 24, 2020, Defendant filed an Objection to the Magistrate’s Decision which denied his request to reallocate parental rights. *Id.* at ¶42 and Exhibit 1. Rather than cite to specific error, Defendant continued to argue the Court reached an incorrect conclusion by failing to view the evidence during the entire pendency of the litigation in his favor. *Id.*

Subsequently, Defendant filed the following documents which requested the Court cease and desist in its actions, argued the Court is incompetent, relied upon works authored by Dr. Childress and re-visited previous events:

- “Motion to Cease and Desist Court’s Orders Exploiting and Abusing the Huston Family and Negligence of Legally Required Competence in Solutions and Treatment of Family Relationships and Shared Psychotic Disorders” filed April 1, 2020;

- “Motion for Competence of Pre-Recorded Testimony in the 20th Century Science of Children and Families as Required to be Competent While Working with What the Court Labels as ‘High Conflict’ Children and Families” filed May 11, 2020;
- “Supplemental Objections to Magistrate’s Decision” filed June 15, 2020;
- “Affidavit Notice of Conflict of Interests and Pursuant to Source of Conflict or Interests with Intentions to Harm Huston Children and Defendant” filed July 1, 2020;
- “Motion to Enforce Divorce Decree and Motion to Order Plaintiff’s Licensed Attorney to Comply with Ohio Supreme Court’s Family Law Reform: Minimizing conflict, Maximizing Families” filed July 7, 2020; and
- “Notice of Court Working Outside Boundaries of Competence and Judgment Motion for Assessment and Treatment Plan” filed July 12, 2020.

Id. at ¶¶43-48 and Exhibit 1.

Defendant’s objections to the Magistrate’s Decision were overruled on July 15, 2020.

Id. at ¶49 and Exhibits 1 and 11. In that Order, the Court stated:

1. Defendant has filed a fifty-nine page supplemental objection with supporting exhibits.
2. This Court is unable to discern a logical connection between the various articles cited by Defendant and his argument that he should be the residential parent and legal custodian of the parties’ minor children.
3. Defendant is rapidly approaching the point where this Court would consider him a vexatious litigator with appropriate sanctions.

Id. at Exhibit 11.

On July 23, 2020, the Magistrate entered a Judgment entry which was adopted by the Domestic Relations Court and found Defendant failed to comply with a May 30, 2018 Order.

Id. at ¶50 and Exhibit 1. Defendant’s parenting time remained suspended. *Id.* Defendant objected to the July 23, 2020 Magistrate’s Decision; however, Defendant did not identify any errors and argued, instead, the Court’s lack of competence and cited to Dr. Childress as his authority. *Id.* at ¶51 and Exhibit 1.

Subsequently, on August 11, 2020, Defendant appealed the July 15, 2020 Judgment Entry overruling his objections which was docketed in the Ninth District Court of Appeals as Case No. 29808. *Id.* at ¶52 and Exhibits 1, 7 and 12. Defendant filed two (2) appellate briefs that did not comply with page limits. *Id.* at ¶53 and Exhibit 12. On October 26, 2020, Defendant filed an “Affidavit of Judicial Abuse Intimate Partner Violence Child Abuse—Brief and Multipart Motion” in Ninth District Court of Appeals Case No. CA-29808. *Id.* at ¶54 and Exhibit 12. Defendant filed a third brief on November 16, 2020 which complied with page limitations, cited to Dr. Childress and focused on events that occurred prior to 2017. *Id.* at ¶55 and Exhibits 12 and 17.

Thereafter, on December 7, 2020 and while the appeal was still pending, Defendant filed a “Supplemental Objection to Magistrate’s Decision” in the Domestic Relations Court. *Id.* at ¶57 and Exhibit 1. Defendant again argued the Court’s incompetence and related the actions of the court to the Roman who persecuted Jesus and Adolph Hitler’s persecution of Jews. *Id.* at ¶57.

On March 31, 2021, the Ninth District Court of Appeals affirmed the trial court’s decision in Case No. CA-29808. *Id.* at ¶58 and Exhibits 1 and 12. That same day, Defendant filed a Notice in the Case No. CA-29808 wherein he called the judges abusers and persecutors. *Id.* at ¶59 and Exhibit 12. Defendant filed a second Notice in Case No. CA-29808 on April 7, 2021 wherein he accused the Ninth District Court of Appeals as being delusional. *Id.* at ¶60 and Exhibit 12.

Subsequently, on April 13, 2021, Defendant’s objections filed December 7, 2020 were overruled by the Domestic Relations Court. *Id.* at ¶61 and Exhibit 1.

Thereafter, on May 7, 2021, Defendant appealed the March 31, 2020 Ninth District Court of Appeals Decision to the Ohio Supreme Court. *Id.* at ¶62.

On May 12, 2021, Defendant filed an appeal on the Domestic Relations Court's April 13, 2021 Judgment Entry which was docketed as Ninth District Court of Appeals Case No. CA-29983. *Id.* at ¶63 and Exhibits 1 and 13. Defendant's appellate brief filed May 23, 2021 was nearly identical to that filed in Ninth District Court of Appeals Case No. CA-29808. *Id.* at ¶64 and Exhibits 13 and 18. On July 11, 2021, Defendant filed a "Motion to Quash Appellee's Additional False Victimization or Motion for More Financial Extortion of Huston Family" in Case No. CA-29983 and which focused on events prior to 2017. *Id.* at ¶66.

On June 9, 2021, Plaintiff filed the Complaint and requested this Court declare Defendant a vexatious litigator pursuant to R.C. §2323.52.

Subsequently, on July 20, 2021, the Ohio Supreme Court declined to accept jurisdiction of Defendant's appeal from the Ninth District Court of Appeals Case No. CA-29808. *Id.* at ¶67.

On August 2, 2021, Defendant filed a document captioned "Defendant Dwayne Huston's Response to Plaintiff's Additional False Victimization or Encapsulated Persecutory Delusion." Although it was not captioned as a counterclaim and it did not contain enumerated counts, the document was docketed as an "Answer and Counterclaim." With leave of Court, Plaintiff filed a response to this filing on September 1, 2021.

On August 20, 2021, Plaintiff filed a Motion to Remove Public Online Access to Case Docket.

Subsequently, on September 12, 2021, Defendant filed a counterclaim which set forth the following claims: 1) "RICO Violation and Class Action Against the AFCC¹"; 2) "RICO Violation and Class Action Against the SCDRC²"; 3) "Ethical Violations in Forensic

¹ Defendant fails to provide an address or other contact information for "AFCC."

² Defendant designates the Summit County Domestic Relations Court as "SCDRC."

Psychology” as to Dr. Robin Tener, Dr. Michael Smith, Dr. Deborah Koricke, Chris Derry from Common Ground Family Services, Dr. Tracy Burke and Dr. Elizabeth Homes; and 4) “Licensed Attorneys Wilfully Neglect ‘more than 40 plus years of scientific research’ Per Ohio LAW MAKERS Press Conference” as to Judge John P. Quinn, Magistrate Ronald Cable, Magistrate Oliver Kimberly, Magistrate Christopher Snyder, Attorney Charles Grisi, Attorney Robert H. Brown, Attorney Denise Houston and Attorney Charles Budde.

The following day, on September 13, 2021, this Court granted Plaintiff’s Motion to Remove Public Online Access to Case Docket. Defendant appealed the September 13, 2021 Order to the Ninth District Court of Appeals which was docketed as Case No. CA-30123. *Id.* at Exhibit 14. The Ninth District Court of Appeals dismissed Defendant’s appeal on October 22, 2021, finding the order appealed as an interlocutory order and not immediately appealable pursuant to R.C. §2505.02(B). *Id.* at Exhibits 14 and 15.

Defendant appealed the October 22, 2021 decision of Ninth District Court of Appeals in Case No. CA-30123 to the Ohio Supreme Court. In support of his appeal, Defendant filed a Memorandum in Support of Jurisdiction wherein Defendant alleged the Domestic Relations Court “PERSECUTED and COVERTLY virtually MURDERED” him and cited the “Salem Witch Trials Judicial ABUSE and PERSECUTION of the Innocent,” “Nuremburg Trials Judicial ABUSE and PERSECUTION of the Innocent” and “Jesus Christ Trial Judicial ABUSE and PERSECUTION of the Innocent” as authority. *Id.* at Exhibit 19 (emphasis in original).

On February 25, 2022 Plaintiff filed a Motion to Dismiss Defendant’s Counterclaims. Defendant responded in opposition on March 7, 2022. No reply was filed.

That same day, February 25, 2022, Plaintiff filed a Motion for Summary Judgment. No opposition has been filed.

Subsequently, on April 14, 2022, Plaintiff filed a Motion for Attorney Fees. Defendant responded in opposition on April 24, 2022 and no reply was filed.

On April 24, 2022, Defendant filed two (2) motions: 1) "Motion for Damages from Slander, Defamation, Emotional Abuse, and Financial Extortion to Huston Children and Defendant"; and 2) "Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System." Rather than file a brief in opposition, on June 13, 2022, Plaintiff filed a Motion to Dismiss Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse and Financial Extortion to Huston Children and Defendant. No opposition was filed to Defendant's "Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System" or Plaintiff's Motion to Dismiss Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse and Financial Extortion to Huston Children and Defendant.

Thereafter, on June 19, 2022, Defendant filed an "Objection to Continued Pathological Judicial Behavior or 'Cancel Culture' Extorting Plaintiff's Mental Illness." No response was filed.

On June 28, 2022, Defendant filed a "Notice of Violation of Oath to the Constitution and Treason Against Huston Children and Defendant." No opposition was been filed.

The Court considers these matters to be fully briefed and ripe for consideration.

LAW AND ANALYSIS

As there are several motions currently pending, this Court will consider each in turn and, for ease of discussion, will not address them in the order in which they were filed.

I. Plaintiff's Motion to Dismiss Defendant's Counterclaim

Plaintiff requests this Court dismiss Defendant's counterclaims, pursuant to Civ.R. 13 and Civ.R. 12(B)(6). Plaintiff argues Defendant's counterclaims are not permissible, pursuant to Civ.R. 13, as they are brought against non-parties and as Defendant has failed to set forth a single claim against Plaintiff the counterclaims should be dismissed, pursuant to Civ.R. 12(B)(6), for failure to state a claim upon which relief may be granted.

Civ.R. 13 governs counterclaims and reads, in pertinent part:

- (A) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.
- (B) Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

- (H) Joinder of additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rule 19, Rule 19.1, and Rule 20. Such persons shall be served pursuant to Rule 4 through Rule 4.6.

Civ.R. 13(A), (B) and (H).

Civ.R. 12 governs motions to dismiss and reads, in pertinent part:

- (B) How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ...(6) failure to state a claim upon which relief can be granted...A

motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided however, that the court shall consider only such matters outside the pleadings as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

Civ.R. 12(B). When a motion to dismiss is based upon a party's failure to state a claim, a court must "presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party." *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Before a complaint may be dismissed, "it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery." *Id.* In considering a motion to dismiss, a plaintiff is not required to prove his or her case at the pleading stage so that as long as there is a set of facts, consistent with the plaintiff's complaint that would allow the plaintiff to recover, the Court may not grant the defendant's motion to dismiss.

In the present case, the only parties to this action are Plaintiff and Defendant. Defendant's counterclaims are asserted against various third parties, not Plaintiff. Defendant has not taken steps to join the third parties to the actions in accordance with Civ.R. 19, Civ.R. 19.1 or Civ.R. 20, nor has Defendant served the third parties as required by Civ.R. 13. Therefore, this Court finds Defendant's counterclaims have not been properly asserted, pursuant to Civ.R. 13, as they name third-parties who have not been joined to the action as defendants, and Defendant has failed to assert a claim upon which relief may be granted as to Plaintiff as she is not named in the counterclaim. Accordingly, Plaintiff's Motion to Dismiss Defendant's Counterclaim is hereby GRANTED.

II. Plaintiff's Motion for Summary Judgment

Plaintiff requests this Court grant summary judgment on the Complaint and find Defendant is a vexatious litigator pursuant to R.C. §2323.52. Specifically, Plaintiff argues Defendant's filings serve merely to harass Plaintiff, lack reasonable grounds and are a waste of judicial resources.

Summary judgment is appropriate only where (1) no genuine issue of material fact exists; (2) the movant is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. *See* Civ.R. 56(C). When making its decision, a court must view the evidence "most strongly in favor" of the non-moving party. *Id.* The court must also resolve all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-369, 1992-Ohio-95.

Summary judgment proceedings create a burden-shifting paradigm. To prevail on a motion for summary judgment, the movant has the initial burden of identifying the portions of the record that demonstrate the lack of a genuine issue of material fact and the movant's entitlement to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 288, 1996-Ohio-107. In satisfying this initial burden, the movant need not offer affirmative evidence, but must identify those portions of the record that support the argument. *Id.* Once the movant overcomes the initial burden, the non-moving party cannot merely rest upon the allegations contained in the pleadings to establish a genuine issue of material fact. *See* Civ.R. 56(C). Rather, the non-moving party has the reciprocal burden of responding and setting forth specific facts demonstrating the existence of a "genuine triable issue." *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 1996-Ohio-211.

Civ.R. 56(C) sets forth the types of evidence that a court may consider when granting a motion for summary judgment, and reads, in pertinent part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

Civ.R. 56(C). However, the Ohio Supreme Court has determined evidence not listed in Civ.R. 56 may be considered under certain circumstances, and has stated:

When deciding a summary-judgment motion, it is generally error for a court to rely on other types of evidence that have not been authenticated by way of an attached affidavit. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94, 97, 647 N.E.2d 788 (1995); *Rogoff v. King*, 91 Ohio App.3d 438, 446, 632 N.E.2d 977 (8th Dist.1993) (“The proper procedure for the introduction of evidentiary matter not specifically authorized by Civ.R. 56(C) is to incorporate the material by reference into a properly framed affidavit”). However, a reviewing court “may consider evidence other than that listed in Civ.R. 56 when there is no objection.” *State ex rel. Spencer v. E. Liverpool Planning Comm.*, 80 Ohio St.3d 297, 301, 685 N.E.2d 1251 (1997).

State ex rel. Jefferson v. Russo, 159 Ohio St.3d 280, 2020-Ohio-338, ¶14.

In support of the Motion for Summary Judgment, Plaintiff attached a copy of the docket in Summit County Domestic Relations Court Case No. DR-2015-03-0714 (Exhibit 1) as well as Plaintiff’s own affidavit and copies of various court filings (Exhibits 2-19). Although Plaintiff failed to attach an affidavit incorporating Exhibit 1 through 19, Defendant did not object to same. Therefore, this Court finds it may consider Exhibits 1 through 19 in reaching its decision.

R.C. §2323.52 governs civil actions to declare a person a vexatious litigator. A vexatious litigator is defined as:

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.

R.C. §2323.52(A)(3). “Vexatious conduct” is defined as a party’s conduct, in a civil action, which 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). “Conduct” is defined as:

[t]he filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action.

R.C. §2323.52(A)(1); R.C. §2323.51(A)(1)(a).

A. Defendant’s filings and arguments are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law.

Plaintiff argues Defendant has engaged in vexatious conduct by continually filing for modification of custody in the Domestic Relations Court. Specifically, Plaintiff argues Defendant has failed to argue or demonstrate a change in circumstances which is necessary for modification of a custody order.

R.C. §3109.04 governs the allocation of parenting rights and responsibilities for care of children and reads, in pertinent part:

The court *shall not modify* a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child,

the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child.

R.C. §3109.04(E)(1)(a) (emphasis added). The use of the word “shall” when used in a statute or rule is to be construed as a mandatory requirement. *Bergman v. Monarch Constr. Co.*, 124 Ohio St.3d 354, 2010-Ohio-622, ¶16.

In the present case, Defendant has repeatedly filed motions seeking to modify custody and challenging the Domestic Relations’ Court’s previous orders. Although Defendant references a change in circumstances with regard to Plaintiff, himself and the parties’ children, his argument is not that the current circumstances have changed so that modification is necessary to serve the children’s best interests but rather, that the parenting plan was not supported by the evidence before the Court. Defendant’s filings accuse the Domestic Relations Court of incompetence, financial extortion, malpractice, failing to protect the parties’ children, causing harm to the parties and violation of the parties’ rights. Defendant’s filings fail to set forth any evidence of a change in circumstances which would support a modification of custody and instead repeats the same arguments previously rejected by the Domestic Relations Court and the Ninth District Court of Appeals. In addition, the Domestic Relations Court warned Defendant that this conduct was rapidly approaching the point where that Court would consider him to be vexatious litigator. This Court notes Defendant continues to repeat the same previously rejected arguments in the various briefs, motions and notices filed in this matter despite the fact that the issue of parenting time is not before this Court. Defendant’s arguments for modification of custody are not warranted under existing law and cannot be supported by a good faith argument for extension, modification or reversal of existing law. Therefore, this Court finds Defendant’s acts of filing motions, briefs, appeals and other items in civil cases repeating these same arguments—which have been previously rejected and ignore the legal

standard to obtain a modification of custody—constitute “vexatious conduct” within the meaning of R.C. §2323.52(A)(2)(b). Accordingly, Plaintiff’s Motion for Summary Judgment is hereby GRANTED.

B. Defendant’s filings serve merely to harass Plaintiff.

Plaintiff argues the parties have been in constant litigation over the same issues for the last five (5) years, and Defendant continues to attempt to relitigate settled issues. Specifically, Plaintiff argues Defendant continues to request full custody of the parties’ children despite refusing to comply with orders from the Domestic Relations Court and ignoring the requirement that there be a change in circumstances to support his requests.

The Ohio Supreme Court, when considering the purpose of R.C. §2323.52, has stated:

“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.”

The court in *Timson* appropriately identified the untoward effects of vexatious litigation in depleting judicial resources and unnecessarily encroaching upon the judicial machinery needed by others for the vindication of legitimate rights. In addition, vexatious litigators oftentimes use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets.

Mayer v. Bristow, 91 Ohio St.3d 3, 13, 2000-Ohio-109 (internal citations omitted).

This Court has previously determined Defendant’s filing are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law. In addition, this Court finds Defendants repetition of the same arguments previously rejected by both the trial and appellate courts, when combined with the

sheer volume of filings, serves no purpose other than to harass Plaintiff. The Court notes that although Defendant argues he wishes to gain custody of his children and stop the harm he alleges is caused by his lack of contact with them, Defendant has taken *no steps* to comply with the Domestic Relations Court's orders and see his children. Therefore, this Court finds Defendant's acts of filing motions, briefs, appeals and other items in civil cases requesting a modification of custody, despite failing to comply with Court orders, constitutes "vexatious conduct" within the meaning of R.C. §2323.52(A)(2)(a). Accordingly, Plaintiff's Motion for Summary Judgment is hereby GRANTED.

III. Plaintiff's Motion for Attorney Fees

Plaintiff requests this Court order Defendant to pay her attorney fees incurred in this matter, pursuant to R.C. §2323.51, and argues Defendant's conduct in the Summit County Domestic Relations Case No. DR-2015-03-0714 as well as his filings in this action constitute frivolous conduct. Specifically, Plaintiff argues Defendant's March 8, 2022 filing fails to cite to any Ohio law or statute or support his arguments, and his attempt to bring counterclaims against people and entities not a party to this action serves merely to harass Plaintiff, her attorney and this Court.

Before an award may be granted under R.C. §2323.51, a court must engage in a two part process to determine "(1) whether an action taken by the party to be sanctioned constitutes 'frivolous conduct,' and (2) what amount, if any, of reasonable attorney fees necessitated by the frivolous conduct is to be awarded the aggrieved party." *Ceol v. Zion Industries, Inc.*, 9th Dist. No. 91CA005110, 81 Ohio App.3d 286, 291.

R.C. §2323.51 governs frivolous conduct in filing civil claims and reads, in pertinent part:

(A) As used in this section:

(1) "Conduct" means any of the following:

- (a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

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

- (a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record 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.

R.C. §2323.51(A)(1)(a) and (A)(2)(a)(i)-(ii). The Ninth District Court of Appeals addressed the purpose of R.C. §2323.51, and stated:

R.C. 2323.51 does not purport to punish a party for failing on a claim. Rather, it addresses conduct that serves to harass or maliciously injure the opposing party in a civil action or is unwarranted under existing law and for which no good-faith argument for extension, modification, or reversal of existing law may be maintained. Frivolous conduct, as contemplated by R.C. 2323.51(A)(2)(a), is judged under an objective, rather than a subjective standard, * * * and must involve egregious conduct.

Oehler v. McAdams, 9th Dist. No. 28903, 2019-Ohio-1976, ¶12. With regard to R.C. §2323.51(A)(2)(a)(i), the Ninth District has noted the trial judge has "the benefit of observing the entire course of proceedings and will be most familiar with the parties and attorneys

involved” and, on review, the trial court’s determination will be given deference. *Ceol*, supra, at 292.

This Court has previously determined Defendant’s arguments raised in the Domestic Relations Case (at both the trial and appellate levels) and repeated in the instant action serve merely to harass Plaintiff and are not warranted under existing law and cannot be supported by a good faith argument for the extension, modification or reversal of the law. In addition, this Court finds Defendant’s arguments cannot be supported by an argument for establishment of a new law.

The Court finds Defendant has reiterated these same arguments in the instant matter in the following filings:

1. Defendant’s Motion to Dismiss Plaintiff’s Additional False Victimization or Encapsulated Persecutory Delusion filed June 27, 2021;
2. Defendant’s Reply to Licensed Attorneys from Grisi & Budde LLC’s Response with Additional Fraud of the Court filed July 18, 2021;
3. Defendant’s Response to Plaintiff’s Additional False Victimization or Encapsulated Persecutory Delusion filed August 2, 2021;
4. Defendant’s Objection to Appellee’s Motion to Remove Public Online Access to Case Docket Substantiated in the Law of Science Which Law Makers Explain Our Courts Have Ignored for 40 Plus Years filed August 29, 2021;
5. Defendant’s Objection to Appellee’s Motion to Strike Report of Dr. Tener (Exhibit CU) from Record Applying Law of Science Which Law Makers Explain Our Courts Have Ignored for 40 Plus Years filed August 30, 2021;
6. Defendant’s Supplemental Objection to Appellee’s Amended Motion to Remove Public Online Access to Case Docket Substantiated in the Law of Science Which Law Makers Explained Our Courts Have Ignored filed September 6, 2021;
7. Defendant’s Counterclaims to Plaintiff’s Additional False Victimization or Encapsulated Persecutory Delusion filed September 12, 2021;

8. Defendant's Response to Pathological Motion to Dismiss Counterclaim to Continue to Violate Dwayne's US Constitutional Rights and Freedoms filed March 7, 2022;
9. Defendant's Affidavit Response to Pathological Affidavit with Arguments from Authority—Stupid Pathogen Damaged Executive Function filed March 8, 2022;
10. Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse, and Financial Extortion to Huston Children and Defendant filed April 24, 2022;
11. Defendant's Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System filed April 24, 2022;
12. Defendant's Objection to Continued Pathological Judicial Behavior or "Cancel Culture" Extorting Plaintiff's Mental Illness filed June 19, 2022; and
13. Defendant's Notice of Violation of Oath to the Constitution and Treason Against Huston Children and Defendant filed June 28, 2022.

Not only does Defendant continue to make the same arguments previously rejected by both the Domestic Relations Court and the Ninth District Court of Appeals, but he also relies upon the same "scientific" sources, including Dr. Craig Childress, and refiles the same supporting documents in various motions. It is clear to this Court that Defendant is actively ignoring not only the law but the attempts by both the Domestic Relations Court and the Ninth District Court of Appeals to explain the standard Defendant must meet to succeed on his requests. The Court finds the sheer volume of Defendant's filings (hundreds of pages in this case alone) coupled with the marked redundancy of both argument and supporting documents demonstrates the egregious conduct necessary to warrant attorney's fees pursuant to R.C. §2323.51. Accordingly, Plaintiff's Motion for Attorney's Fees is hereby GRANTED.

IV. Remaining Motions, Objection and Notices

In light of this Court's previous rulings, the Court makes the following rulings:

1. Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse, and Financial Extortion to Huston Children and Defendant is hereby DENIED;
2. Defendant's Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System is hereby DENIED;
3. Plaintiff's Motion to Dismiss Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse and Financial Extortion to Huston Children and Defendant is hereby GRANTED;
4. Defendant'S Objection to Continued Pathological Judicial Behavior or "Cancel Culture" Extorting Plaintiff's Mental Illness is hereby OVERRULED; and
5. Defendant's Notice of Violation of Oath to the Constitution and Treason Against Huston Children and Defendant is hereby DENIED.

CONCLUSION

WHEREFORE, this Court **ORDERS** the following:

1. Plaintiff Alecia Huston's Motion to Dismiss Counterclaim is hereby **GRANTED**;
2. Plaintiff Alecia Huston's Motion for Summary Judgment is hereby **GRANTED**;
3. This Court **ORDERS** Defendant Dwayne Huston is declared a vexatious litigator pursuant to R.C. §2323.52 and he is prohibited from doing any of the following without first obtaining 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 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;

4. Plaintiff Alecia Huston's Motion for Attorney Fees is hereby **GRANTED**. This Court **ORDERS** a hearing shall be held on **September 15, 2022 at 1:30 p.m.** via video conference to determine the amount of attorney's fees to be awarded.

(a) Participants will need to utilize the Zoom Meeting application to connect with the Court. To connect to the virtual meeting room, parties will need to log-in to the Zoom Meeting application at the appointed time and input the meeting **ID 285 280 2166**.

(b) **It is recommended you attempt to login at least 5 to 10 minutes early to ensure you do not have problems connecting on the day of the hearing. Parties should check that their device is capable of logging on prior to the day of the hearing.**

(c) If there is any objection to the hearing being conducted by video conference, the objecting party must file a motion at least **seven (7) days** prior to the scheduled hearing.

(d) Copies of any exhibits intended to be used at the hearing shall be marked and provided to the Court as well as to all other parties, along with an exhibit list, at least **three (3) days** prior to the hearing. These may be provided to the Court via email at: JudgeBreuxCourt@cpcourt.summitoh.net.

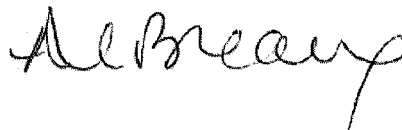
5. Defendant Dwayne Huston's Motion for Damages from Slander, Defamation, Emotional Abuse, and Financial Extortion to Huston Children and Defendant is hereby **DENIED**;

6. Defendant Dwayne Huston's Submission of Undeniable Relevant Contrary Evidence to the Fixed False Beliefs of the Ohio Judicial System is hereby **DENIED**;

7. Plaintiff Alecia Huston's Motion to Dismiss Defendant's Motion for Damages from Slander, Defamation, Emotional Abuse and Financial Extortion to Huston Children is hereby **GRANTED**;

- 8. Defendant Dwayne Huston’s Objection to Continued Pathological Judicial Behavior or “Cancel Culture” Extorting Plaintiff’s Mental Illness is hereby **OVERRULED**; and
- 9. Defendant Dwayne Huston’s Notice of Violation of Oath to the Constitution and Treason Against Huston Children and Defendant is hereby **DENIED**.

IT IS SO ORDERED.



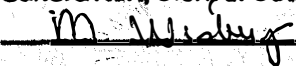
JUDGE ALISON BREAUX

The Clerk of the Summit County Common Pleas Court shall serve a copy of this Order upon the Pro Se party, Dwayne Huston, by U.S. mail, Certificate of Service, noting return of same.

CC: ATTORNEY CHARLES BUDDE

JLP

I certify this to be a true copy of the original
Sandra Kurt, Clerk of Courts.

 Deputy Clerk