

**CERTIFIED**  
**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO**  
**CIVIL DIVISION**

**HUBER HEIGHTS VETERANS  
CLUB, INC.**

**Plaintiff,**

**vs.**

**TIMOTHY R. WEBB, et al**

**Defendants**

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**CASE NO. 2021CV04538**

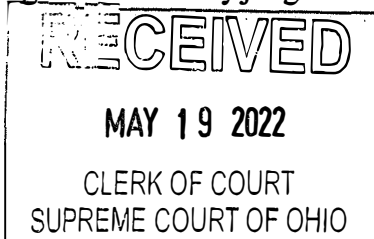
**JUDGE RICHARD S. SKELTON**

**FINAL AND APPEALABLE  
DECISION, ORDER, AND ENTRY  
SUSTAINING THE MOTION  
FOR SUMMARY JUDGMENT  
REGARDING THE VEXATIOUS  
LITIGATOR CLAIM; DECLARATION  
THAT HUBER HEIGHTS VETERANS  
CLUB, INC. IS A VEXATIOUS  
LITIGATOR UNDER R.C. 2323.52**

This matter is before the Court on the *Motion for Summary Judgment on Claim for Vexatious Litigation* filed by Defendants/Counterclaimants, Timothy R. and Jessika N. Webb, Frank Kronen, and Joseph Dolwig filed on March 10, 2022. Plaintiff/Counterclaim Defendant Huber Heights Veterans Club, Inc. filed a *Response* and a *Renewed Motion for Summary Judgment* on March 22, 2022. Counterclaimants filed a *Reply* on March 24, 2022. Plaintiff filed a *Surreply* without leave of Court (in violation of Mont. Co. C.P.R. 2.05(B)(3)) on March 29, 2022. This matter is properly before the Court.

**I. STANDARD OF REVIEW**

Summary judgment can be an “appropriate means” of resolving a claim that a party is a vexatious litigator. *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 43; *Prime Equip. Grp., Inc. v. Schmidt*, 2016-Ohio-3472, 66 N.E.3d 305, ¶ 11 (10th Dist.); *Ealy v. McLin*, 2d Dist. Montgomery No. 21934, 2007-Ohio-4080 (trial court properly granted summary judgment to city and mayor on vexatious litigator counterclaim where there were



no genuine issues of material fact regarding whether city commission meeting participant habitually, persistently and without reasonable grounds had engaged in vexatious conduct in the several meritless civil actions he had filed against various city and county employees).

Summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Civil Rules, which are, as a whole, designed to secure the just, speedy and inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S.Ct. 2548, 2554-55 (1986). Under Civil Rule 56(C), summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” See *Dresher v. Burt*, 75 Ohio St.3d 280, 287, 662 N.E.2d 264 (1996), quoting Fed.R.Civ.P. 56.

The burden of showing that no genuine issue exists as to any material fact falls upon the party requesting summary judgment. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978). When sustained, an adverse party may not rest upon the mere allegations or denials of his or her pleadings, but his or her response, by affidavit or as otherwise provided in Rule 56, must set forth specific facts showing that there is a genuine issue for trial. If he or she does not so respond, summary judgment, if appropriate, shall be entered against him or her. Civ.R. 56(E); *Dresher*, 75 Ohio St.3d at 293, citing Civ.R.56.

## **II. VEXATIOUS CONDUCT UNDER R.C. 2323.52.**

“Vexatious conduct” is the conduct of a party in a civil action that “obviously serves merely to harass or maliciously injure another party to the civil action,” “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 “is imposed solely for delay.” R.C. 2323.52(A)(2)(a) through (c). A “vexatious litigator” is “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); see also *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 2008-Ohio-2637, ¶ 17, 118 Ohio St. 3d 368, 370, 889 N.E.2d 500, 503.

Under R.C. 2323.52(B), “[a] person ... who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, 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 ... 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 termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.” Defendants in this case are defending against habitual and persistent vexatious conduct in all of the above-named courts. “When a vexatious litigator claim is based on conduct in multiple cases, the party bringing the vexatious litigator claim need not have been a party to all of the cases relied upon which they rely.” *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 42.

Once a person is found to be a vexatious litigator, the court of common plea making such a finding may preclude that person from doing any of the following without first obtaining 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 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.

R.C. 2323.52. The Ohio Supreme Court has explained the beneficial purpose of the statute:

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 v. Bristow*, 91 Ohio St. 3d 3, 13, 740 N.E.2d 656, 665 (2000). There can be no question that preventing Huber Heights Veterans Club from filing further claims making the same claims over and over again, disregarding final judgment after final judgment, befits the purposes of this statute.

“Filing a complaint barred by res judicata is frivolous conduct.” *Mack v. Asset Acceptance*, 5th Dist. Ashland No. 07-COA-044, 2008-Ohio-5108, ¶ 40, citing *Cincinnati Ins. Co. v. Oancea*, 6th Dist. Lucas No. L-05-1007, 2005-Ohio-4872, 2005 Ohio App. Lexis 4428; see also *Crenshaw v. Integrity Realty Grp., L.L.C.*, 8th Dist. Cuyahoga No. 100031, 2013-Ohio-5593, ¶ 16; *Sain v. Roo*, 10th Dist. Franklin No. 01AP-360, 2001-Ohio-4115; *Streb v. AMF Bowling Ctrs.*, 10th Dist. Franklin No. 99AP-633, 2000 Ohio App. LEXIS 1927 (May 4, 2000); *Stuller v. Price*, 10th Dist. Franklin No. 03AP-30, 2003-Ohio-6826. Every complaint filed by HHVC, including the one in the case at bar, has been held to be barred by res judicata.

The definition of “vexatious conduct” is consistent with the definition of “frivolous conduct” found in R.C. 2323.51. *Brown v. Carlton Harley-Davidson, Inc.*, 8th Dist. Cuyahoga

No. 101494, 2014-Ohio-5157, ¶ 10; see also *Ogle v. Greco*, 4th Dist. Hocking No. 15CA2, 2015-Ohio-4841, ¶ 33 (“The two statutes share the same definition of reprehensible conduct.”). Here, HHVC has not only engaged in frivolous conduct, but has done so “habitually and persistently.” Every time one of its cases has been dismissed, it has filed another. Having failed with its multiple lawsuits in Montgomery County, it then filed one in Clark County. Even within the context of each lawsuit, despite courts’ finding that the claims are barred by res judicata, HHVC has persistently filed motions demanding a new trial or seeking to vacate the decisions granted on summary judgment, as it has in the case at bar, or seeking to compel discovery even after the case is concluded. See Case No. 020 CV 02183, motions filed March 17, 2021; March 18, 2021; March 29, 2021; April 9, 2021; February 21, 2022; Case No. 2021 CV 01227, Motion filed April 15, 2021; in the case at bar, motions filed January 26, 2022; January 31, 2022, February 3, 2022. Just as filing a complaint barred by res judicata is vexatious, so is persistently refusing to accept the finality of prior decisions in the context of each lawsuit. As this Court has stated: HHVC is claiming an “entitlement to beat a dead horse.” The metaphor is apt. HHVC has attempted to beat a dead horse over and over again across multiple lawsuits and multiple appeals. In every case the courts have informed it that these matters were already decided. In each case that information has gone unheeded, and HHVC went on to file yet another claim or file another flurry of motions.

As the Ohio Supreme Court has held, the vexatious litigator statute prevents “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.” *Mayer, supra*. HHVC is a habitual filer, and its conduct is, and has been, unquestionably frivolous. Even as this Court and the Court of Appeals have repeatedly told HHVC to stop, it has completely ignored

every decision against it. The statutory remedies under R.C. 2323.52 may provide some preventive measure of protection to curtail HHVC's campaign of harassment through endless litigation.

### **III. HUBER HEIGHTS VETERANS CLUB'S HISTORY OF VEXATIOUS CONDUCT.**

This Court has already stated in its earlier decision on Plaintiff's claims:

Plaintiff's opposition appears to claim entitlement to a right of the 40 Men to "beat a dead horse", until all 8 horses are dead, and to do so repeatedly in this Court. The doctrine of res judicata expresses the established principle that legal disputes in court must come to an end, and the finality must be honored by subsequent courts when a litigant or counsel or both refuse to accept the result.

See Decision and Entry dated January 14, 2022. Huber Heights Veterans Club, as the named plaintiff, has filed four different lawsuits in the Montgomery County Common Pleas Court, all of which, including the case at bar, have asserted the same claims, and all of which, including the case at bar, have resulted in the claims of the Plaintiff being dismissed on summary judgment on the basis of res judicata. These cases include *Huber Heights Veterans Club v. Grande Voiture d'Ohio la Societe des 40 Hommes et 8 Chevaux*, No. 2020 CV 02183 before Judge Wiseman, *Huber Heights Veterans Club v. Grande Voiture d'Ohio la Societe des 40 Hommes et 8 Chevaux*, No. 2021 CV 01227, before Judge Krumholtz, 2021 CV 01570, and *Huber Heights Veterans Club v. Bowman*, 2021 CV 04538, before Judge Parker.

All of these decisions were affirmed on appeal. *Huber Heights Veterans Club, Inc. v. Grande Voiture d'Ohio la Societe des 40 Hommes et 8 Chevaux*, 2d Dist. Montgomery No. 29078, 2021-Ohio-2695, ¶ 21 ("HHVC I")(affirming 2020-CV-2183); *Huber Heights Veterans Club, Inc. v. Grande Voiture d'Ohio La Societe des 40 Hommes et 8 Chevaux*, 2d Dis. Montgomery No. 29095, 2021-Ohio-2784 ("HHVC II") (affirming 2021 CV 01227), *Huber Heights Veterans Club v. Bowman*, 2d Dist. Montgomery No. 29175, 2021-Ohio-3944 ("HHVC III") (affirming

2021 CV 04538). In every case, the judgment of the trial court was affirmed, and principles of res judicata were held to bar the filing of the lawsuit.

HHVC further appealed two of these decisions to the Ohio Supreme Court, which declined jurisdiction and dismissed the appeals. *Huber Heights Veterans Club, Inc. v. Grande Voiture d'Ohio La Societe des 40 Hommes et 8 Chevaux* 2021-Ohio-1471 (affirming Case No. 29078); *Huber Heights Veterans Club v. Bowman*, 2022-Ohio-397 (affirming Case No. 29175).

HHVC has also filed a lawsuit in Clark County, *Huber Heights Veterans Club v. VFW Post 9966*, Case No. 21CV0277, against Frank Kronen and against another member of the Grand Voiture, Francis Webb. That case is now stayed pending a decision on summary judgment. See Decision dated December 8, 2021.

In every one of these cases, HHVC was suing the defendants regarding property, ownership of which had already been determined by the Court in Montgomery County Common Pleas Case No. 2018CV01457, *Grande Voiture d'Ohio La Societe des 40 Hommes et 8 Chevaux v. Montgomery County Voiture No. 34 La Societe des 40 Hommes et 8 Chevaux*. Mr. Simpson, attorney for the ostensible plaintiff, had filed papers changing the name of the charitable corporation, Montgomery County Voiture No. 34, to the "Huber Heights Veterans Club," an action for which he was held in contempt of an injunction issued by the Montgomery County Common Pleas Court. Simpson was ordered to restore the name with the Ohio Secretary of State, yet he refused to do so, despite being sanctioned and facing further sanctions. Accordingly, the 40 & 8's counsel, sought an express Court order authorizing him to restore the name. The Court granted it. All of these decisions have been affirmed on appeal. *Grande Voiture D'Ohio La Societe des 40 Hommes et 8 Chevaux v. Montgomery Cty. Voiture No. 34 La Societe Des 40 Hommes*, 2021-Ohio-1430.

As the Court of Appeals held in its most recent decision in this seemingly endless line of cases: “It cannot be said plainly enough: there is nothing left to litigate.” *HHVC III*, 2021-Ohio-3944, ¶ 42. Nevertheless, Plaintiff has persisted in filing lawsuits, two of which are still pending: this case and one in Clark County. Indeed, in Case No. 2020 CV 02183, before Judge Wiseman, Plaintiff has recently filed a motion asking for an order setting the case for trial. (See Case No. 2020 CV 02183, Motion for Order Setting Date for Trial of All Issues and Defenses and for Order Directing Completion of Discovery, dated February 21, 2022). Plaintiff has filed this motion despite the fact that Case No. 2020 CV 02183 was decided, Plaintiff’s claims were dismissed in whole, Plaintiff appealed that judgment to the Second District and again to the Ohio Supreme Court and lost at each and every stage. Plaintiff did the same thing in this case, despite the clear resolution of its claims by summary judgment, (See Decision and Entry on Plaintiff’s Pending Motions, dated May 5, 2022).

As this Court noted in its decision of January 14, 2022, this Court “can take judicial notice” of the earlier decisions of this Court, the Court of Appeals, and the Supreme Court. The Second District Court of Appeals has held so repeatedly in recent cases, including several involving HHVC. See *HHVC III*, 2021-Ohio-3944, ¶ 25; *HHVC I*, 2021-Ohio-2695, ¶ 33; *State v. Lewis*, 2d Dist. Montgomery No. 28962, 2021-Ohio-1895, ¶ 49, fn. 7, citing *State v. Carr*, 2d Dist. Montgomery No. 28360, 2020-Ohio-42, ¶ 4, fn. 2; *State v. Bevers*, 2d Dist. Montgomery No. 27651, 2018-Ohio-4135, ¶ 13; *State v. Beverly*, 2016-Ohio-8078, 75 N.E.3d 847, ¶ 34 (2d Dist.). In any event, Defendants have submitted certified copies of the relevant decisions with their earlier-filed affidavits. The evidence of HHVC’s vexatious conduct is in the record for this Court’s review, and its campaign of endless litigation is fully evident.



There is no genuine issue of material fact with regard to Defendants' counterclaim in this case. The issues in all of these lawsuits were resolved years ago when Judge Parker made his original decision in Case No. 2018CV01457, and that decision was affirmed on appeal. HHVC has been beating the same dead horse with every new lawsuit that it files, with every new attempt to force the 40 & 8 organization, its members, and others associated with that organization, to respond to each lawsuit and each motion that ignores the finality of each prior decision. Summary judgment is hereby GRANTED and HHVC is declared a vexatious litigator.

#### **IV. EFFECT OF JUDGMENT UNDER R.C. 2323.52**

##### **Regarding Ohio Trial Courts:**

Pursuant to R.C. 2323.52(D)(1), this Court hereby orders and prohibits Huber Heights Veterans Club, Inc., from doing any of the following:

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 it has instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of this *Decision*; and
3. Making any application, other than an application for leave to proceed by R.C. 2323.52(F)(1), in any legal proceedings instituted by it or another person in the court of claims or in a court of common pleas, municipal court or county court.

Pursuant to R.C. 2323.52(F)(1) before Huber Heights Veterans Club, Inc., may issue any legal proceeding in a civil action, continue any currently pending legal proceeding or civil action, or make any other application, it must file with this Court—specifically Judge Richard S. Skelton, or his successor in office—a written request for leave to proceed. The written request must demonstrate to the satisfaction of this Court that the proceedings are not an abuse of process of the

court in question and that there are reasonable grounds for proceedings or application. In particular, the written request must show that the proceedings are not an attempt to relitigate any matter that has been previously decided.

**Regarding Ohio Appellate Courts:**

Pursuant to R.C. 2323.52(D)(3), this Court hereby orders and prohibits Huber Heights Veterans Club, Inc., from doing any of the following without obtaining leave from the appropriate appellate court:

1. Instituting proceedings in the court of appeals;
2. Continuing any legal proceedings that it has instituted in a court appeals prior to the entry of this *Decision*; and
3. Making any application, other than an application for leave to proceed by R.C. 2323.52(F)(2), in any legal proceedings instituted by it or another person in the court of claims or in a court of appeals.

Pursuant to R.C. 2323.52(F)(2) before Huber Heights Veterans Club, Inc., may issue any legal proceeding in a court of appeals, it must file a written application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The written request must demonstrate to the satisfaction of the appellate court that the proceedings are not an abuse of process of the court in question and that there are reasonable grounds for proceedings or application.

**Additional Provisions**

For purposes of R.C. 2323.52(E), this Court orders that this *Decision* remain in force indefinitely.

For purposes of R.C. 2323.52(H), this Court orders the Montgomery County Clerk of Courts to forthwith send a certified copy of this *Decision* 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, or clerks of the courts of appeals, courts of common pleas, municipal courts, or county courts in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be vexatious litigators and who have failed to obtain leave to proceed according to the statute.

Pursuant to R.C. 2323.52 whenever it appears by suggestion of the parties or otherwise that Huber Heights Veterans Club, Inc., as a person found to be a vexatious litigator, has instated, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so, the court in which the legal proceedings are pending shall dismiss the proceedings or application.

This *Decision* resolves all issues remaining before this Court and is, accordingly, a FINAL APPEALABLE ORDER.

**SO ORDERED:**

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**RICHARD S. SKELTON, JUDGE**





General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Number:**  
2021 CV 04538

**Case Title:**  
HUBER HEIGHTS VETERANS CLUB INC. vs TIMOTHY R  
WEBB

**Type:**

Final Judgment Entry

So Ordered,

Electronically signed by skelton on 05/09/2022 12:35:46 PM Page 13 of 13

I hereby certify this to be a true and  
correct copy.

Witness my hand and seal this 18  
day of May 2022.

Clerk of Common Pleas  
Court of Montgomery County, Ohio

By S. Harness  
Deputy