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IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

CATHERINE M STARK ET AL
Plaintiff

Case No: CV-22-969917

Judge: BRENDAN J SHEEHAN

WILLIAM EASTON HORNER ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - PARTIAL

OPINION AND JUDGMENT ENTRY AND DECLARATION OF VEXATIOUS LITIGATOR. O.S.J.

THE CLERK OF COURTS, CUYAHOGA COUNTY, OHIO, SHALL SEND A CERTIFIED COPY OF THIS JOURNAL ENTRY TO THE OHIO SUPREME COURT FOR PUBLICATION PURSUANT TO OHIO REV. CODE § 2323.52(H).

PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

Judge Signature

Date



The State of Ohio } I, The Clerk of the Court
Cuyahoga County } ss. Of Common Pleas within
And for said County

Hereby certify that the above and foregoing is truly
Taken and copied from the original Journal Entry

Now on file in my office
Witness my hand and seal of said Court this 3rd
Day of August A.D. 20 23

CUYAHOGA COUNTY CLERK OF COURTS
By [Signature] Deputy

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CLERK OF COURTS
CUYAHOGA COUNTY

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

CATHERINE M. STARK, <i>et al.</i> ,	)	CASE NO. CV 22 969917
	)	
Plaintiffs,	)	JUDGE BRENDAN J. SHEEHAN
	)	
v.	)	
	)	
WILLIAM EASTON HORNER, <i>et al.</i> ,	)	OPINION AND JUDGMENT
	)	ENTRY AND
	)	DECLARATION OF
Defendants.	)	VEXATIOUS LITIGATOR
	)	

I. ISSUES PRESENTED.

On October 12, 2022, Plaintiffs Catherine M. Stark and Allison M. Stark filed their action against Defendant William Easton Horner and various internet sites and services alleging that Defendant has engaged in vexatious litigation, defamed Plaintiffs, invaded their privacy, presented Plaintiffs in a false light and intentionally inflicted emotional distress upon them. Plaintiffs seek summary judgment as to Counts I and II.

Plaintiffs maintain that Defendant is a vexatious litigator and that he has defamed them by posting statements that Plaintiffs: “kidnapped” his children, have “been working with corrupted government agents ...to fabricate/obfuscate evidence to deny me access to my children in the Courts,” and engaged in cell phone hacking and other forms of cyberterrorism.

Plaintiffs filed their Motion for Summary Judgment on May 19, 2023. Defendant filed his Objection to Summary Judgment on May 30, 2023. Defendant failed to oppose Plaintiffs’ motion with admissible evidence or applicable law.

II. LAW AND ANALYSIS.

A. Standard of Review.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc.*, 8th Dist. No. 70175, 1997 WL 578940, 2 (1997), citing *Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

When ruling upon a motion for summary judgment, a court may not consider the weight of the evidence or the credibility of the witnesses. Those issues must be resolved at trial. *TCC Mgmt. v. Ruffo*, 8th Dist. Cuyahoga No. 89661, 2007-Ohio-6652, ¶ 9. As the Ohio Supreme Court has stated: “Credibility issues typically arise in summary judgment proceedings when one litigant's statement conflicts with another litigant's statement over a fact to be proved. Since resolution of the factual dispute will depend, at least in part, upon the credibility of the parties or their witnesses, summary judgment in such a case is inappropriate.” *Turner v. Turner*, 67 Ohio

St.3d 337, 341, 1993- Ohio 176, 617 N.E.2d 1123 (1993). See also, *Widok v. Estate of Wolf*, 8th Dist. No. 108717, 2020-Ohio-5178, ¶ 60.

B. Plaintiffs' Request to Designate Defendant as a Vexatious Litigator.

Count I of Plaintiffs' Complaint seeks to have Defendant declared a vexatious litigator. To declare a person a "vexatious litigator," the plaintiff must demonstrate that the person:

has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. * * *

R.C. 2323.52(A)(3).

"Vexatious conduct" is conduct in a civil action that (1) obviously serves merely to harass or maliciously injure another party to the civil action, (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law or (3) is imposed solely for delay. R.C. 2323.52(A)(2)(a)-(c). "Conduct" includes "[t]he 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." R.C. 2323.52(A)(1); 2323.51(A)(1)(a).

"The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources — resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation." *Mayer*

v. Bristow, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000), quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998).

"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.'" *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. No. 105261, 2017-Ohio-7721, ¶ 44, citing *Mansour v. Croushore*, 12th Dist. Butler Nos. CA2008-07-161 and CA2008-07-170, 2009-Ohio-2627.

While the divorce proceedings involving the parties to this action involve extensive acrimonious pleadings, for purposes of Plaintiffs' current motion the Court will review actions in the General Division of the Cuyahoga County Court of Common Pleas only and focus on those in which Defendant initiated the complaint. Based on the four lawsuits brought by Defendant Horner, the Court finds that Defendant's pleadings and motions have been vexatious because they have been duplicative, frivolous, abusive, and lacking legal grounds. Defendant repeatedly asserts the same narratives across cases, fails to conform to court rules, fails to support his claims with competent evidence or argument, and resorts to threats and harassment of the litigants and courts.

In *Horner v. Stark*, Case CV 22 962585, filed April 27, 2022 and assigned to Judge Steven E. Gall (hereinafter Case I), Defendant attempted to assert a claim of fraud against his ex-mother-in-law, Plaintiff Catherine M. Stark. This claim was dismissed without prejudice by the Court for failure to appear at a case management conference despite prior notice. Defendant appealed the dismissal and, despite the 8th District Court of Appeals providing a list of available resources for *pro se* litigants, his appeal was dismissed and no further appropriate legal measures were taken. Instead, Defendant assumed that the dismissal was part of a conspiracy against him including a variety of state and federal entities.

In *Horner v. Stark, et al.*, Cuyahoga County Court of Common Pleas Case No. CV 22 963377, filed May 12, 2022 and assigned to Judge Brian J. Corrigan (hereinafter Case II), Defendant attempted to assert claims of fraud, theft, and harassment against his ex-wife and the attorney who represented her in their divorce proceedings. Defendant's support for summary judgment lacked any legal argument or admissible evidence supporting his claims:

Defendant's [sic] have conspired with no less than two corrupted high ranking Federal Bureau of Investigation Agents to wage a more than two-year cyberterrorism campaign against Plaintiff which started with the very frauds outline in Plaintiffs [sic] initial suit.

Further, Plaintiff has documented evidence of no less than two instances where the Cuyahoga County Courts of Common Plea [sic] have doctored evidence, documents, and transcripts to inappropriately interfere in the due process of law to the direct detriment of my cases. Plaintiff at current has no reason to believe Your Honor has been corrupted by these forces, however any attempt by this Court to prevent Plaintiff from [sic] bringing the facts, case, and evidence before a jury of his peers in keeping with the highest forms of juris prudence [sic] will be seen as simply more of the same Cuyahoga County Courts cover-up. Summary judgement will be immediately appealed in the 8th District, and immediate Affidavit of Disqualification sought with Chief Justice O'Connor for transfer out of a documented corrupted courthouse.

Id., Plaintiff's Brief in Opposition for Summary Judgement, filed August 26, 2022.

In *Horner v. Stark, et.al.*, Cuyahoga County Court of Common Pleas Case No. CV 22 965121, filed June 23, 2022 and assigned to Judge Ashley Kilbane (hereinafter Case III), Defendant attempted to assert a claim of improper access to medical records against Plaintiff Allison Marie Stark and the Cleveland Clinic Foundation although he designated it as a medical malpractice action. His pleadings in that case presented legally invalid and frivolous objections to proceedings and threats to parties including statements such as:

Defendant can either produce the requested records, or Plaintiff is going to use his MinuteMan cybersecurity clearances to extract them from their servers through the CONFIRMED zero-day cybersecurity weaknesses already found and present in their

systems. But one way or the other Your Honor, **the documents will see the light of day.**

Id., Plaintiff Countermotion for Subpoena Not to Be Quashed but Instead Enforced to Avoid Publication of Defendant's Zero-Day Cybersecurity Vulnerability, filed October 20, 2022 (emphasis in original).

Plaintiff is an openly declared Minute Man intelligence asset duly activated directly by Director of the FBI, Christopher Wray, to investigate corruption and cyberterrorism in the Cuyahoga County court system according to the procedures and practices of the US intelligence agencies.

Those same procedures and practices specifically prescribe email communications between the activated Minute Man and **any and all** associated individuals or groups so as to establish a clear and distinct timeline of communications and accurately establish who knew precisely what, precisely when through the email timestamps. These prescribed procedures are specifically designed to remove the ambiguity associated with delayed communications through snail mail. These practices are not open to change without ratified orders delivered through the appropriate chain of command **of which this Court is not a link in.**

Id., Plaintiff's Countermotion Regarding Prohibition of Email Communications, filed 11/01/22 (emphasis in original).

Once again, Defendant failed to present any relevant, admissible evidence in support of his claims and they were disposed of by summary judgment.

In *Horner v. Stark, et al.*, Cuyahoga County Court of Common Pleas Case No. CV 22 971495, filed November 17, 2022 and assigned to Judge David T. Matia (hereinafter Case IV), Defendant again filed an action for alleged HIPAA violations misdesignating it as a medical malpractice case as he did in Case III. Despite filing no praecipe for personal service, Defendant filed objections:

Now comes Plaintiff, William Horner by pro se representation and respectfully requests to know why the Cuyahoga County Court of

Common Pleas is not sending Cuyahoga County Sheriffs to serve Ms. Allison Stark copy of the civil lawsuit which she is clearly dodging with the same vigor it has sent Hamblen County Sheriffs to serve Plaintiff.

For more than two years, the Cuyahoga County Court of Common Pleas has had no trouble sending the Hamblen County Sheriffs to Plaintiff's home to harass him with frivolous lawsuits and he's not even dodging the paperwork. Why is the same level of service not being provided for Plaintiffs benefit by this courthouse? Why are the Sheriffs not being sent to Ms. Starks home to serve her paperwork she's intentionally avoiding? Why aren't mothers held to the same standard in this court?

Id., Plaintiff's Motion for Explanation Regarding Lack of Sheriff Service, filed February 7, 2023.

The Court also notes that, in addition to the threats detailed above, Defendant threatened to hack into the Cleveland Clinic's information systems to obtain discovery. The Cleveland Clinic was forced to obtain a civil stalking protection order against him. See *Cleveland Clinic v. Horner*, Cuyahoga County Court of Common Pleas Case No. CV 22 970761. Additionally, Defendant Horner barraged Plaintiff's counsel with spam emails in a deliberate attack on their firm's computer system, again necessitating a civil stalking protection order. See *Seeley Savidge Ebert & Gourash Co. LPA v. Horner*, Cuyahoga County Court of Common Pleas Case No. CV 23 974806

The court, pursuant to Ohio Rev. Code §2323.52, declares Defendant Horner a vexatious litigator. Consistent with that designation, Defendant Horner is indefinitely prohibited from doing any of the following without first obtaining 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 he has instituted in any Ohio trial court prior to the entry of this order;

(c) making any application, other than an application for leave to proceed under Ohio Rev. Code §2323.52(f)(1), in any legal proceedings instituted by him or another person in any of the Ohio trial courts listed above; or

(d) instituting or continuing any legal proceedings in the court of appeals without first obtaining leave from the court of appeals pursuant to Ohio Rev. Code §2323.52(f)(2), provided, however, that this court's journal entry and opinion does not affect Defendant's right to appeal his classification as a vexation litigator.

The Clerk of Courts, Cuyahoga County, Ohio, is hereby ordered to send a certified copy of this journal entry to the Ohio Supreme Court for publication pursuant to Ohio Rev. Code § 2323.52(h).

C. Plaintiffs' Defamation Claim.

Count II of Plaintiffs' Complaint alleges that Defendant has defamed them by publishing false statements of that they have engaged in criminal activity. To prevail on a defamation claim, a plaintiff must prove five elements:

- 1) a false statement;
- 2) about the plaintiff;
- 3) published to a third party;
- 4) with the required degree of fault by the defendant publisher; and
- 5) defamatory *per se* or defamatory *per quod*, causing special harm to the plaintiff."

Garofolo v. Fairview Park, 8th Dist. Cuyahoga Nos. 92283 and 93021, 2009-Ohio-6456, ¶ 17.

Defamation *per se* means that the defamation is accomplished by the very words spoken. It consists of words which "import an indictable criminal offense involving moral turpitude or infamous punishment, imputes some loathsome or contagious disease which excludes one from society or tends to injure one in his trade or occupation." *Kanjuka v. Metrohealth Med. Ctr.*, 2002-

Ohio-6803, ¶ 16, 151 Ohio App. 3d 183, 191-92, 783 N.E.2d 920, 927. Damages and actual malice are presumed with defamation *per se*. Defamation *per quod* is a statement with an apparently innocent meaning that becomes defamatory through interpretation or innuendo. The plaintiff must plead and prove special damages resulting from the defamatory statements with defamation *per quod*.

Defendant has made and continues to make statements that Plaintiffs have engaged in criminal activity including: kidnapping, collusion to fabricate or destroy evidence, and hacking cell phones or computers. Plaintiffs have never been charged or convicted of the crimes as stated by Defendant. Therefore, Defendants statements that Plaintiffs have engaged in specific criminal activity are verifiably false.

Defendant's false statements have been published on various sites on the Internet including YouTube, LinkedIn, and GoFundMe. This manner of publication constitutes publication to a third party as an element of Plaintiffs' defamation claim.

Plaintiffs are private individuals so the required degree of fault by Defendant is negligent publication. *Dale v. Ohio Civil Serv. Emps. Ass'n*, 57 Ohio St. 3d 112, 114, 567 N.E.2d 253, 255 (1991). Defendant purposely and intentionally posted the statements about Plaintiffs and resolutely refuses to remove or alter them despite a court order requiring him to do so.

Finally, because the statements at issue accuse Plaintiffs of engaging in various criminal activity, the statements constitute defamation *per se*. Accordingly, viewing the evidence most strongly in favor of the nonmoving party, the Court finds that there are no genuine issues of material fact and reasonable minds can only reach one conclusion which is that Plaintiffs Catherine M. Stark and Allison M. Stark are entitled to judgment as to liability only against Defendant William Easton Horner for defamation *per se*.

III. CONCLUSION.

For the foregoing reasons, judgment is granted in favor of Plaintiffs Catherine M. Stark and Allison M. Stark and against Defendant William Easton Horner on Count I of Plaintiffs' Complaint and, as to liability only, on Count II of Plaintiffs' Complaint. Trial by jury will proceed in accordance with Civ.R. 39(A) on October 11, 2023 at 8:30 A.M. All parties must appear in person. Civ.R.43(B) notices to be submitted no later than 30 days before trial. The Court's trial order with regard to other matters is available on the Court's website at:

<https://cp.cuyahogacounty.us/media/1160/20121012bjsheehantrialorder.pdf>

IT IS SO ORDERED.

Dated: 8/1/23


JUDGE BRENDAN J. SHEEHAN