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CLERK OF COURT
SUPREME COURT OF OHIO

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

THOMAS LILLY,

Plaintiff(s),

-vs-

LEO NEAL JR,

Defendant(s).

CASE NO.: 2019 CV 03620

JUDGE MARY WISEMAN

**FINAL AND APPEALABLE DECISION,
ORDER, AND ENTRY GRANTING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

**DECISION, ORDER, AND ENTRY
DENYING DEFENDANT'S MOTION TO
STRIKE**

**ORDER AND ENTRY DECLARING LEO
NEAL, JR. A VEXATIOUS LITIGATOR**

**ORDER FOR CLERK OF COURTS TO
SEND COPY OF THIS DECISION TO
THE SUPREME COURT OF OHIO FOR
PUBLICATION**

There are three matters before the Court. First, on September 10, 2020, pro se Defendant Leo Neal, Jr. ("Mr. Neal") filed his *Motion for Summary Judgment*. See Docket. Second, on October 2, 2020, Plaintiff Thomas Lilly ("Mr. Lilly") filed his *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment*. *Id.* Also on October 2, 2020, Mr. Lilly moved for and obtained leave to supplement his motion, and he subsequently filed his *Plaintiff's Notice of Supplementation to Motion for Summary Judgment* on November 11, 2020. *Id.* Mr. Neal subsequently filed his *Memorandum in Opposition to Plaintiff's Motion for Summary Judgment* on December 9, 2020. *Id.*

Montgomery County Common Pleas Court
General Division

Thereafter, Mr. Lilly filed his *Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment* on December 11, 2020. *Id.*

On February 12, 2021, the Court filed its *Order and Entry Setting Non-Oral Hearing on Plaintiff's Motion for Summary Judgment; Order for Plaintiff to Submit Evidentiary Materials by February 26, 2021* ("Order"). *See* Docket. Therein, the Court notified Mr. Lilly that it could not take judicial notice of certain filings mentioned in his memoranda, and the Court provided a deadline of February 26, 2021 for Mr. Lilly to file any relevant evidence from the cases previously referenced in his *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment* and/or his *Plaintiff's Notice of Supplementation to Motion for Summary Judgment*. *Order* at 1-2. Thereafter, Mr. Lilly filed the *Affidavit of Craig T. Matthews* and separately filed multiple exhibits on February 26, 2021. *See* Docket. Pursuant to the Court's *Order*, Mr. Neal had until March 12, 2021 to file any objection with respect to the additional evidence submitted by Mr. Lilly. *Order* at 2. By decision filed on March 8, 2021, the Court granted Mr. Neal's request for an extension of time and gave him until April 19, 2021 to file any objection to Mr. Lilly's additional evidence. *See Dec.* at 2. No such objection was ever filed by Mr. Neal. *See* Docket.

Third, Mr. Neal filed a *Motion to Strike Plaintiff's Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment filed October 2, 2021* ("Motion to Strike") on March 3, 2021. *See* Docket. Therein, Mr. Neal requested the Court strike the following documents filed by Mr. Lilly: (1) *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment*, filed on October 2, 2020; (2) *Plaintiff's Notice of Supplementation to Motion for Summary Judgment*, filed on November 11, 2020; (3) the *Affidavit of Craig T. Matthews*, filed on February 26, 2021; and (4) *Plaintiff's Notice of Filing Additional Exhibits to Affidavit of Craig T. Matthews*, which constitutes three separate filings, all filed on February 26, 2021. *Mot. Strike* at 1. By decision filed on March 8, 2021, the Court denied Mr. Neal's motion as it relates to *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment*, filed on October 2, 2020. *Dec.* at 2. However, the Court held in abeyance Mr. Neal's motion to strike with respect to the other filings referenced therein. *See id.*

These matters are now properly before the Court. For the reasons that follow, the Court hereby grants Mr. Lilly's *Motion for Summary Judgment* and the Court denies Mr. Neal's *Motion for Summary Judgment*.

The Court further denies Mr. Neal's *Motion to Strike*. The Court finds as a matter of law that Leo Neal, Jr. is a vexatious litigator in accordance with R.C. 2323.52.

FACTS AND PROCEDURAL HISTORY

The Court finds a detailed recitation of the procedural history to be instructive for purposes of resolving the legal issue before the Court. This action arises from the *Complaint for Declaration of Vexatious Litigator* filed by Mr. Lilly on August 7, 2019. *See* Docket. Therein, Mr. Lilly asserts that he is bringing this action under RC. 2323.52 to have Mr. Neal declared a vexatious litigator based upon his conduct in several cases brought in multiple jurisdictions, including this Court. *See generally* *Complaint*.

Originally, this matter was randomly assigned to Judge Timothy O'Connell in accordance with Mont. Co. C.P.R. 1.19(A)(1). However, on November 20, 2019, Mr. Lilly filed a *Motion to Transfer Case to Judge Wiseman*, on the grounds that his *Complaint for Declaration of Vexatious Litigator* is based upon Mr. Neal's alleged vexatious conduct in a prior action before the undersigned, and "[a]s such, Judge Wiseman is very familiar with the parties and information on which Mr. Lilly's claims rest." *Mot. Transfer* at 1-2. In his *Decision and Entry Granting Plaintiff's Motion to Transfer Case to Judge Wiseman* filed on November 22, 2019, Judge O'Connell specifically stated the following:

On or about November 20, 2019 Plaintiff, Thomas Lilly, by and through counsel, filed a *Motion to Transfer Case to Judge Wiseman* in the above captioned matter. In that motion the Plaintiff references case number 2017CV03306 as a basis for the filing of 2019CV03620. The court has reviewed the dockets in the 2017 and 2019 cases and the motion. The court has also spoken to Judge Wiseman's office. Considering all of those elements, the court hereby GRANTS Plaintiff's motion to transfer. The above captioned case is hereby transferred to Judge Wiseman's docket.

Dec. at 1. On December 17, 2019, Mr. Neal filed his *Objection to Transfer of Case*. On the following day, Mr. Neal filed a *Notice of Appeal* of Judge O'Connell's decision to the Second District Court of Appeals, docketed as appellate case number CA 28643. *See Notice of Appeal*, filed 12/18/19, at 1. After the dismissal of Mr. Neal's appeal, the Court filed its *Decision and Entry Denying Defendant's Objection to Transfer of Case* on February 18, 2020. *See* Docket. Therein, this Court held that case numbers 2017 CV 3306 and 2019 CV 3960 constitute companion cases and that Judge O'Connell "properly followed the procedure as outlined in Mont. Co. C.P.R. 1.19(A)(3) by obtaining the approval of the undersigned prior to transfer. Accordingly, the transfer was appropriate * * *." *Decision*, filed 02/18/20, at 2.

On October 24, 2019, Mr. Neal moved for and obtained an extension of time to plead or answer. *See* Docket. On November 6, 2019, Mr. Neal filed a *Motion to Dismiss Complaint* alleging improper venue. *Id.* Mr. Lilly timely filed his *Plaintiff's Reply to Defendant's Motion to Dismiss* on November 20, 2019. *Id.* Mr. Neal moved for and obtained an extension of time to file his reply memorandum in support of his motion. *Id.* Although Mr. Neal was granted an extension until December 16, 2019 to file his memorandum, no reply was ever filed by Mr. Neal. *Id.* The Court ultimately denied Mr. Neal's *Motion to Dismiss Complaint* and ordered Mr. Neal to file a responsive pleading within fourteen days in accordance with Civ.R. 12(A)(2).¹ *See Dec.*, filed 02/14/20, at 1-4. Mr. Neal failed to file a responsive pleading in accordance with the Court's order. *See* Docket. Notably, the Court's decision did not include the "no just cause for delay" language of Civ.R. 54(B). *See id.* Nevertheless, Mr. Neal appealed this decision to the Second District Court of Appeals, docketed as appellate case number CA 28751. *See Notice of Appeal*, filed 03/13/20, at 1. Due to the pendency of this appeal, the Court vacated the case management scheduling order, including the dispositive motion filing deadline and the bench trial dates. *See Order and Entry Vacating Case Management Order*, filed 06/05/20, at 1. New dates were not scheduled until after the filing of Mr. Neal's *Motion for Summary Judgment*, which occurred subsequent to the dismissal of his appeal. *See Order and Entry; Case Management Order*, filed 09/14/20, at 1-2.

After briefing on the subject motions was complete, Mr. Neal filed a *Motion for Disqualification of Judge Mary Wiseman and Montgomery County Common Pleas Court in Comity* in this matter on January 7, 2021. *See* Docket. Mr. Neal also filed an *Affidavit of Disqualification* with the Supreme Court of Ohio on January 14, 2021, docketed as Supreme Court Case No. 21-AP-007. *See Affidavit of Disqualification*, filed 01/25/21, at 3. On January 22, 2021, the Supreme Court issued its *Judgment Entry and Decision*, finding Mr. Neal's *Affidavit of Disqualification* to be without merit and denying the same. *See Entry*, filed 01/26/21, at 1-2. Subsequently, Administrative Judge Gregory Singer filed an *Entry and Order Overruling Motion for Disqualification* on January 27, 2021. *See* Docket.

Thereafter, Mr. Neal filed two motions on March 3, 2021: (1) a *Motion to Strike Plaintiff's Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment* filed

¹ The Court stayed its decision on Mr. Neal's *Motion to Dismiss Complaint* until resolution of Mr. Neal's earlier appeal to the Second District of Appeals, docketed as appellate case number CA 28643.

October 2, 2021, and (2) a *Motion for Additional Time to Respond to Plaintiff's Alleged Opposition to Defendant's Motion for Summary Judgment; Motion to Dismiss and Strike Craig Matthews Affidavit and all Addendums filed February 26, 2021*. See *id.* By decision dated March 8, 2021, the Court denied the majority of Mr. Neal's requests, but the Court granted Mr. Neal's request for an extension of time and gave him until April 19, 2021 to file any objections with respect to the additional evidence submitted by Mr. Lilly on February 26, 2021. See *Dec.* at 2. As stated above, Mr. Neal never filed objections with respect to Mr. Lilly's additional evidence. See *Docket*.

Subsequently, Mr. Neal filed a second *Motion to Disqualify Judge Wiseman and Montgomery County Common Pleas Court in Comity* on March 29, 2021. See *Docket*. The Court sua sponte stayed this matter for approximately one month so that the Court could determine whether Mr. Neal had filed an additional affidavit of disqualification with the Supreme Court of Ohio. Court staff contacted the Supreme Court of Ohio on May 3, 2021, and determined that no additional affidavit of disqualification had been filed by Mr. Neal. Thereafter, Administrative Judge Gregory Singer issued his *Entry and Order Overruling Defendant's Second Motion for Disqualification* on May 4, 2021. See *Docket*.

In his *Motion for Summary Judgment*, Mr. Neal attempts to relitigate the merits of a separate matter before this Court, docketed as case number 2017 CV 3306 (*Neal v. Lilly*), and Mr. Neal argues that this Court erred in various rulings in that matter. See generally *Mot. Summ. J.* at 1-4. Regarding Mr. Lilly's *Complaint for Declaration of Vexatious Litigator*, Mr. Neal contends that Mr. Lilly failed to provide evidence to demonstrate that he is a vexatious litigator, and he requests that the Court grant him judgment as a matter of law. *Id.* at 4-5. Mr. Neal attached ten documents to his motion as exhibits, including several invoices, a bill from the Licking County Treasurer's Office from 2016, a copy of a Real Property Conveyance Fee Statement of Value and Receipt, and another bill from the Licking County Treasurer's Office from 2019. *Id.* at Ex. 1-10.

In his *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment*, Mr. Lilly asserts that he brought this action "primarily based upon Mr. Neal's vexatious conduct in the case of *Leo Neal Jr. v. Thomas Lilly et al.*, Montgomery C.P. No. 2017 CV 03306 (July 17, 2017) ("the 2017 case")." *Pl.'s Mot. Summ. J.* at 2-3. Mr. Lilly details Mr. Neal's alleged vexatious conduct in the 2017 Case, including filing various objections, motions, and appeals which were found to be without merit, in addition to failing to comply with discovery. *Id.* at 3-6, citing *Affidavit of Craig*

T. Matthews at ¶ 4, Ex. A. Mr. Lilly further details Mr. Neal's filings and conduct in the case of *Neal v. 4030 West Broad Inc.*, Franklin C.P. No. 2016 CVF 019268 ("the 2016 case"), including his filing of meritless appeals before the Tenth District Court of Appeals. *Id.* at 6-9. Mr. Lilly cites to *Lasson v. Coleman*, 2d Dist. Montgomery No. 21983, 2008-Ohio-4140, and argues that Mr. Neal's conduct is similar to Mr. Lasson's conduct and that it would thus be proper for the Court to find that Mr. Neal is a vexatious litigator. *Id.* at 11-13. Specifically, Mr. Lilly asserts the following:

Like in *Lasson*, Mr. Neal has exhibited an egregious indifference for court rules and procedure. Mr. Neal has habitually failed to comply with discovery, and appear for scheduled hearings and depositions. Mr. Neal has failed to adhere to the appellate rules of procedure by filing briefs in contravene to the rules and filing untimely appeals. Furthermore, Mr. Neal has filed numerous motions, objections, and appeals setting forth the same arguments and legal theories that have been rejected by the trial courts numerous times. Moreover, like in *Lasson*, Mr. Neal was sanctioned by the Franklin County Municipal Court for failing to comply with the Civil Rules. Mr. Neal has repeatedly failed to attend or be available for status conferences and hearings, and blamed his failures on alleged medical emergencies, illnesses, and business trips. Based on this behavior and conduct, this Court should declare Mr. Neal to be a vexatious litigator.

Id. at 12-13. Mr. Lilly thus requests the Court deny Mr. Neal's *Motion for Summary Judgment* and grant him judgment as a matter of law. *Id.* at 13.

Throughout his *Memorandum in Opposition to Plaintiff's Motion for Summary Judgment*, Mr. Neal again addresses the merits of the underlying 2017 case. *See generally Mem. Opp'n Pl.'s Mot. Summ. J.* In addressing *Plaintiff's Combined Motion for Summary Judgment and Memorandum in Opposition to Defendant's Motion for Summary Judgment*, Mr. Neal argues that Mr. Lilly has failed to provide evidence to support his assertion that Mr. Neal engaged in vexatious conduct. *Id.* at 5-6.

In his *Plaintiff's Reply in Support of Plaintiff's Motion for Summary Judgment*, Mr. Lilly argues that Mr. Neal's memorandum was untimely filed and should not be considered by the Court. *Pl.'s Reply* at 2. Additionally, Mr. Lilly contends that Mr. Neal has failed to point to admissible evidence under Civ.R. 56(C). *Id.* Mr. Lilly thus asserts that Mr. Neal's conduct "serves merely to harass and delay payment of the Judgment[s] owed to both Mr. Lilly and 4030." *Id.*

LAW AND ANALYSIS

Pursuant to Civ.R. 56(C), before summary judgment may be granted, a court must determine that (1) there remains no genuine issue of material fact to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) 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, where such party is entitled to have the evidence construed most strongly in its favor. *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 6, quoting *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 327, 364 N.E.2d 267 (1977). ““Before ruling on a motion for summary judgment, the trial court’s obligation is to read the evidence most favorably for the nonmoving party to see if there is a “genuine issue of material fact” to be resolved. Only if there is none does the court then decide whether the movant deserves judgment as a matter of law.”” *Algren v. Algren*, 183 Ohio App. 3d 114, 2009-Ohio-3009, 916 N.E.2d 491, ¶ 24 (2d Dist.) (internal citation omitted). Thus, the main purpose of a motion for summary judgment is to ““enable a party to go behind the allegations in the pleadings and assess the proof in order to see whether there is a genuine need for trial. * * * Consequently, the primary function of a trial court in reviewing a motion for summary judgment is to determine whether triable issues of fact exist, not the sufficiency of those facts.”” *Allstate Ins. Co. v. Pittman*, 2d Dist. Montgomery No. 26330, 2015-Ohio-699, ¶ 22 (citation omitted).

In order to prevail on a motion for summary judgment, the moving party carries the initial burden to inform the trial court of the basis for the motion and to point to parts of the record demonstrating that no genuine issue of material fact exists. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). “In the context of summary judgment, the failure to meet one’s burden as to any one of the essential elements can be dispositive.” *Kryder v. Kryder*, 9th Dist. Summit No. 25665, 2012-Ohio-2280, ¶ 30; *see also Lloyd v. Rogerson*, 9th Dist. Wayne No. 18AP0024, 2019-Ohio-2606, ¶ 18 (“Failure to meet the evidentiary burden on any of the elements will entitle the moving party to judgment as a matter of law.”); *Phillips v. Spitzer Chevrolet Co.*, 5th Dist. Stark No. 2006CA00002, 2006-Ohio-4701, ¶ 19 (“It is axiomatic that failure to prove one element of a cause of action is fatal to a party’s claim.”). The moving party must be able to specifically point to some evidence of the type listed under Civ.R. 56(C) to affirmatively demonstrate that the non-moving party has no evidence to support the non-moving party’s claims. *Vahila v. Hall*, 77 Ohio St. 3d 421, 428, 674 N.E.2d 1164 (1997); *see also Civ.R. 56(C)* (“Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact * * * show that there is no genuine issue as to any issue of material fact and that the moving party is entitled to judgment as a matter of law.”).

Once the moving party satisfies this burden, in order to avoid a grant of summary judgment, the non-moving party has the reciprocal burden to present evidence to show there is a genuine issue of material fact, as outlined in Civ.R. 56(E):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Civ.R. 56(E); *see also Jackson v. Alert Fire & Safety Equip., Inc.*, 58 Ohio St. 3d 48, 52, 567 N.E.2d 1027 (1991). The non-moving party is not required to "conclusively demonstrate" its case, but must produce enough evidence to show that there remains a genuine issue of material fact. *State ex rel. J.J. Detweiler Ent. v. Warner*, 103 Ohio St.3d 99, 101, 2004-Ohio-4659, 814 N.E.2d 482, ¶ 14. Additionally, "[a]lthough courts are cautioned to construe the evidence in favor of the nonmoving party, summary judgment is not to be discouraged where a nonmovant fails to respond with evidence supporting the essentials of his claim." *Armeni v. Aromatorio*, 7th Dist. Mahoning No. 11 MA 48, 2012-Ohio-1500, ¶ 16.

Pursuant to R.C. 2323.52, a "vexatious litigator" is a person who has "habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, * * *, 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 further defined as conduct that satisfies any of the following: (1) "The conduct obviously serves merely to harass or maliciously injure another party to the civil action"; (2) "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"; and (3) "The conduct is imposed solely for delay." R.C. 2323.52(A)(2)(a)-(c). "A person * * * who has defended against habitual and persistent vexatious conduct in the 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." R.C. 2323.52(B). If a party is determined to be a vexatious litigator, that party must first obtain leave of court to institute new legal proceedings or continue any legal proceedings previously instituted. R.C. 2323.52(D)(1).

In *Davie v. Nationwide Ins. Co. of America*, the Eighth District Court of Appeals further elaborated on this issue as follows:

As the Ohio Supreme Court explained in *Mayer v. Bristow*, 91 Ohio St.3d 3, 740 N.E.2d 656 (2000):

“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.”

Id. at 13, quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998). “It is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle, the same unwarranted complaint that cannot be supported by any recognizable good-faith argument.” *Hull v. Sawchyn*, 145 Ohio App.3d 193, 197, 762 N.E.2d 416 (8th Dist.2001).

It is the “nature of the conduct, not the number of actions,” that determines whether a person is a “vexatious litigator.” *Prime Equip. Grp., Inc. v. Schmidt*, 2016-Ohio-3472, 66 N.E.3d 305, ¶ 40 (10th Dist.), quoting *Borger v. McErlane*, 1st Dist. Hamilton No. 010262, 2001-Ohio-4030. “Whether undertaken in an array of cases or in a single action, the consistent repetition of arguments and legal theories that have been rejected by the court numerous times can constitute vexatious litigation.” *Prime Equip. Grp.* at ¶ 40.

In determining whether a party is a vexatious litigator, the trial court may consider the party’s conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought. *See, e.g., Catudal v. Netcare Corp.*, 10th Dist. Franklin No. 15AP-133, 2015-Ohio-4044, ¶ 8; *see also Prime Equip. Grp.*, 2016-Ohio-3472, 66 N.E.3d 305, at ¶ 20 (finding no “restriction” on the trial court’s reliance on conduct occurring in cases that terminated more than one year before plaintiff filed its vexatious litigator complaint in determining that party was a vexatious litigator); *Buoscio v. Macejko*, 7th Dist. Mahoning No. 00-CA-00138, 2003-Ohio-689, ¶ 33 (“Under R.C. 2323.52(A)(3), a person’s behavior in prior civil actions can also form the basis for declaring him a vexatious litigator.”); *Georgeadis v. Dials*, 10th Dist. Franklin No. 99AP-232, 1999 Ohio App. LEXIS 5848, *9-*10 (Dec. 9, 1999) (affirming trial court’s decision to declare appellant a vexatious litigator where her vexatious conduct was demonstrated by her actions in both the current action and prior actions).

Where 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. A vexatious litigator claim may be supported by evidence of the alleged vexatious litigator’s vexatious conduct in other actions to which the person bringing the vexatious litigator claim was not a party. *See, e.g., Prime Equip. Grp.*, 2016-Ohio-3472, 66 N.E.3d 305, at ¶ 19; R.C. 2323.52(A)(3) (indicating that a vexatious litigation claim may be based on “conduct * * * against the same party or against different parties in the civil action or actions”); *Ealy*, 2007-Ohio-4080 (evidence of multiple prior court actions instituted by a city commission meeting participant against various city and county employees, all which were found to lack any basis, supported the determination that meeting participant had engaged in “vexatious conduct” under R.C. 2323.52(A)(2) and was a vexatious litigator under R.C. 2323.52(A)(3)).

Summary judgment can be an “appropriate means” of resolving a claim that a party is a vexatious litigator. *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). However, “[t]here must remain no genuine issue of material fact * * * regarding the nature of the defendant’s conduct and its impact on the cases involved, and the [moving party] must submit appropriate evidence complying with Civ.R. 56.” *Prime Equip. Grp.* at ¶ 11. Where reasonable minds could disagree as to these or other factual issues, summary judgment on a vexatious litigator claim is inappropriate. *See, e.g., Conley v. Smith*, 5th Dist. Stark No. 2004CA00285, 2005-Ohio-1433, ¶ 27-28 (where the issues between the parties are “factually intense” and “lead to the necessity of different interpretations of the facts,” the trial court did not err in denying motion for summary judgment on vexatious litigator claimed but erred in not proceeding with a trial on the matter per the civil rules); *Mansour v. Croushore*, 12th Dist. Butler Nos. CA2008-07-161 and CA2008-07-170, 2009-Ohio-2627, ¶ 50 (trial court did not err in refusing to grant summary judgment on vexatious litigator claim).

“Declaring a plaintiff to be a vexatious litigator is ‘an extreme measure’ that should be granted only ‘when there is no nexus’ between ‘the filings made by the plaintiff[] and [his or her] ‘intended claims.’” *Id.*, quoting *McClure v. Fischer Attached Homes*, 145 Ohio Misc. 2d 38, 2007-Ohio-7259, 882 N.E.2d 61, ¶ 33; *Helfrich v. Madison*, 5th Dist. Licking No. 11 CA 26, 2012-Ohio-551, ¶ 60.

Davie v. Nationwide Ins. Co. of Am., 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶¶ 39-44.

Analysis:

As an initial matter, the Court notes that it cannot consider the evidence attached to Mr. Neal’s *Motion for Summary Judgment*. The Rules of Civil Procedure specify the type of evidence that the Court can consider, including “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact * * *.” Civ.R. 56(C). “If the evidence produced in support of summary judgment does not fit into one of those categories, then that evidence must be incorporated through a properly framed affidavit pursuant to Civ.R. 56(E). * * * If the evidence is not incorporated through a properly framed affidavit, it is not proper summary judgment evidence and will not be considered.” *U.S. Bank, N.A. v. Kamal*, 7th Dist. Mahoning No. 12 MA 189, 2013-Ohio-5380, ¶ 46; *see also Evans v. Jeff Wyler Chrysler Jeep Dodge Ram of Springfield*, 2018-Ohio-1726, 111 N.E.3d 901, ¶¶ 28-31 (2d Dist.). As none of the attachments to Mr. Neal’s *Motion for Summary Judgment* are the type of evidence permitted by Civ.R. 56(C), and based upon Mr. Neal’s failure to incorporate this evidence into a properly framed affidavit, the Court will not consider Mr. Neal’s exhibits.

Additionally, the Court will consider the evidence provided by Mr. Lilly on October 2, 2020, November 11, 2020 and February 26, 2021, as this evidence was incorporated by reference in counsel’s

affidavit. Specifically, with respect to the Court's *Order* setting this matter for a non-oral hearing, the Court notes that Civ.R. 7(B)(2) permits the Court to set matters for non-oral hearing, and courts may permit the parties to submit additional evidence. Accordingly, the Court hereby denies Mr. Neal's *Motion to Strike* as being wholly without merit.

Based upon a review of the filings in the 2016 and 2017 cases, and additionally based upon Mr. Neal's conduct in the instant action, the Court finds that Mr. Lilly has demonstrated that Mr. Neal has made numerous unwarranted and frivolous filings in all three cases. A review of the actions taken by Mr. Neal in these cases leads to this Court's conclusion that he is a person who has "habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions * * *." R.C. 2323.52(A)(3). By continuing to pursue meritless claims after receiving repeated adverse rulings in these actions, Mr. Neal's conduct can only be described as "not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law" and for the purpose of harassing Mr. Lilly. *See* R.C. 2323.52(A)(2). Furthermore, the Court finds Mr. Neal's filing of numerous appeals and affidavits of disqualification in both this matter and the 2017 case constitute improper delay tactics. *See id.* In response to the overwhelming evidence of Mr. Neal's vexatious conduct, Mr. Neal merely continues to attempt to relitigate the merits of the 2017 case. Such behavior itself constitutes vexatious conduct. *See, e.g., Lasson v. Coleman*, 2d Dist. Montgomery No. 21983, 2008-Ohio-4140, ¶ 36 ("the consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute vexatious litigation.").

Moreover, as noted above, Mr. Neal failed to file a responsive pleading to Mr. Lilly's *Complaint for Declaration of Vexatious Litigator*. By decision dated February 14, 2020, the Court denied Mr. Neal's *Motion to Dismiss Complaint* and ordered him to file a responsive pleading within fourteen days in accordance with Civ.R. 12(A)(2). *See Dec.*, filed 02/14/20, at 1-4. Civ.R. 8(D) provides that "[a]verments 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." Thus, based upon Mr. Neal's failure to file a responsive pleading, the following averments are admitted pursuant to Civ.R. 8(D):

4. This Court has personal jurisdiction over Neal because a significant number of events giving rise to this action have taken place in Montgomery County. Specifically, Neal has engaged in vexatious litigation in *Leo Neal Jr. v. Thomas Lilly et al.*, Montgomery C.P. No. 2017 CV 03306 (July 17, 2017) ("the Lilly Case"), under Judge Mary Wiseman.

5. Venue is proper because a substantial part of the events giving rise to the claim asserted in this action occurred in Montgomery County.
6. Neal has made numerous spurious attempts to strike pleadings and vacate decisions regarding the Lilly Case.
7. On July 18, 2017, Neal filed a frivolous Motion to Strike Counterclaim in the Lilly Case.
8. On September 13, 2017, Neal filed a frivolous Motion to Compel in the Lilly Case.
9. On January 2, 2018, Neal filed a frivolous Objection to the Court Order for Sanctions in the Lilly Case.
10. On February 6, 2018, Neal filed a frivolous Objection in the Lilly Case.
11. On March 6, 2018, Neal filed a frivolous Objection in the Lilly Case.
12. On May 29, 2018, Neal filed a frivolous Motion to Deny all Damage Claims in the Lilly Case.
13. On August 3, 2019, Neal filed a frivolous Motion to Set Aside Judgment and to Grant a New Trial in the Lilly Case.
14. On August 7, 2018, Neal filed frivolous Objections to Magistrate Decision in the Lilly Case.
15. On August 8, 2018, Neal filed a frivolous Motion for Jury Demand for Attorney Fees to Determine Liability and Amount in the Lilly Case.
16. On July 17, 2019, Neal filed a frivolous Motion to Vacate Judgment Entry and Set Jury Trial in the Lilly Case.
17. In addition to the Lilly Case, Neal has a history of habitually and persistently engaging in litigation with persons other than Lilly which obviously serves merely to harass or delay.
18. In 1985, Neal frivolously sued the Mayor of Lima. *STATE ex rel. NEAL*, CASE No. 1-84-44, 1985 Ohio App. LEXIS 5380 (Ct. App. Jan. 9, 1985).
19. On May 27, 2016, Neal frivolously filed *Leo Neal Jr v. 4030 West Broad Inc.*, Franklin M.C. No. 2016 CVF 019268 (May 27, 2016) (“the 4030 Case”).
20. On March 13, 2018, Neal filed frivolous Objections in the 4030 Case.
21. On April 23, 2018, Neal filed a frivolous Motion to Set Aside Judgment in the 4030 Case.
22. On March 26, 2019, Neal filed a frivolous Motion to Vacate Judgment in the 4030 Case.
23. On March 28, 2019, Neal filed a frivolous Motion to Vacate Judgment in the 4030 Case.
24. On May 21, 2019, Neal filed a frivolous Motion for Reconsideration of Order Denying Set Aside of JMT and to Conduct an Evidentiary Hearing in the 4030 Case.
25. Neal lost the 4030 Case and filed five frivolous appeals. *Leo Neal Jr v. 4030 West Broad Inc.*, 10th Dist. Franklin No. 17 AP 000312 (May 2, 2017); *Leo Neal Jr v. 4030 West Broad Inc.*, 10th Dist. Franklin No. 17 AP 000803 (Nov. 16, 2017); *Leo Neal Jr v. 4030 West Broad*

Inc., 10th Dist. Franklin No. 18 AP 000314 (May 2, 2018); *Leo Neal Jr v. 4030 West Broad Inc.*, 10th Dist. Franklin No. 18 AP 000483 (Nov. 16, 2018); *Leo Neal Jr v. 4030 West Broad Inc.*, 10th Dist. Franklin No. 19 AP 000378 (June 13, 2019).

26. Further, Neal has a history of making numerous attempts to vacate the same judgment based on meritless defenses and claims. See *OhioHealth Corp. v. Neal*, 2017-Ohio-1125 (Ct. App.).

* * *

28. Neal's conduct obviously served merely to harass Lilly, and to delay a hearing to determine the amount of attorney's fees which he owes to Lilly. See Decision dated July 10, 2018, in the Lilly Case.

29. Lilly has had to defend against Neal's persistent, vexatious conduct in this Court for more than three years.

30. Neal is a vexatious litigator under ORC § 2323.52.

Compl. for Declaration of Vexatious Litigator at ¶¶ 4-30. Thus, these averments, having been admitted pursuant to Civ.R. 8(D) based upon Mr. Neal's failure to file a responsive pleading, provide an independent, separate basis for the Court to find that Mr. Neal is a vexatious litigator.

Accordingly, based on the foregoing, this Court finds by a preponderance of the evidence that Mr. Neal has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in the Montgomery County Court of Common Pleas. He has habitually, persistently, and without reasonable grounds engaged in conduct that obviously serves merely to harass or maliciously injure Mr. Lilly, and he has engaged in 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. This Court finds by a preponderance of the evidence that Defendant Leo Neal, Jr. is a vexatious litigator. Accordingly, the Court hereby grants Mr. Lilly's *Motion for Summary Judgment* and the Court denies Mr. Neal's *Motion for Summary Judgment*.

As the Court has determined that Mr. Neal is a vexatious litigator, the Court further orders that pursuant to R.C. 2323.52, Mr. Neal is prohibited from doing the following without first obtaining leave of this Court to proceed:

(a) Instituting legal proceedings in the court of claims, the court of common pleas, municipal court or county court;

(b) Continuing any legal proceedings that Mr. Neal had instituted in any of the courts specified in section (a) above prior to the entry of this Court's order; and

(c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by Mr. Neal or another person in any of the courts specified in section (a).

R.C. 2323.52(D)(1)(a)-(c). In accordance with R.C. 2323.52(E), this order shall remain in force indefinitely. Additionally, pursuant to R.C. 2323.52(H), the Court hereby orders the Clerk of Courts to send a certified copy of this order to the Supreme Court of Ohio for publication.

CONCLUSION

For the foregoing reasons, the Court hereby grants Mr. Lilly's *Motion for Summary Judgment* and the Court denies Mr. Neal's *Motion for Summary Judgment*. The Court further denies Mr. Neal's *Motion to Strike*. Additionally, the Court finds by a preponderance of the evidence that Defendant Leo Neal, Jr. is a vexatious litigator pursuant to R.C. 2323.52.

THIS IS A FINAL APPEALABLE ORDER. IN ACCORDANCE WITH APP.R. 4, ANY PARTY INTENDING TO APPEAL THIS DECISION SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.

To the Clerk of Courts:

Pursuant to Civ.R. 58(B), please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.

SO ORDERED:

JUDGE MARY WISEMAN

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

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Copies of this document were sent to all parties listed below by ordinary mail:

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

Case Number:
2019 CV 03620

Case Title:
THOMAS LILLY vs LEO NEAL

Type:

Decision

So Ordered,

May Wiseman