



CV15849017

94597189



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

WILLIAM PEREZ, *et al.*,

Plaintiffs,

vs.

HON. STUART A. FRIEDMAN, in his official
capacity as Judge, *et al.*,

Defendants.

CASE NO.: CV15-849017

JUDGE PATRICIA A. COSGROVE
(Sitting by Assignment)

JUDGMENT ENTRY
(Final and Appealable)

2015 JUN 20 P 2:26

CLERK OF COURTS
CUYAHOGA COUNTY

This matter is before the Court upon Defendants' (the Honorable Judge Stuart A. Friedman's, or "Judge's") Motion for Summary Judgment on a Counterclaim to declare Plaintiffs Vexatious Litigators. Plaintiffs, *pro se*, have responded in opposition.

PROCEDURAL HISTORY

On July 30, 2015, Plaintiffs William Perez and Alicia Ruitto filed a 'Verified Complaint' against the Honorable Stuart A. Friedman, a Judge sitting in the Cuyahoga County Court of Common Pleas. Plaintiffs purported to file this civil action against the Judge in his individual capacity and in his official capacity (or "DBA Judge"). Plaintiffs alleged the Judge breached a contract with them "by way of a waiver of tort" and they referenced Case No. CV14-825937. The Complaint was nonsensical and it sought millions of dollars in damages in "gold eagle coins" for various conduct including, but not limited to "barratry," and "pillaging."

The Judge answered the Complaint and denied all perceivable allegations. He admitted that he was the Judge assigned to adjudicate a foreclosure case involving Plaintiff Alicia Ruitto's residence. *Green Tree Servicing v. Ruitto, et al.*, Case No.: CV14-825937. He asserted that Plaintiffs are unhappy with the results in those proceedings and since the judgment issued in that case, Plaintiffs have twice filed frivolous and vexatious civil actions against the individuals and/or County Officials that were involved in the foreclosure proceedings. The Judge filed a Counterclaim to declare Plaintiffs Vexatious Litigators pursuant to R.C. 2323.52. The Judge asserts Plaintiffs have habitually, persistently, and without reasonable grounds engaged in vexatious litigation conduct in the Cuyahoga County Court of Common Pleas.

Shortly after the Judge answered the Complaint and set forth his Counterclaim, Plaintiffs filed a document titled “Withdrawal of Charges Via Nolle Prosequi.” That document is interpreted as a voluntary dismissal of Plaintiffs’ claims in this action.

Later, the Judge moved for Summary Judgment of his Counterclaim. Attached to the Judge’s Motion for Summary Judgment are Exhibits (A) a Memorandum of Opinion & Order from *Perez v. Law Offices of John Clunk, et al.*, 1:15CV701 (N.D. Ohio);¹ (B) a certified copy of docket in *Green Tree Servicing v. Ruitto*, Case No. CV14-825937 (docket available online); (C) a certified copy of Judgment Entry (including Magistrate’s Decision and Adoption of Decree of Foreclosure) in *Green Tree Servicing v. Ruitto, et al.* Case No.: CV14-825937 (available online), and; (D) a certified copy of docket in *Bayview Loan Servicing, LLC v. Ruitto*, Case No.: CV12-787650 (available online).

In opposition to the Judge’s Motion for Summary Judgment, Plaintiffs declared themselves to be sovereign citizens not subject to U.S. legislative or administrative law. They assert the term “vexatious litigator” has no basis in any law. They attached several uncertified and/or unauthenticated documents.

The Judge filed a Reply Brief and attached Exhibit A, a certified copy of the docket in *Bayview Loan Servicing, LLC v. Ruitto*, Case No.: CV12-787650.

Plaintiffs filed an opposition to the Reply Brief and they again asserted a sovereign citizenship status and attached uncertified and/or unauthenticated documents.

The Judge further supplemented the record with *State v. Armstrong*, 8th Dist. Cuy. Co. App. No. 103088, 2016 Ohio 2627, to rebut Plaintiffs’ sovereign citizenship argument. Plaintiffs objected to the Judge’s supplemental authority.

The parties were ordered to authenticate their evidence pursuant to Civ.R. 56(E). The Judge declined, as the relevant attachments he submitted were certified copies. Plaintiffs appear to have relocated and they did not authenticate their documents. The matter is now deemed submitted upon this established record.

LAW & ANALYSIS
Standard of Review – Summary Judgment Civ.R. 56

In pertinent part, Civ.R. 56(C) provides:

¹ Federal cases cannot be used as evidence to support a finding that a person is a vexatious litigator. *Carr v. Riddle*, 136 Ohio App.3d 700, 704 (8th Dist. 2000). The case is submitted only to show that Plaintiffs filed a lawsuit against County Officials.

“* * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, 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. A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that 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, such party being entitled to have the evidence or stipulation construed most strongly in his favor.

Biskupich v. Westbay Manor Nursing Home, 33 Ohio App.3d 220, 222, 515 N.E.2d 632 (8th Dist. 1986).

The proper procedure for introducing evidentiary matter not specifically authorized by Civ.R. 56(C) is to incorporate it by reference in a properly framed affidavit pursuant Civ.R. 56(E). See e.g., *State ex rel. Corrigan v. Seminatore*, 66 Ohio St.2d 459, 467, 423 N.E.2d 105. (“The requirement if Civ.R. 56[E] that sworn or certified copies of all papers referred to in the affidavit be attached is satisfied by attaching the papers to the affidavit, coupled with a statement that such copies are true and accurate reproductions.”) Moreover, while it is correct that a court, in its discretion, may consider other documents than those specified in Civ.R. 56(C) if there is no objection, *Brown v. Insurance Co.*, 63 Ohio App.2d 87, 409 N.E.2d 253 (1978), there is no requirement that the court do so.

Id.

The Judge’s documents are certified copies.² Plaintiffs failed to authenticate their evidence (after being granted leave to do so).

As noted, in opposition to the Judge’s Motion for Summary Judgment Plaintiffs declared themselves to be sovereign citizens not subject to U.S. legislative or administrative law. They assert the term “vexatious litigator” has no basis in any law.

Vexatious Litigator Statute R.C. 2323.52

Defendants’ Counterclaim was brought pursuant to R.C. 2323.52, a law in the State of Ohio deemed constitutional in all respects. *Mayer v. Bristow*, 91 Ohio St.3d 3, 740 N.E.2d 656 (Ohio 2000); and see *Grundstein v. Ohio*, 2006 U.S. Dist. LEXIS 87880 (N.D. Ohio 2006). Despite Plaintiffs’ assertions to be ‘sovereigns,’ as residents of Ohio, U.S.A., they are indeed subject to this Ohio law. Their declaration of sovereign citizenship status carries no weight in this Court. *State v. Armstrong*, 8th Dist. Cuy. Co. App. No. 103088, 2016 Ohio 2627.

² The “requirement that papers be sworn or certified may be satisfied by a certification contained within the paper itself rather than an external affidavit.” *NuFloor Systems v. Precision Environmental Co.*, 9th Dist. Summit Co. App. No. 25432, 2011 Ohio 3669, ¶8.

R.C. 2323.52 expressly authorizes Ohio courts to declare a person a vexatious litigator upon a properly filed civil action (or counterclaim in response to a civil action).

R.C. 2323.52(A)(2) defines vexatious conduct as 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 a 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). R.C. 2323.52(A)(3) defines a vexatious litigator 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 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 a civil action or actions. * * *

Hull v. Sawchyn, 145 Ohio App.3d 193, 196-97, 762 N.E.2d 416 (8th Dist., Cuy. Co. 2001).

For purposes of the statute, “conduct” means “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.” R.C. 2323.51(A)(1)(a); R.C. 2323.51(A)(1). Vexatious and frivolous litigation conduct generally includes filing unnecessary, inappropriate, or supernumerary pleadings and motions with an insistence on raising and re-raising arguments previously rejected by courts. See *In re: Helfrich*, 5th Dist. Licking Co. App. No. 13CA20, 2014 Ohio 1993, ¶10. Such conduct only serves to impede and obstruct a judge in the performance of his or her duties.

A person may be declared a vexatious litigator as long as the person uses the court to engage in vexatious conduct. *Borger v. McErlane*, 1st Dist. Hamilton Co. App. No. C-010262, 2001 Ohio 4030, *11 (Dec. 14, 2001). “It is the nature of the conduct, not the number of actions, that determines whether a person is a vexatious litigator.” *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 taxpayer’s of this state. The unreasonable burden placed upon

the courts by such baseless litigation prevents the speedy consideration of proper litigation.

Mayer v. Bristow, 91 Ohio St.3d at 13, quoting *Central State Transit Auth. v. Timson*, 132 Ohio App.3d 41, 724 N.E.2d 458 (1998).

The vexatious litigation conduct at issue involves the filing of above-captioned Complaint (which served only to harass or maliciously injure the Judge). It also involves conduct which was not warranted under existing law in the above-captioned instant litigation and conduct in cases *Green Tree Servicing v. Ruitto, et al*, CV14-825937 and *Bayview Loan Servicing, LLC v. Ruitto*, CV12-787650. And, it involves conduct which was imposed solely for delay in cases *Green Tree Servicing v. Ruitto, et al*, CV14-825937 and *Bayview Loan Servicing, LLC v. Ruitto*, CV12-787650.

The Judge's evidence demonstrates Plaintiffs filed numerous documents to delay the foreclosure proceedings in *Green Tree Servicing v. Ruitto, et al*. Case No.: CV14-825937 and they continued to file objections with no basis in law or fact.³ Similar conduct occurred in *Bayview Loan Servicing, LLC v. Ruitto*, CV12-787650.⁴ The Judge's evidence demonstrates Plaintiffs have filed unwarranted 'communications,' 'demands,' 'motions,' and challenges that are unwarranted and/or have no basis in any law or procedure. Such filings are numerous they amount to an undue burden the court's resources. The numerous motions filed in the foreclosure action served only to harass the foreclosing plaintiffs and unnecessarily delay the proceedings.

Accordingly, the Court has reliable and probative evidence (mostly authored by Plaintiffs themselves) which demonstrates frivolous and vexatious litigation conduct. In the above-captioned case, the conduct served only to harass and maliciously injure the Judge (by claiming he is liable for an alleged breach of a non-existent contract) and by inserting scandalous allegations of "barratry" and "pillaging." In this case, and the other cases, the conduct was not warranted in existing law (and/or procedure) and there was no argument made to change the existing law. Also, in the other cases the conduct served only to delay and impede upon the Cuyahoga County Court of Common Pleas' docket. The Plaintiffs' own attachments (if

³ After judgment issued in that case, Plaintiffs filed "A Second Attempt at Trial of Rights is Demanded"; an "Objection to Judge's Decision"; a Notice of Removal, and; a "Motion for Writ of Error." There are numerous baseless motions/filings on the docket but to conserve judicial resources the Court has not elaborated on each instance of frivolous and vexatious litigation conduct as the record speaks for itself.

⁴ Plaintiffs filed over thirty briefs/motions/filings. To conserve resources, the Court will not elaborate on each instance except to note a review of the majority of the documents filed by Plaintiffs make no legitimate requests and no cogent legal arguments.

considered) do not alter this conclusion – they only reinforce it. Plaintiffs’ offer nothing but nonsensical rambling diatribes that cite to irrelevant law and are unsupported by any cogent argument in law or fact. See for example, Plaintiffs “Judicial Notice of Adjudicative Facts” March 10, 2016 (attached to opposition to Judge’s Motion for Summary Judgment); March 21, 2016 Motion in Opposition to Reply Brief, and; April 26, 2016 Motion in Opposition to Supplemental Authority.

Upon review of the evidence, it is clear Plaintiffs meet the statutory definition of vexatious litigators. Plaintiffs have habitually, persistently, and without reasonable grounds filed repeated motions and civil actions and claims that lack merit. Plaintiffs have demonstrated a pattern of such frivolous and vexatious conduct and the Court hereby finds Plaintiffs William Perez and Alicia Ruitto are vexatious litigators under R.C. 2323.52.

Viewing the evidence in the light most favorable to Plaintiffs, there is no genuine issue of material fact, reasonable minds can reach but one conclusion (which is adverse to Plaintiffs). Accordingly, Defendants are entitled to judgment as a matter of law on the Counterclaim to declare Plaintiffs Vexatious Litigators pursuant to R.C. 2323.52.

Plaintiffs William Perez and Alicia Ruitto are hereby declared vexatious litigators in the State of Ohio. William Perez and Alicia Ruitto are prohibited indefinitely from doing any of the following without prior leave of a Judge of the Cuyahoga County Common Pleas Court:

- (1) Instituting any legal proceedings in the court of claims or in any court of common pleas, municipal court, or county court (R.C. 2323.52(D)(1)(a) and (E));**
- (2) Continuing any legal proceedings that they have instituted in any of the courts specified in subsection (1) above, prior to the entry of the Judgment Entry (R.C. 2323.52(D)(1)(b));**
- (3) Making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by them, or another person in any of the courts specified in subsection (1) above (R.C. 2323.52(D)(1)(c).**

This Judgment and Prohibition shall be applied broadly to include any activity related to civil law, including but not limited to transmitting complaints, applications, other forms of assertions of claims or right, motions, subpoenas, discovery (such as notices of depositions or other matters, interrogatories, requests for admissions or inspection, etc.) in connection with civil legal matters.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants' (the Honorable Judge Stuart A. Friedman's) Motion for Summary Judgment is GRANTED. Plaintiffs William Perez and Alicia Ruitto are hereby declared vexatious litigators and shall be subject to all restrictions of R.C. 2323.52.

The Clerk of Court shall provide notice of this Judgment Entry to the Ohio Supreme Court and furnish a time-stamped copy of the order to the individuals listed below.

Plaintiffs shall pay the costs of this action.

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

IT IS SO ORDERED.


JUDGE PATRICIA A. COSGROVE
(Sitting by Assignment)

cc: Attorney Brian R. Gutkoski
William Perez
Alicia Ruitto
Judge Stuart A. Friedman's Court
Judge Patricia A. Cosgrove