

**IN THE COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

ANN BORNSCHLEGEL, et al.,	:	Case No.: 2023 CVH 00535
	:	
Plaintiffs,	:	Judge Anthony W. Brock
v.	:	
	:	ORDER GRANTING PLAINTIFFS'
JOSHUA V. JONES, et al.,	:	MOTION TO AWARD SANCTIONS
	:	FOR DEFENDANT'S FRIVOLOUS
Defendants.	:	AND VEXATIOUS CONDUCT
	:	

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BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS
CLERMONT COUNTY, OH

This matter came before this Court on March 22, 2024 for a hearing on Plaintiffs, Ann Bornschlegel (“Bornschlegel”) and the Commons of Eastgate Condominium Unit Owner’s Association (“Eastgate”)(collectively “Plaintiffs”) combined Motion for Sanctions and an award of attorney fees, which Plaintiffs had requested in their Motion for Summary Judgment. On February 13, 2024, this Court issued a Decision and Entry Granting the Plaintiffs’ Motion for Summary Judgment (the “Decision”) and made specific findings of fact and conclusions of law in favor of the Plaintiffs. The Court specifically incorporates by reference herein all findings of fact and conclusions of law contained in the Decision and makes the following additional findings:

The court finds that notice of the March 22, 2024 hearing was sent to Mr. Jones, at Mr. Jones’s last known address, at 1077 Kensington Lane, Cincinnati, OH 45245, in conformity with the docket of this case, and on file with the Clerk when Mr. Jones made his appearance and filed his Motion to Dismiss and his Counterclaim.

The Court called this case on the record on March 22, 2024, at 1:30 p.m., and the Plaintiff’s Counsel, Ryan F. Hemmerle, appeared on behalf of the Plaintiffs. Mr. Jones, however, failed to appear. Mr. Hemmerle presented arguments in support of the Plaintiffs’ Motion and sufficiently addressed all of the pertinent legal issues, including the specific details of the

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Plaintiffs' invoices for attorneys' fees. Furthermore, Mr. Hemmerle adequately demonstrated that the amounts charged were reasonable and the hourly rates were appropriate for the specific legal services provided. Based on the evidence presented and being otherwise sufficiently advised, the Court hereby grants the Plaintiffs' Motion for Sanctions and an award of attorneys' fees against Mr. Jones for his Vexatious and Frivolous Conduct.

LEGAL ANALYSIS:

Mr. Jones's conduct constitutes Frivolous Conduct under R.C. § 2323.51:

Ohio Revised Code Section 2323.51(A)(2)(a) defines frivolous conduct as follows:

- (i) ... [conduct that] 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) ... [conduct that] is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- (iii) ... [conduct that] consists of allegations or other factual contentions that have no evidentiary support or, if specifically identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

See R.C. § 2323.51.

This Court finds that Mr. Jones's conduct, as supported by the substantial evidence presented in Plaintiff's Motion for Summary Judgment, meets one or more of the elements under R.C. § 2323.51(2) to constitute frivolous conduct. The test for determining frivolous conduct is an objective test based on consideration of how a reasonable lawyer would have proceeded. *Fornshell v. Roetzel & Andress, L.P.A.*, Nos. 92132 and 92161, 2009-Ohio-2728 (8th Dist.2009), ¶ 69 citing *Hickman v. Murray*, No. CA 15030, 1996 Ohio App. LEXIS 1028 (2nd Dist.1996).

The Court finds that Mr. Jones's conduct, described in Plaintiff's Motion for Summary Judgment and further outlined in the Court's Decision, is frivolous and was done solely to subvert justice by causing expense and delay. *See Foland v. City of Englewood*, 2nd. Dist.

Montgomery No. 22940, 2010-Ohio-1905; R.C. § 2323.51(B)(4) (an award under R.C. § 2323.51(B)(1) may be made against a party, the party's counsel of record, or both). The statute defines frivolous conduct to include conduct that "consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery." R.C. 2323.51(A)(2)(a)(iii). "Under this definition of 'frivolous conduct,' the test is whether no reasonable attorney would have brought the action in light of the existing law." *Groves v. Groves*, 10th Dist. No. 09AP-1107, 2010-Ohio-4515, ¶ 17, citing *L & N Partnership v. Lakeside Forest Assn.*, 183 Ohio App.3d 125, 2009-Ohio-2987, ¶ 37, 916 N.E.2d 500 (10th Dist.); *Bartelt Dancers, LLC v. Icenhour*, 2013-Ohio-5604, P9, 2013 Ohio App. LEXIS 5851, *4, 37 I.E.R. Cas. (BNA) 759, 2013 WL 6728924.

As outlined in the Decision, not only did Mr. Jones have no solid factual or legal basis for his conduct, but also it is clear that Mr. Jones performed no investigation to find any factual or legal basis for his frivolous and vexatious filings. Jones's conduct was designed solely to harass and to cause delays. Mr. Jones's conduct is an attempted mockery of this Court and a complete disregard for the rule of law and our American system of justice. Thus, this Court makes a finding that Mr. Jones's actions are frivolous as defined by R.C. §2323.51 and Vexatious under 2323.52 and that the Plaintiffs are entitled to recover their attorney fees associated with Mr. Jones's conduct as identified in the Plaintiffs' Affidavit filed in support of its Motion for Attorneys' Fees, which Mr. Jones has failed to respond to in any way.

CONCLUSION

As a result of the Vexatious and Frivolous conduct of Mr. Jones, as outlined in the Plaintiffs' Motion for Summary Judgment and the Court's Decision, the Plaintiffs have

substantiated that they have incurred reasonable legal fees. For the foregoing reasons, this Court awards Plaintiffs \$42,328.98 in attorney fees against Joshua V. Jones as a sanction for his Frivolous and Vexatious Conduct. The Court specifically incorporates by reference herein all findings of fact and conclusions of law contained in its previously issued February 13, 2024 Decision. Furthermore, the Court directs the Clerk of Courts, under R.C. 2323.52(H), to send a certified copy of the February 13, 2024 Decision and this Entry to the Supreme Court of Ohio 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 Joshua V. Jones, a vexatious litigator unless he has first obtained leave to proceed under R.C. 2323.52. This is a final and appealable entry and there is no just cause for delay.

IT IS SO ORDERED.

Dated: 3-26-24



Judge Anthony W. Brock

Direction to Clerk:

Under Civ.R.58(B), you are to serve notice of this judgment and its date of entry upon the journal to all parties not in default for failure to appear in a manner prescribed by Civ.R. 5(B) within three days of the judgment's entry upon the journal and note the service in the appearance docket.

Prepared by:

/s/ Ryan F. Hemmerle

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