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LINDA H. FRARY
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IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

CARLINE M. CURRY,

Plaintiff

v.

CITY OF MANSFIELD, et al.,

Defendants.

Case No. 2021-CV-0447 R

**JUDGMENT ENTRY
ON ALL PENDING
MOTIONS FOR
SUMMARY JUDGMENT
AND DECLARING
PLAINTIFF A VEXATIOUS
LITIGATOR**

RULE 58 (B) NOTICE
THIS JUDGMENT WAS ENTERED ON THE
COURT'S JOURNAL.

ON 12-1-22
BY B. Dalton

Richland County Clerk of Courts
Deputy Clerk

This action for discrimination and retaliation is before the Court on the following pending motions and memoranda:

1. February 18, 2022, Plaintiff's motion, caption: Defendants were served a copy of the complaint; receipt attached Motion for Summary Judgement (*sic*).
2. March 28, 2022, Plaintiff's motion, caption: Objection to Counter Claim & Motion for Summary Judgement (*sic*) or Jury Trial By Demand Hereon Requested if Summary Judgement (*sic*) not granted Cleavage (*sic*) of Court to Proceed.
3. April 1, 2022, 9:38 a.m., Defendants' Response in Opposition to Plaintiff's Motion for Summary Judgment.
4. April 1, 2022, 1:37 p.m. Plaintiff's motion, caption: Objection to Oral Argument for Summary Judgement (*sic*): if Summary Judgement (*sic*) Not granted Motion for Jury Trial hereon Demand.

This is a true and exact copy of the original document containing
13 pages filed on 11/30/22 with the Richland County Clerk
of Courts. Alterations void its certification. Personal Identifiers
have been redacted pursuant to ORC 149.43 (A) (1) (dd).

A. B. [Signature]
Deputy Clerk

5. April 4, 2022, 1:37 p.m. Plaintiff's motion, caption: Amended Objection to Oral Argument for Summary Judgement (*sic*): if Summary Judgement (*sic*) Not granted Motion for Jury Trial hereon Demand.
6. April 12, 2022, Plaintiff's motion, caption: Motion for Summary Judgement (*sic*) (Reconsideration).
7. June 13, 2022, Plaintiff's motion, caption: Motion for Jury Trial Hereon Demand or Summary Judgment For City Discriminating. I was qualified for the job of Environmental Compliance Supervisor.
8. September 23, 2022, Plaintiff's motion, caption: Motion for Jury Trial Hereon Demand or Summary Judgment For City Discriminating. I was qualified for the job of Environmental Compliance Supervisor.
9. September 26, 2022, Plaintiff's motion, caption: Motion for Jury Trial Hereon Demand or Summary Judgment For City Discriminating. I was qualified for the job of Environmental Compliance Supervisor Amendment: Amended page 4.
10. October 3, 2022, Defendant's Motion for Summary Judgment.
11. October 17, 2022, Plaintiff's motion, caption: Objection for Summary Judgment, Objection to Oral Argument; Motion for Summary Judgment Jury Demand Hereon Endorsed if Summary Judgment is not granted Motion to Compel City to answer questions in the complaint under Rule 37.
12. November 9, 2022, Plaintiff's motion, caption: Motion for Jury Trial Hereon Demand or Summary Judgment (*sic*) For City Discriminating I was qualified for the job of Environmental Compliance Supervisor.

The Court has reviewed the motions, the memoranda in support and in opposition, all properly submitted evidence and the relevant Ohio law.

Plaintiff filed her first motion for summary judgment in this case on October 8, 2021. That motion for summary judgment was overruled for lack of demonstrable merit on December 21, 2021, as Plaintiff had failed to perfect service of process on any of the Defendants and the Court lacked personal jurisdiction to order judgment against the Defendants. It will not be reconsidered in this judgment entry.

RES JUDICATA

Plaintiff filed the complaint in this case on September 14, 2021. Plaintiff alleges the same causes of action against the same parties in this case as in Richland County Case No. 2017-CV-0426 R and Richland County Case No. 2018-CV-0642 N. This Court dismissed Case No. 2017-CV-0426 R on the merits and with prejudice on August 22, 2017.¹ On December 11, 2019, this Court dismissed Case No. 2018-CV-0642 N as barred by res judicata, claim and issue preclusion, and collateral estoppel by this Court's August 22, 2017 judgment entry, issued in case number 2017-CV-0426.

The Court reiterates and readopts the analysis and rationale of its December 11, 2019 Order on Pending Motions in 2018-CV-0642, as if fully re-written herein.

Plaintiff has not changed any of her claims or arguments, nor has any subsequent event occurred to change the Court's analysis with respect to Plaintiff's claims in this case, 2021 CV 0447 R, being barred by res judicata, claim and issue

¹ Objections were overruled on September 7, 2017. The Plaintiff appealed to the Fifth Appellate District in case number 2017-CA-0080, which was dismissed on January 5, 2018 and all objections, motions to reopen, and motions to reconsider were denied. The Ohio Supreme Court declined jurisdiction on June 8, 2018.

preclusion, and collateral estoppel by this Court's August 22, 2017 judgment entry issued in case number 2017-CV-0426, and again, by this Court's December 11, 2019 Order on Pending Motions in case number 2018-CV-0642.

SUMMARY JUDGMENT STANDARD

A summary judgment shall not be rendered unless it appears from the evidence or stipulations, and only from the evidence or stipulations, 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, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.²

A court may grant summary judgment only where 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 material fact, and that the moving party is entitled to judgment as a matter of law.³

The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims.⁴ The moving party may not fulfill its initial burden simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case.⁵ Rather, the moving party must support its motion by pointing to some evidence of the type set forth in Civ.R. 56(C), which affirmatively demonstrates that the nonmoving

² Ohio Civ. R. 56

³ See Ohio R. Civ. P. 56 (C).

⁴ *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996 Ohio 107, 662 N.E.2d 264.

⁵ *Id.*

party has no evidence to support the nonmoving party's claims.⁶ If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.⁷

However, once the moving party satisfies its initial burden, the nonmoving party bears the burden of offering specific facts showing that there is a genuine issue for trial.⁸ The nonmoving party may not rest upon the mere allegations and denials in the pleadings, but instead, must point to or submit some evidentiary material that demonstrates a genuine dispute over a material fact.⁹ The nonmoving party has the reciprocal burden of specificity and cannot rest on the allegations or denials in the pleadings, but must set forth "specific facts" by the means listed in Civ.R. 56(C) showing that a "triable issue of fact" exists.¹⁰ A summary judgment motion forces the non-moving party to come forward with evidence on all issues for which that party bears the burden of production at trial.¹¹

PLAINTIFF CARLINE CURRY'S MOTIONS FOR SUMMARY JUDGMENT

None of Plaintiff's eleven (11) filings filed in this case captioned "Motion for Summary Judgment" is a motion for summary judgment in reality. They are disorganized screeds, mostly made up of a series of long block quotes copied and

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Dean v. Adm'r, Bureau of Workers' Comp.*, 5th Dist. Muskingum No. CT2010-0003, 2010-Ohio-2545 P17, citing Civ. R. 56(E); *Henkle v. Henkle*, 75 Ohio App.3d 732, 600 N.E.2d 791 (12th Dist.1991).

¹⁰ *Westbrook v. Swiatek*, , 5th Dist. Delaware No. 09CAE09-0083, 2011-Ohio-781, P45, citing *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798, 801 (1988).

¹¹ *Colby v. Terminix Internatl. Co., L.P.*, 5th Dist. Stark No. 96-CA-0241, 1997 Ohio App. LEXIS 1043, at *11-12 (Feb. 10, 1997), citing *Wing v. Anchor Media Ltd. of Texas*, 59 Ohio St. 3d 108, 570 N.E.2d 1095, (1991) the Supreme Court, citing *Celotex v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

pasted from various federal laws and regulations, and some Ohio laws, without any textual narrative, analysis, or application of the law to the facts. A smaller fraction of the motions consist of scattered allegations, accusations, and questions, to or about the Defendants, none of which are organized into any coherent textual narrative, and none of which are supported by affidavits or other properly authenticated evidence.

In deciding a motion for summary judgment, Civ.R. 56(C) only allows the trial court to consider "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact."¹²

Generally, the failure to authenticate a document submitted on summary judgment renders the document void of evidentiary value.¹³ Upon summary judgment consideration, the proper procedure for introducing evidentiary material not specifically authorized by the rule is to incorporate such material by reference in a properly framed affidavit.¹⁴ Civ.R. 56(E) mandates that sworn or certified copies of all papers filed in support of or in opposition to a motion for summary judgment must be accompanied by an affidavit swearing that the matters contained within the document were made on the affiant's personal knowledge.¹⁵ The affidavit shall also set forth facts that would be admissible into evidence, and shall affirmatively show that the affiant is competent to

¹² *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24, citing Ohio R. Civ. P. 56(C).

¹³ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24 citing *Citizens Ins. Co. v. Burkes* (1978), 56 Ohio App.2d 88, 381 N.E.2d 963.

¹⁴ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24, citing See *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 515 N.E.2d 632.

¹⁵ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24, citing *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 515 N.E.2d 632.

testify to those matters.¹⁶ Thus, the proper procedure for introducing an evidentiary matter not specifically authorized by Civ.R. 56(E) is to incorporate it by reference into a properly framed affidavit.¹⁷ Documents submitted in support of, or in opposition to a motion for summary judgment that are neither sworn, certified, nor authenticated by affidavit have no evidentiary value.¹⁸

In this case, none of the documents submitted by Plaintiff in support of her motions for summary judgment are sworn, certified, nor authenticated by affidavit; consequently none of the documents have any evidentiary value.

Defendants' April 1, 2022 response in opposition to Plaintiff's motion for summary judgment accurately details all of the ways that Plaintiff's motions for summary judgment fail on the merits. The Court finds the Defendants' analysis to be correct and finds that Plaintiff has failed to plead or prove a *prima facie* case under: 1) Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e *et seq*; 2) 42 U.S.C. § 1981; 3) Ohio Revised Code Chapter 4112; or, 4) retaliation.

The Court finds that Plaintiff has failed to meet her initial burden of proof under the *Dresher v. Burt* standard with regard to all purported claims. Plaintiff has failed to support her motions for summary judgment by pointing to any evidence of the type contemplated by Civ.R. 56(C). Consequently, none of the Plaintiff's motions for summary judgment are well-taken and all must be denied.

¹⁶ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24.

¹⁷ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24, citing *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 515 N.E.2d 632, citing *State ex rel. Corrigan v. Seminatore* (1981), 66 Ohio St.2d 459, 467, 423 N.E.2d 105.

¹⁸ *Worldwide Asset Purchasing, L.L.C. v. Sandoval*, 5th Dist. Stark No. 2007-CA-00159, 2008-Ohio-6343, ¶¶ 22-24, citing *Green v. B.F. Goodrich Co.* (1993), 85 Ohio App.3d 223, 228, 619 N.E.2d 497, 500-501.

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants pleaded a counterclaim seeking to have Plaintiff Carline Curry declared a vexatious litigator, pursuant to R.C. 2323.52. Plaintiff failed to plead and file a reply to Defendants' counterclaim. Defendants have now filed a motion for summary judgment on their counterclaim. Plaintiff has filed no memorandum in opposition to Defendants' motion for summary judgment.

R.C. 2323.52 provides in relevant part:

(A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(2) "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.

(3) "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. * * *

(D)

(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court

of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the 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.¹⁹

Defendants' motion for summary judgment on their vexatious litigator counterclaim is supported by the affidavit of Christopher Brown, an assistant law director for the Defendant City of Mansfield. Christopher Brown attests that he is competent to testify and authenticates copies of the civil case dockets for 40 cases and/or appeals filed by Plaintiff Carline Curry in the last twenty-six (26) years.

Ohio law provides that cases filed in the federal court system, cannot be used in determining whether Plaintiff is a vexatious litigant.²⁰ "[T]he vexatious litigation to which the statute has reference is aimed at proceedings 'in the court of claims, or in a court of common pleas, municipal court or county court' and does not apply to *federal cases*,

¹⁹ R.C. 2323.52

²⁰ *Caghan v. Caghan*, 5th Dist. Stark No. 2014 CA 00094, 2015-Ohio-1787, ¶ 86.

cases between other parties or legislative and administrative proceedings."²¹ [Emphasis added].

Consequently, the Court disregards twenty-one (21) cases and/or appeals cited in Defendants' affidavit and which Plaintiff has filed in the federal court system since 1996.

The Ohio Court of Appeals, Fifth Appellate District has stated: "Given the purpose and design of the vexatious-litigator statute, it makes sense that "the consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute vexatious litigation."²²

Plaintiff's remaining nineteen (19) Ohio court cases and/or appeals provide an ample preponderance of the evidence to support a finding that Plaintiff Carline Curry is a vexatious litigator based on her consistent repetition of arguments and legal theories that have been rejected by this Court and other Ohio courts. Each of her previous filings have raised the same claims and been equally incomprehensible as her claims in this case. This Court dismissed her claims on the merits and with prejudice in Richland County Case No. 2017 CV 426. In Richland County Case No. 2018 CV 642 the claims were dismissed with prejudice as barred by res judicata, claim and issue preclusion, and collateral estoppel. That should have been the end of the line for Plaintiff's claims in

²¹ *Caghan v. Caghan*, 5th Dist. Stark No. 2014 CA 00094, 2015-Ohio-1787, ¶ 86, quoting *Carr v. Riddle* (2000), 136 Ohio App.3d 700, 704, 737 N.E.2d 976, citing *Cent. Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41, 724 N.E.2d 458 (federal cases cannot be used as evidence to support a finding that a person is a vexatious litigator).

²² *Caghan v. Caghan*, 5th Dist. Stark No. 2014 CA 00094, 2015-Ohio-1787, ¶ 83, citing *Farley v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, ¶ 46.

this Court. However, Plaintiff Carline Curry apparently does not know how to take “no” for an answer.

Plaintiff’s consistent repetition of arguments is easily demonstrated by the eleven (11) documents filed in this case with “Summary Judgment” in the caption. Many of them are merely the same copied and pasted block quotes of statutes seen in the motion before and in the motion after.

Defendants have met their initial burden of proof under the *Dresher v. Burt* standard. Plaintiff has made no argument in opposition to Defendants motion for summary judgment on their vexatious litigator counterclaim; therefore, she has failed to meet her reciprocal burden of presenting evidence to raise a genuine issue of material fact for trial.

Construing the evidence submitted most strongly in favor of the non-movant, Plaintiff Carline Curry, the Court finds that reasonable minds can come to only one conclusion and that conclusion is adverse to Plaintiff Carline Curry, that there is no genuine issue as to any material fact, and that the Defendants are entitled to judgment as a matter of law.²³

This judgment entry resolves all claims as to all parties. It is a final, appealable order.

JUDGMENT ENTRY

IT IS THEREFORE ORDERED:

1. That Plaintiff Carline Curry’s claims are all dismissed with prejudice as barred by res judicata, claim and issue preclusion, and collateral estoppel.

²³ See Ohio R. Civ. P. 56 (C).

2. The Plaintiff's February 18, 2022, March 28, 2022, April 1, 2022, April 12, 2022, June 13, 2022, September 23, 2022, September 26, 2022, October 17, 2022, and November 9, 2022 motions for summary judgment are not well-taken and are all overruled in their entirety.
3. The Defendant's October 3, 2022 motion for summary judgment is hereby sustained and granted.
4. Plaintiff Carline Curry is hereby declared a vexatious litigator pursuant to Ohio Revised Code R.C. 2323.52.
5. As a vexatious litigator, Plaintiff Carline Curry is hereby prohibited from doing any of the following without first obtaining the leave of the Richland County Court of Common Pleas, General Division 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 she has instituted in any of the courts specified in R.C. § 2323.52 (D)(1)(a) prior to the entry of this 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 Plaintiff Carline Curry or another person in any of the courts specified in division (D)(1)(a) of this section.
6. Plaintiff Carline Curry is hereby ordered to act within thirty (30) days from the date of this judgment entry to:
 - a. Identify any legal proceedings that she has currently pending in the Ohio court of claims or in an Ohio court of common pleas, municipal court, or county court; and either,

- b. make an application to the Richland County Court of Common Pleas, General Division for leave to proceed, pursuant to Ohio Revised Code R.C. 2323.52 (F)(1) in each case so identified; or,
 - c. voluntarily dismiss each case so identified.
- 7. This entry constitutes a final appealable order.
 - 8. There is no just cause for delay.
 - 9. Costs are taxed to Plaintiff Carline Curry



Judge Brent N. Robinson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment Entry was served according to local rules and sent by regular U.S. Mail this 1st day of

~~November~~, 2022 to the following:

December

Carline Curry

Attorney Andrea Ziarko _____



Clerk of Courts