

2022 SEP -6 PM 4: 16

I. JEAN MECKSTROTH  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
AUGLAIZE COUNTY, OHIO  
CIVIL DIVISION

EDWIN A. PIERCE,  
Plaintiff

vs.

TIMOTHY SCOTT WORKMAN  
Defendant

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Case No. 2022-CV-0071

JOURNAL ENTRY -- ORDERS  
GRANTING PLAINTIFF  
SUMMARY JUDGMENT AND  
DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

On May 10, 2022, Plaintiff filed his Complaint seeking that defendant be declared a vexatious litigator pursuant to R.C. Section 2323.52. On June 15, 2022, Defendant filed his "Reply to Complaint".

Pursuant to Civil Rule 8(F), the Court construed the "Reply" in part as a motion to dismiss, and overruled the same. The Court further construed the remainder of the "Reply" as an answer.

On June 29, 2022, the Defendant, Timothy Scott Workman, filed his motion for Summary Judgment. On July 8, 2022, Plaintiff Edwin A. Pierce filed his motion for Summary Judgment through counsel, and supplemented that motion on July 12, 2022. Thereafter, the Court filed its entries setting forth briefing schedules, as last amended on August 10, 2022, to allow Defendant an opportunity to file additional responses on or before August 31, 2022.

As to Defendant's motion, Plaintiff responded on July 14, 2022, and Defendant replied on August 1, 2022, with the Plaintiff responding again on August 12, 2022. As to Plaintiff's motion, Defendant responded on August 1 and August 10, 2022. Defendant was given an extension to file any supplemental response until August 31, 2022, and has failed to do so.

The cross motions now come before the Court for consideration, as the extended briefing schedule has expired.

The standard of review, pursuant to Civ. R. 56, requires granting summary judgment if: 1) there is no genuine issue of material fact; 2) the moving party is entitled to judgment as a matter of law; and 3) reasonable minds can come but to one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. Also, Civ. R. 56 requires the evidence be construed most favorably toward the non-moving party. *Civ. R. 56(C)*. Initially, the burden of establishing that no genuine issue of material fact exists rests squarely on

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the moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 47 (1978). Once established, in rebuttal, “a nonmoving party cannot rest upon the allegations of the pleadings but must respond with affidavits or similar evidentiary materials demonstrating that a genuine issue of material fact exists for trial.” *Wiegerig v. Timken Co.*, 144 Ohio App.3d 664, 670, 761 N.E.2d 118, 122 (2001), quoting *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264, 273-274 (1996). The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party’s claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party satisfies this burden, then the nonmoving party has a “reciprocal burden” to set forth specific facts, beyond the allegations and denials in his pleadings, demonstrating that a “triable issue of fact” remains in the case. The duty of a party resisting a motion for summary judgment is more than that of resisting the allegations in the motion. Instead, this burden requires the nonmoving party to “produce evidence on any issue for which that (the nonmoving) party bears the burden of production at trial.” The non-movant must present documentary evidence of specific facts showing that there is a genuine issue for trial and may not rely on the pleadings or unsupported allegations. Opposing affidavits, as well as supporting affidavits, must be based on personal knowledge, must set forth facts as would be admissible into evidence, and must show affirmatively that the affiant is competent to testify on the matters stated therein. See generally *Dresher v. Burt*, *supra*, and *Wing v. Anchor Media Ltd. Of Texas* (1991), 59 Ohio St.3d 108, 570 N.E.2d 1095.

While this Court has construed the Defendant’s pleading of June 15, 2022, as an answer, the Court will nevertheless apply Civil Rule 8(D):

“Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.”

Defendant has denied being a vexatious litigator as Plaintiff has alleged, but all remaining allegations in Plaintiff’s Complaint are hereby deemed admitted.

From all the evidence presented, the court finds that no genuine issue of material fact exists, and when construing the evidence most strongly in favor of the Defendant and against Plaintiff, that judgment should be rendered in favor of the Plaintiff who is entitled to judgment as a matter of law with respect to Plaintiff’s complaint, in the particulars set forth below.

As noted in *State v. Nichols*, 11 Ohio St. 3d 40 (Ohio 1984):

Post-conviction relief proceedings in Ohio have historically been cognizable as quasi-civil. Thus, the doctrine of *res judicata* is applicable to post-conviction relief proceedings. *State v. Perry* (1967), 10 Ohio St.2d 175 [39 O.O.2d 189],

paragraph eight of the syllabus. Moreover, *res judicata* has been most recently utilized to justify dismissal of post-conviction relief proceedings where the issue in question was never raised on direct appeal from the original judgment and sentence. *State v. Cole* (1982), 2 Ohio St.3d 112.

In the case *sub judice*, appellant raises constitutional issues *de novo* on appeal in a post-conviction relief proceeding. Insofar as appellant's claims have never been heard on appeal from the original judgment and conviction, the optimum forum for appellant's arguments would be in a delayed appeal from the original judgment and conviction if so granted by the court of appeals. As we stated in paragraph nine of the syllabus in *Perry, supra*, and subsequently reaffirmed in *Cole, supra*, "a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding *except an appeal from that judgment*, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment or conviction, or on an appeal from that judgment." (Emphasis added.) By logical extension, postconviction relief is not available until such time as conventional appellate relief has been sought. Cf. *State v. Gibson* (1980), 69 Ohio App.2d 91 [23 O.O.3d 130] (postconviction relief should be used for evidence de hors the record). Since the constitutional concerns of appellant were never raised in an appeal from the original judgment and conviction, there would, however, be no *res judicata* effect as to subsequent postconviction relief proceedings. Accordingly appellant has the avenue of filing a motion for a delayed appeal from the original judgment and conviction.

In the present case appellant seeks to have us allow a delayed appeal in postconviction relief proceedings as if App. R. 5(A) were applicable to such proceedings. We decline to endorse such a view.

R.C. 2953.23(B) is explicit in stipulating appeal may be had from an order denying or awarding postconviction relief "pursuant to section 2953.21." Such an order is a final judgment and may be appealed *pursuant to R.C. Chapter 2953*. Although R.C. Chapter 2953 is a criminal chapter, nowhere does this chapter explicitly mandate the use of the Ohio Rules of Appellate Procedure as applicable to criminal cases. As we noted in *State v. Milanovich* (1975), 42 Ohio St.2d 46, 49 [71 O.O.2d 26], "[u]nder R.C. 2953.21, an action for postconviction relief is a *civil proceeding* in which the prosecuting attorney represents the state as a party." (Emphasis added.) See, also, *State v. Harvey* (1980), 68 Ohio App.2d 170, 171 [22 O.O.3d 235].

Thus, many of the pleadings referenced in the various memoranda, affidavits and pleadings herein in Defendant's underlying criminal case are civil in nature.

"Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of 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(C).

"Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

- (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
- (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- (c) The conduct is imposed solely for delay. R.C.2323.52(B).

Accordingly, whether the Defendant's pleadings are vexatious conduct turns on what his intent is, to sort out whether his conduct is merely to harass or maliciously injure another party; or whether his pleadings can be supported by a good faith argument for reversal of the existing law of the case.

Since both Plaintiff and Defendant have relied heavily on the record in this Court's Case No. 2014-CR-0075, and as requested by the Plaintiff, this Court takes judicial notice of the record in Case No. 2014-CR-0075, including, without limitation, all opinions filed therein from the Third District Court of Appeals.

Relevant are the significant number of falsehoods his pleadings and arguments in his civil post-conviction relief petitions. A review of the entire record of post-conviction proceedings is replete with falsehoods and misrepresentations, as found not only by this court but also by the Court of Appeals. (See the Appellate decisions of May 4, 2022, and April 26, 2022, as just two of the most recent examples.) His conduct therein is not warranted under existing law and cannot be supported by a good faith argument for an extensions, modification, or reversal of existing law.

Defendant's filings accusing former witnesses of committing crimes pursuant to R.C. 2935.09 are further corroboration of the intent of the Defendant. The court took judicial notice of all of the record in Case No. 2014-CR-75 in ruling on March 28, 2022, in Case No. 2021-MISC-34 that "the Complaint filed [t]herein was not filed in good faith as it was known to have been filed beyond the statute of limitations, and further finds that the claim is not meritorious based upon not only the statute of limitations that has expired, but also on the merits based upon the entire record in the [2014] case," with a similar outcome in Case No. 2022-MISC-02. His conduct serves merely to harass or maliciously injure the witnesses in his criminal case that he brought into the Miscellaneous cases, including the police investigator and the two teenage

victims who testified against him. (See *Stafford v. Columbus Bonding Ctr.*, 2008 Ohio 3948, filing beyond statute of limitations is frivolous conduct.)

While filing his various motions, Defendant has continuously filed his pleadings for the purpose of delaying his judgment of conviction becoming final. His conviction is, indeed, a final judgment, but his *purpose* is to delay through failed attempts to avoid such finality.

The purpose of R.C. 2323.52 is clear from the terms of the statute. There comes a point when Courts should protect public attorneys (including County Prosecuting Attorneys) who are forced to waste resources to defend persistent vexatious conduct by pre-screening litigation when such litigator wished to file yet another pleading. Such a determination does not preclude additional filings, but it does require such a litigant to obtain leave of court to file any such cause of action or appeal. The statute, in fact, is jurisdictional, meaning that no court has jurisdiction to entertain such a cause of action or appeal anywhere in the state without the court issuing such a ruling granting such leave.

Accordingly, the Plaintiff's motion for summary judgment is hereby GRANTED and it is hereby ordered, adjudged and decreed that plaintiff should be awarded summary judgment; and that Defendant's motion for summary judgment be, and is hereby, dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, THAT Timothy Scott Workman, a/k/a Scott Workman, be and is hereby DECLARED to be a VEXATIOUS LITIGATOR pursuant to R.C. 2323.52, and further makes the following ORDERS:

1. TIMOTHY SCOTT WORKMAN, a/k/a SCOTT WORKMAN, is hereby prohibited from any one or more of the following without first obtaining the 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 said vexatious litigator, Timothy Scott Workman, had instituted in any of the courts listed in paragraph 1(a) above prior to the date of this ORDER;
  - c. Making any application, other than an application for leave to proceed under Division (F)(1) of Revised Code Section 2323.52, in any proceedings instituted by said vexatious litigator or another person in any of the said courts; AND
  - d. Instituting any legal proceedings in a court of appeals, continue any legal proceedings that said vexatious litigator, Timothy Scott Workman, had instituted in a court of appeals prior to the date of this ORDER, other than the application for leave allowed by Division (F)(2) of Revised Code Section 2323.52, in any legal proceedings instituted by said vexatious

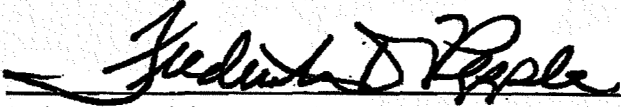
litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to said Division (F)(2).

Costs assessed to the Defendant. Judgment for costs in favor of the Plaintiff.

The Clerk shall send a certified copy of this ORDER to the supreme court for publication in accordance with R.C. Section 2323.52(H).

The Clerk shall cause a copy of this journal entry to be provided to the Prosecuting Attorney by hand delivery, and a copy to the defendant Timothy Scott Workman, A727-101 by regular U.S. Mail at P.O. Box 300, Orient, Ohio 43146.

IT IS SO ORDERED.

  
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Judge Frederick D. Pepple

**TO THE CLERK:**  
This Journal Entry **MAY** be  
a final appealable order.  
Copies to parties and attorneys  
in accordance with Civil Rule 58.

State of Ohio, Auglaize County, SS.

I, I. Jean Meckstroth, Clerk of the Court of Common Pleas within and for said County, hereby certify that the foregoing is a true and correct copy of the original record on file in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court at Wapakoneta, Ohio.

this September 20th day of

I, JEAN MECKSTROTH, CLERK OF COURT

By: [Signature] Deputy Clerk