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SUMMIT COUNTY
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IN THE COURT OF COMMON PLEAS

COUNTY OF SUMMIT

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Melvin Cook,	)	
	)	**CASE NO. CV 2009-01-0694**
Plaintiff	)	
	)	**Judge Hunter**
	)	
vs	)	
	)	
Charles Minson, et al.	)	**ORDER**
	)	
Defendant	)	

This matter comes before the Court upon the Motion for Summary Judgment filed by Defendant-Intervening Counterclaimant, City of Akron Director of Law (the City) in regard to its vexatious litigator claim against Plaintiff Melvin Cook filed on May 28, 2010. Plaintiff Melvin Cook (Cook) filed a Brief in Opposition on June 9, 2010.

Initially, the Court notes that the City filed a Motion for The Court to Take Judicial Notice of the facts contained in the Summit County Court of Common Pleas' docket regarding the thirty-four cases where Melvin Cook is the Plaintiff from 1989 to 2011. The Motion was filed on May 28, 2010 and was unopposed. A court may take judicial notice of its own docket and cases filed within its same division. The Motion to Take Judicial Notice is hereby GRANTED.

As always, this Court acknowledges that pro se litigants are to be granted reasonable leeway such that their motions and pleadings should be liberally construed, while at the same time they are to remain subject to the same rules and procedures as a represented litigant. *Sherlock v Meyers*, 9th Dist. No. 04CV336, 2004-Ohio-5178 citing, *Martin v Wayne Cty. Natl. Bank*, 9th Dist. No. 03CA0079, 2004-Ohio-4194; *Kilroy v B.H. Lakeshore Co.* (1996), 111 Ohio App. 3d 357, 363. The evidence presented establishes that Plaintiff Cook has proceeded pro se at the municipal, common pleas and appellate levels numerous times and is thus fully acquainted with the rules and procedures of this court.

Summary Judgment, *Civ. R. 56*, is a procedural device designed to terminate litigation and to avoid a formal trial where there are no genuine issues of material fact to be tried and the moving party is entitled to judgment as a matter of law. Ohio law is well settled as to the standard courts must use in evaluating motions for summary judgment. This Court has used the well settled law in its evaluation of this matter. *Ohio Civil Rule 56* specifically provides that before Summary Judgment may be granted, "it must be determined that: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for Summary Judgment is made, that conclusion is adverse to that party." *Temple v Wean United, Inc.* (1977), 50 Ohio St. 2d 317, 327, 4 O.O.3d 466, 472, 364 N.E. 2d 267, 273. *See also, Norris v Ohio Std. Oil Co.*, (1982), 70 Ohio St. 2d 1, 24 O.O. 3d 1, 433 N.E. 2d 615. The moving party has the burden of showing that there is no genuine issue of material fact as to the critical issue. The opposing party has a duty to submit affidavits or other materials permitted

by *Civil Rule 56* to show that a genuine issue for trial exists. *See Harless v Willis Day Warehousing Co.* (1978), 54 Ohio St. 2d 64, 8 O.O.3d 73, 375 N.E. 2d 46.

The undisputed facts of this case are as follows. Plaintiff Cook filed the underlying case against a number of Defendants. This Court granted Summary Judgment in favor of the Defendants on January 11, 2010. On February 25, 2010, this Court granted the City's Motion to intervene and file a Counterclaim and the City filed its counterclaim asking that Melvin Cook be found a vexatious litigator. The City is a proper party pursuant to Ohio Revised Code §2323.52(B) and this matter is properly before this Court. *Castrataro v Urban* (2003), 155 Ohio App. 3d 597. The Court, on March 11, 2010, as a result of his actions in the current case, found that Plaintiff Cook had acted frivolously pursuant to Ohio Revised Code §2323.51 and awarded attorney fees to Defendants. The Court hereby reiterates its findings and orders in this case filed on January 11, 2010 and March 11, 2010 as if completely rewritten within.

As stated above, Plaintiff Cook filed his Brief in Opposition to Summary Judgment on June 9, 2010. Cook's opposition consists, in large part, of attempted explanations for each individual case he has filed in Summit County since 1989. The thirty-four explanations are brief and self-serving. The Court notes that this list is not exhaustive of all cases filed by Plaintiff Cook as a brief review of the Court's docket reveals that he has filed at least one new case, CV 2010-04-2654, while this matter has been pending.

Examples of Plaintiff Cook's self-serving statements are as follows. Plaintiff Cook claims he dismissed CV 2009-06-4593, "When the Courts agreed to have Magistrate Shoemaker recused from any future cases with the plaintiff." This is a false statement. A review of the docket reveals absolutely no evidence of this statement. The word recuse does not appear in any of the pleadings filed by either side, nor was any agreement reached between the parties. The

docket revealed that Plaintiff sued Magistrate Shoemaker and a member of his staff for $15,000 each following a decision he did not agree with and then filed a voluntary dismissal rather than file a response to Defendants' Motion to dismiss based on immunity. Plaintiff Cook claims that he filed Case CV 2003-06-3854 involving his son's baseball team, "because you cannot get a T.R.O. without there being first a case on file. Once the season ended there was no need of a T.R.O. and Plaintiff dismissed his case." This explanation alone is an example of wrongful and illegal use of the judicial system. A review of the docket in this matter reveals that Mr. Cook fails to mention that he also sued a seventeen year old little league referee for ejecting Plaintiff Cook from a game in this case. Plaintiff Cook also sued the referee's father and "unknown mother" because his, "actions were a direct and proximate result of his upbringing." Again, such actions portray a knowing and capricious misuse of the legal system. The request for a temporary restraining order was denied in July of 2003, but Plaintiff Cook did not file a dismissal until September of 2003, when he would have been required to file a response to Defendants' Motion to Dismiss. Plaintiff Cook describes the disposition of Case CV 2009-01-0696 as, "since defendant hadn't made any new threats, I had nothing to fear, and since I didn't seek psychological treatment, there was no documentation of distress." What the Court actually said in its Final Appealable Order on August 18, 2009 was, "He (Cook) has provided no proof of his claim that he suffered damages because of Mr. Shoaf's behavior. Interesting to this court is that the dispute began more than a year before Mr. Cook filed his lawsuit... " The Court goes on to say that Plaintiff Cook made no attempt to establish a question of fact in the time that was provided to him.

Although pro se litigants are granted leeway, Plaintiff Cook's brief contains no evidence as described in Ohio Civil Rule 56. Even had Plaintiff Cook given his arguments in affidavit

form, it is well established in Ohio law that "a party's unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civil Rule 56, will not be sufficient to demonstrate material issues of fact." See *Hillstreet Fund III, L.P. v Bloom*, 2010 Ohio 2961.

The question before the Court is whether or not the evidence currently before the Court reveals Cook as a vexatious litigator. Ohio Revised Code §2323.52 (A)(3) says,

> '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. 'Vexatious litigator' does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented himself pro se in the civil action or actions.

Ohio Revised Code §2323.52(A)(2) defines vexatious conduct as

> conduct of a party in a civil action that satisfies any of the following: (a) The conduct 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.

Ohio Revised Code 2323.51(A)(1)(a), in relevant part, defines conduct as,

> The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action.

There is no question that Plaintiff Cook is not registered to practice law in the courts of this state. There is also no question that he has taken part in "conduct" as defined above on a number of occasions against different parties in the Summit County Court of Common Pleas.

The question now before the Court is whether Plaintiff Cook's conduct has been vexatious as defined above. Due to the sheer number of cases and motions filed by Plaintiff Cook over the years, the Court will not address every filing. It is specifically found by clear and convincing evidence that the current case, where Plaintiff was sanctioned for frivolous conduct, and the three examples listed above can be considered as serving merely to harass or maliciously injure the opposing party. It is further found by the same standard of evidence that none of these cases were justified under current law or a good faith argument for a modification of the law.

In fact the above listed cases present a pattern, again found by clear and convincing evidence, which continues throughout many of Plaintiff Cook's filings. Plaintiff Cook has filed the following cases since 2008. In CV 2009-06-4256, Plaintiff Cook dismissed the matter after an answer was filed. In CV 2009-01-0827, the Court found Plaintiff Cook to have acted frivolously and awarded attorney fees to Defendant. In CV 2008-09-6151, Plaintiff Cook filed motions against the Defendants after the matter was dismissed. After the Court dismissed the unwarranted new filings, Plaintiff Cook filed a Motion to Reconsider. In CV 2008-08-5824 and CV 2008-08-5823, the matters were remanded to Akron Municipal Court because they did not meet the statutory requirements to be in Common Pleas Court. In CV 2008-08-5728, Plaintiff Cook dismissed the case approximately two weeks before he would have had to be deposed in the matter. In case CV 2008-08-5728, Plaintiff Cook won a default judgment against a defendant in prison and the rest of the case settled in mediation. It was also found that Plaintiff Cook was not entitled to damages for many of the claims he alleged in the matter. According to

the final disposition in CV 2008-04-3292, Plaintiff Cook sued a woman for liability in an auto accident when he admittedly was unsure she was even involved. The Court found that she was likely not involved. Plaintiff Cook has appealed this case to the Ninth District Court of Appeals where it remains pending at the time of this Order. A review of the above cases reveals numerous examples of filings that were not justified under the current law or a good faith argument for a change in the law. It is concluded that the Summit County Court of Common Pleas Docket provides a multitude of positive and clear indications that many of the filings in the above cases were filed in a knowing manner for the specific purpose of harassing or maliciously injuring another party or for purposes of delay.

It is also found that the filings in Plaintiff Cook's cases show patterns of missing pretrials and hearings. See CV 2008-09-6151, Plaintiff missed the hearing on his own motion to reinstate the case after voluntarily dismissing it. Also, Plaintiff Cook regularly fails to pay court costs, even when they are specifically assigned to him by court order. CV 2008-08-5824, CV2004-02-1037 and CV 2008-08-5729, are specific examples of this behavior, though the vast majority of Plaintiff's cases show that he has not paid court costs though often ordered to do so. Plaintiff Cook also regularly files questionable poverty affidavits and makes contradictory statements therein as well as in other matters. See CV 2008-04-3292 where the transcript of a hearing held on October 14, 2009 shows Plaintiff Cook testifying under oath that he is able to make $2,000 a day in order to establish lost wages in a case where he had filed a poverty affidavit. The Defendant therein then offers into evidence 59 poverty affidavits filed by Cook. The above citations are not exhaustive, but serve as examples of Plaintiff Cook's repeated contumacious conduct.

It is further found that Plaintiff Cook routinely dismisses cases when he would be required to file evidence beyond an inflammatory Complaint. Examples of this pattern, although again, it is not an exhaustive list may be seen in: CV 2003-06-3854, CV 2009-06-4256, CV 2009-06-4593, CV 2009-06-4256, CV 2008-08-5728. This repeated activity is concluded to be for the knowing and intentional purpose of harassing or maliciously injuring the party Plaintiff Cook has brought suit against. Plaintiff Cook, who usually proceeds in forma pauperis, files a Complaint, often handwritten, making allegations against Defendant. The Defendant is then compelled to go through the process of hiring an attorney and paying said attorney to file an Answer or some sort of dispositive motion in order to avoid a default judgment. At this point, when he is called upon to prove his statements, Plaintiff Cook files a dismissal. Although many of Plaintiff Cook's cases follow this general pattern, it can be seen most clearly in CV 2008-08-5728 and CV 2009-06-4593.

A review of the underlying case in this matter alone reveals an example of Plaintiff Cook filing a cause of action barred by res judicata and attempting to impose civil sanctions for criminal accusations. Such conduct is not supported by current law. Plaintiff's extreme familiarity with the legal system compels the conclusion that he has intentionally and knowingly filed this cause of action only to harass and inconvenience the Defendants. These actions severely undermine the concept of judicial efficiency and are the very antithesis of the fair and impartial administration of justice. Such conduct cannot be tolerated by Ohio Courts as the filing of such cases demonstrates a manifest injustice to the parties sued in these matters.

Finally the Court notes, once again, the deposition taken into evidence from the City of Akron in this underlying case, where Plaintiff admits that he files cases without necessarily researching the legal concepts involved. Deposition filed on September 4, 2009 pages 23-25.

The Court finds that Plaintiff Cook's conduct falls squarely within the requirements of Ohio Revised Code §2323.52(A)(2) as cited above.

Finally, the Court must determine if Plaintiff Cook's conduct is habitual and persistent. Plaintiff Cook's brief says, "Habitual and persistant (sic) is a pattern of doing some thing (sic) over and over." The filing of thirty-five cases since 1989 certainly establishes that Plaintiff Cook's conduct is habitual and persistent by his own definition. As noted in this Court's Order Granting Summary Judgment filed on January 11, 2010, Plaintiff Cook has also filed twenty-four or more cases in Akron Municipal Court since 1988. The Court concludes that Plaintiff Cook's conduct is habitual and persistent. This conduct was knowingly and intentionally undertaken by Plaintiff Cook. Also as seen above, Plaintiff Cook's actions have been without reasonable grounds and totally irreconcilable with well established Ohio law.

In conclusion, this Court concludes that Plaintiff Melvin Cook has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in actions, in the Summit County Court of Common Pleas and is found to be a vexatious litigator as defined in Ohio Revised Code §2323.52 (A)(3). Pursuant to Ohio Revised Code §2323.52, he may do none of the following without first obtaining leave of court:

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

b) Continue any legal proceedings that he has instituted in the Summit County Court of Common Pleas.

c) Make any application, other than an application for leave to proceed.

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Defendant's Motion for Summary Judgment is hereby GRANTED. Pursuant to Ohio Civil Rule 58(B) The Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and this date of entry upon the journal.

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

IT IS SO ORDERED.

Judge Judy Hunter

cc:

Melvin Cook
Attorney James Gutbroad
Attorney Christopher Reece

I certify this to be a true copy of the original
Daniel M. Horrigan, Clerk of Courts.
Deputy