

NO: 21-1069

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**In The  
Supreme Court of the United States**

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MERRILEE STEWART,  
PETITIONER

V.

RRL HOLDING COMPANY OF  
OHIO LLC, ET AL., RESPONDENTS

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On petition for Writ of Certiorari to the  
Supreme Court of Ohio

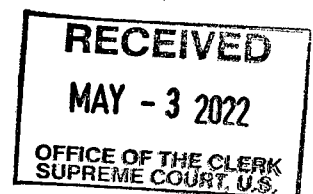
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**PETITION FOR REHEARING  
AND SUPPLEMENTAL APPENDIX**

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## **SUPPLEMENTAL LIST OF PROCEEDINGS**

- The Franklin County Ohio Common Pleas Court, 18CV7212, RRL Holding Company of OH LLC, et al v. Merrilee Stewart, Original Complaint, filed August 23, 2018, Judge Kim J. Brown.
- The Franklin County Ohio Common Pleas Court, 18CV7212, RRL Holding Company of OH LLC, et al v. Merrilee Stewart, Decision: Judgement entry granting Plaintiffs Motion for Summary Judgement rendered on December 20, 2019, Judge Kim J. Brown.

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**CERTIFICATE OF COUNSEL  
CERTIFICATE OF GOOD FAITH**

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully Submitted,

/s/ Merrilee Stewart

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## **PETITION FOR REHEARING**

Now comes Petitioner Merrilee Stewart, Pro Se on behalf of Merrilee Stewart ("Ms. Stewart") with this Petition for Rehearing Pursuant to Rule 44.

Petitioner Merrilee Stewart requests rehearing and reconsideration of the April 4, 2022 court order denying the Petition for a Writ of Certiorari, on the grounds of substantial intervening circumstances and substantial grounds not previously presented.

## **CONSTITUTIONAL QUESTION NOT PREVIOUSLY PRESENTED**

Petitioner Merrilee Stewart heretofore submits a constitutional question, not previously presented, which is an issue of great public interest as it relates to the Double Jeopardy Clause in the Fifth Amendment to the United States Constitution and the applicability to civil case punishments.

## **PRECURSORY DECLARATION**

Petitioner's fulfillment of her Duty to Report White-Collar Crimes (the "Crime Reports"), subjected her to prejudice, detriment, threat, discreditation, censorship and as in double jeopardy, she was endangered by the same Judge, drawn upon the same allegations, in two separate court cases, in violation of the Fifth Amendment to the Constitution of the United States of America, quoted in part "nor shall any person be subject for the same offense to be twice put in jeopardy".

## **BACKGROUND**

Ms. Stewart is a Federal Whistleblower who initially reported White-Collar Criminal Activity

("the Crime Reports") to local authorities in the State of Ohio.

The White-Collar Crimes include over 17 million dollars of tax evasion, tax fraud, embezzlement, discrimination and redlining with victims in multiple states at the hands of the perpetrators' business headquartered in Ohio. The White-Collar Criminal investigations are currently in the appropriate hands of the Federal Authorities. Violations of Federal Whistleblower laws are on-going and continuously inflicted upon this Petitioner by the Respondents, their legal counsel and the Franklin County Ohio Common Pleas Court Judge Kim J. Brown.

As a whistleblower, fulling her duty to report White Collar Crimes, Judge Kim J. Brown of Franklin County Ohio Common Pleas court subjected Petitioner to double jeopardy, for the same alleged offense of violation of the agreed order by holding herself out as representing Respondent IHT/RRL in the reporting of White-Collar Crimes to the proper authorities.

The Franklin County Ohio lower court Judge Kim J. Brown in case 15CV1842 levied sanctions and attorney fees by alleging Ms. Stewart violated the agreed entry when she reported criminal activity witnessed firsthand while serving as President of Respondent's company. The initial Crime Reports were made to Ohio Department of Insurance, Columbus Ohio Police, Ohio Civil Rights Commission and the insurance companies Hartford and Liberty Mutual.

While the sanctions and attorney fees judgement in 15CV1842 was under appeal, in the jurisdiction of the

Ohio Tenth District Court of Appeals (19AP202), this same Franklin County Ohio lower court Judge Kim J. Brown in case 18CV7212 inflicted a lifetime sentence with a Vexatious Litigator judgement (12/20/2019), against Ms. Stewart for the very same allegations of violation of the agreed entry when she fulfilled her duty to report these same Crime Reports to Ohio Department of Insurance, Columbus Ohio Police, Ohio Civil Rights Commission and the insurance companies Hartford and Liberty Mutual.

See Supplemental Appendix Q, Original Complaint filed August 23, 2018, Once again Alleging the very same Crime Reports violated the agreed entry and seeking additional punishment (emphasis) of a Vexatious litigator judgement, case 18CV7212, *Franklin County Ohio Common Pleas Court, RRL Holding Company of OH LLC, et al v. Merrilee Stewart*.

See Page 100a ¶11. “Stewart repeatedly violated the Agreed Order. First, in mid-2016, Defendant began filing claims with Firefly/IHT's insurers (including Hartford Financial and Liberty Mutual Insurance)...]”

¶12. “Second, on July 27, 2016, Stewart made a complaint to the Columbus Police Department, Case Report No. 163056538-000 ...]”

Page 101a ¶13. “These actions led Judge Kim Brown to find that Stewart had violated the Agreed Order. After a February 8, 2017 show cause hearing, Magistrate Timothy N. Harildstad found that Stewart was in contempt



of the Agreed Order and recommended sanctions.”

¶14. “As is her practice, on February 27, 2017, Stewart filed a motion objecting to the contempt finding and sanctions recommendation. Judge Brown denied Stewart's motion.”

¶15. “In the same order, Judge Brown also found that Stewart had committed perjury by lying under oath during the February 8, 2017 show cause hearing. She found Stewart to be in contempt and referred her for a second show cause hearing.”

Page 103a ¶25. “On June 10, 2015, Defendant filed an Ohio Civil Rights Commission complaint against Plaintiffs, File No. COL71(41835) 06102015...”]

Ultimately, the Tenth District Court of Appeals 19AP202 (CPC15CV1842) determined that Judge Kim J. Brown acted unreasonably, arbitrarily, or unconscionably and reversed, remanded and ordered a hearing on the Crime Reports. However, judge Kim J. Brown refuses the order of the higher court.

*See Appendix P*, of Ms. Stewarts' Writ No. 21-1069, the Tenth District Court of Appeals Decision of January 23, 2020, 19AP202, RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al., on appeal from Franklin County Ohio C.P.C. 15CV1842, Judge Kim J. Brown

¶10 Appellees claimed appellant violated the Agreed Entry by claiming to be an owner and authorized agent of IHT and RRL to: (1) the

Ohio Civil Rights Commission ("civil rights commission"); (2) the Columbus Police Department ("police"); (3) Hartford Insurance ("Hartford"); and (4) Liberty Mutual Insurance ("Liberty") (collectively "insurance companies").

¶71 Quoted, in Part: "On remand, the court shall hold a hearing" "On remand, the trial court shall vacate that finding and any award of sanctions or attorney fees pertaining thereto."

## ARGUMENT

### **The Double Jeopardy Clause of the 5th Amendment**

Petitioner was twice Punished for the same activity of fulfilling her duty to report White-Collar Crimes, by the same Judge presiding over two separate cases, inflicting multiple punishments in violation of the double jeopardy clause of the Fifth Amendment.

The Double Jeopardy Clause of the 5th Amendment guarantees that a person will not be tried twice for the same crime in the same jurisdiction. Double jeopardy is intended to protect against the abuse of multiple punishments for the same offense.

The Double Jeopardy Clause can apply to sanctions that are civil in form if they clearly are applied in a manner that constitutes punishment.

In *United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984), the Supreme Court held that the prohibition on double jeopardy extends to civil sanctions which are applied in a manner that is punitive in nature.

In *United States v. Halper*, 490 U.S. 435 (1989) (civil penalty under the False Claims Act constitutes punishment if it is overwhelmingly disproportionate to compensating the government for its loss, and if it can be explained only as serving retributive or deterrent purposes).

See also, to punish. A punishment imposed on parties who disobey laws or court orders. See e.g., *Chambers v. Nasco, Inc.* 501 U.S. 32 (1991).

The higher Appellate (appeal from 15CV1842) court did disagree with the lower Common Pleas Court judge, and stated Judge Kim J Brown abused her discretion, “acted unreasonably, arbitrarily, or unconscionably”, remanded for a hearing and vacated the finding and any award of sanctions and attorney fees associated with Petitioner and ordered a hearing on the Crime Reports. However, when the higher court reversed the attorney fees and sanctions, Judge Kim J. Brown refused to hold the ordered hearings.

See Appendix O, 70a, of Ms. Stewarts’ Writ No. 21-1069, Appeals Court quote:

*Id.* ¶37. “An abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Claims of error by the trial court must be based on the trial court's actions, rather than on the magistrate's findings. “Therefore, we may reverse the trial court's adoption of the magistrate's decision only if the trial court acted unreasonably, arbitrarily, or unconscionably.”

Judge Kim J. Brown used these same crime reports and the allegation that the reporting violated the agreed entry and in case 18CV7212 on December 20, 2019 declared Petitioners reporting was vexatious litigation and inflicted a life-time sentence upon Petitioner of Vexatious Litigator.

*See Supplemental Appendix R, Page 118A, File Date: December 20, 2019, Franklin County Ohio Common Pleas Court, 18CV7212 RRL Holding Company of OH LLC, et al v. Merrilee Stewart. Decision: Judgement entry granting Plaintiffs Motion for Summary Judgement.]*

*“This order will run indefinitely, pursuant to R.C. 2323.52(E); and The Clerk shall send a certified copy of this order to the Supreme Court of Ohio for publication in a manner the Supreme Court of Ohio deems appropriate under R.C. 2323.52(H).”*

Immediately following this lifetime sentence of Vexatious Litigator and before the Judgement had been received by Petitioner (postmarked December 24, 2019), the Ohio State Court, Tenth District Court of Appeals kicked off the docket a fully briefed appeal purporting failure to file the vexatious litigator required leave to proceed when on December 23, 2019 the Appellant/Petitioner filed her optional response to the Brief of Appellees.

*See Appendix M, page 39a, re: 20AP674, of Petition for Writ of Certiorari, Case No. 21-1069.*

*Also See page 10 of Petition for Writ of Certiorari, Case No. 21-1069 quoted in part: “In this specific final appealable issue, the State of*

Ohio Tenth District Court of appeals kicked off the docket a fully briefed appeal which only lacked an optional response to the Brief of Appellees (Respondents). When petitioner filed the optional response to the appellees brief on December 23, 2019 the entire fully briefed appeal was removed from the docket. This was done by purporting Petitioner failure to file the leave required by the Vexatious Litigator judgment that was postmarked on December 24, 2019 and mailed to Petitioner after the response to the brief was already filed.”

First, the reporting of White-Collar Crimes is not litigation and the judgment in 18CV7212 occurred without discovery via a Motion for Summary Judgment.

Second, Jurisdictional authority involving the Crime Reports and did the reporting violate the agreed entry was in the hands of the higher court in 19AP202 at the same time Judge Kim J. Brown inflicted her additional punishment upon Petitioner in case 18CV7212.

Third, If the basis for judgement in 15CV1842, violating the agreed entry by reporting, was overturned by the higher court in 19AP202, is that in itself justification to undo the punishment of this vexatious litigator life time sentence inflicted in 18CV7212. One might also expect res a judicata, preclusion or the rules against case splitting apply.

Fourth, the constitutional protection guaranteed to all people is that this sort of abuse shall not be allowed to stand.

Finally, to remove from the docket a fully briefed appeal 20AP674 for failure to comply with an order not yet known (emphasis) is a violation of Petitioners due process rights.

### CONCLUSION

As a citizen of these United States of America and a resident of the State of Ohio I pray this honorable court will consider the applicability of double jeopardy protection against the abuse of multiple punishments in the civil cases outlined in the proceeding paragraphs.

Petitioner Merrilee Stewart prays this Petition for Rehearing will be granted and the cases will be reversed and remanded with an order to abide by the higher courts' decision, hold the hearing on the crime reports and reverse and remand the Appeal 20AP674 which was unjustly removed from the docket with the premature and unjust application of the vexatious litigator judgement.

Respectfully Submitted,

/s/ Merrilee Stewart

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*Merrilee Stewart, Pro Se on behalf of  
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**CERTIFICATE OF COUNSEL  
CERTIFICATE OF GOOD FAITH**

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.

Respectfully Submitted,

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**APPENDIX Q**

**[File Date: August 23, 2018**

**Franklin County Ohio Common Pleas Court,  
18CV7212 *RRL Holding Company of OH LLC,*  
*et al v. Merrilee Stewart***

**Complaint]**

**IN THE COURT OF COMMON PLEAS,  
FRANKLIN COUNTY, OHIO CIVIL DIVISION**

RRL Holding Company  
of Ohio, LLC, et al.,  
Plaintiffs,

Case No.  
18-CV-7212

v  
Merrilee Stewart,  
Defendant.

JUDGE  
KIM J BROWN

**COMPLAINT**

For its Complaint against Defendant Merrilee Stewart, Plaintiffs RRL Holding Company of Ohio, LLC ("RRL") and Firefly Agency LLC (f/k/a IHT Insurance Agency Group, LLC) ("Firefly/IHT") (collectively "Plaintiffs") state as follows:

**NATURE OF THE CASE**

1. This is an action to declare Defendant Merrilee Stewart a vexatious litigator.
2. Firefly/IHT is a limited liability company organized under the laws of the state of Ohio. Firefly's primary business is the sale and service of insurance and insurance-related products to consumers and businesses through a network of independent producers.



3. Firefly/IHT is wholly owned by RRL Holding Company of Ohio, LLC ("RRL"). RRL Holding Company of Ohio, LLC is a limited liability company organized under the laws of the State of Ohio. The current members of Firefly/IHT are Bill Griffioen, Fritz Griffioen, and Rod Mayhill.
4. Stewart is an Ohio resident and currently resides in Franklin County. Stewart was formerly a member of RRL and officer of Firefly/IHT.
5. This Court has jurisdiction over this Complaint pursuant to R.C. § 2323.52. Venue is proper in Franklin County, as a significant portion of the conduct complained of has occurred in this county, and Stewart resides in this county.
6. Plaintiffs are persons with the authority to bring this action under R.C. § 2323.52(B), as they have defended against habitual and persistent vexatious litigation conduct by Stewart.

### **FACTUAL ALLEGATIONS**

#### **Overview**

7. In late 2014, Stewart was removed as President of Firefly/IHT and as a member of RRL after she made a series of misrepresentations to her partners. In October 2017, a three-member arbitration panel found Firefly/IHT and RRL's actions in removing Stewart to be lawful and consistent with the terms of the written agreements governing the parties' relationships.
8. Since her removal, Stewart has engaged in a bad-faith litigation vendetta, filing claims, complaints, and grievances against RRL/IHT with numerous courts, agencies, and tribunals, and spreading false accusations against RRL/IHT to the press and police. She has invented a massive embezzlement and fraud

scheme at Firefly/IHT, accusing its owners and employees of criminal activity. No court, agency, or tribunal has ever found any merit to her substantive claims. Moreover, she repeatedly flouts court rules and orders. She has been found to be in contempt of a court order that she agreed to, and she has been ordered to show cause as to why she should not be held in contempt for perjury. Her repeated vexatious conduct is detailed below.

**Vexatious Conduct in Franklin County**  
**Litigation and Arbitration**

9. On March 2, 2015, RRL and Firefly/IHT filed a Complaint against Stewart and a separate company owned by Stewart, because Stewart was illegally holding herself out as still affiliated with RRL and IHT (Franklin County Common Pleas Case No. 15-CV-001842).

10. After Firefly/IHT sought a preliminary injunction, the parties negotiated an Agreed Order which prohibited Stewart from holding herself out to any third parties as affiliated with Firefly/IHT or RRL.

11. Stewart repeatedly violated the Agreed Order. First, in mid-2016, Defendant began filing claims with Firefly/IHT's insurers (including Hartford Financial and Liberty Mutual Insurance) for recovery of funds lost to alleged embezzlement by an employee. The embezzlement claim was an utter fabrication. Moreover, Stewart filed these claims purportedly on behalf of Firefly/IHT, but without any actual authority to act on behalf of Firefly/IHT and in violation of the Agreed Order.

12. Second, on July 27, 2016, Stewart made a complaint to the Columbus Police Department, Case Report No. 163056538-000 - purportedly on behalf of

Firefly/IHT - against a Firefly/IHT employee for alleged embezzlement of 5-10 million dollars. She then contacted a reporter for the Columbus Dispatch in an attempt to have a story written concerning the "embezzlement scandal" at Firefly/IHT.

13. These actions led Judge Kim Brown to find that Stewart had violated the Agreed Order. After a February 8, 2017 show cause hearing, Magistrate Timothy N. Harildstad found that Stewart was in contempt of the Agreed Order and recommended sanctions.

14. As is her practice, on February 27, 2017, Stewart filed a motion objecting to the contempt finding and sanctions recommendation. Judge Brown denied Stewart's motion.

15. In the same order, Judge Brown also found that Stewart had committed perjury by lying under oath during the February 8, 2017 show cause hearing. She found Stewart to be in contempt and referred her for a second show cause hearing.

16. On June 6, 2017, Stewart filed a premature appeal of Judge Brown's ruling confirming the Magistrate's contempt decision. The Tenth District Court of Appeals dismissed Defendant's appeal for lack of jurisdiction on June 30, 2017 (Case No. 17-AP-410).

17. Meanwhile, Stewart had filed counterclaims and affirmative defenses implicating an arbitration clause in the parties' written operating agreements. Accordingly, on November 19, 2015, the court referred the parties' dispute to arbitration and stayed the litigation of the underlying claims. After much foot-dragging by Stewart, the arbitration was commenced in September 2016.

18. Notwithstanding the pending arbitration, Stewart continued to file motions in the Franklin County case. On July 5, 2017, Stewart filed a "Motion for Leave to Amend and Prepare Cross Complaint Based Upon New Information" on July 5, 2017. The Court denied that Motion on July 11, 2017 due to the fact that the case was stayed pending arbitration and Stewart did not detail what "new information" she possessed.

19. On September 12, 2017, Stewart filed a "Motion for Advancement of Fees" based on a statute that had no applicability to the case. That motion was denied on December 12, 2017.

20. On September 18, 2017, Stewart filed a "Motion for Attorney Sanctions" against James Carnes, Plaintiffs' counsel, alleging "subordination of perjury," witness tampering, and obstruction of justice. This motion was denied on December 12, 2017.

21. On January 8, 2018, Stewart again filed an appeal with the Tenth Appellate District Court of Appeals; this time appealing Judge Brown's November 19, 2015 order staying the case pending arbitration. Inexplicably, this appeal was filed more than two years after entry of the order in question and after the arbitration proceedings were already concluded. As with Stewart's previous appeal, this appeal was dismissed on February 1, 2018.

22. The Franklin County case is still pending. RRL and Firefly/IHT prevailed at arbitration, and the court entered judgment confirming the arbitration award on February 5, 2018. Per her usual practice, Stewart has yet again appealed Judge Brown's order to the Tenth District, which appeal remains pending (Case No. 18-AP-118).

23. Over the course of this litigation, Stewart has been represented by four different law firms, all of whom have withdrawn. She has represented herself pro se since April, 2017, and there has been a notable uptick in her frivolous filings since that time.

**Ohio Department of Insurance Complaint**

24. On February 5, 2015, Stewart filed a complaint against IHT with the Ohio Department of Insurance, alleging that IHT had committed various violations of insurance regulations. The Department did not find any wrongdoing or take any action against IHT.

**Ohio Civil Rights Commission Complaint**

25. On June 10, 2015, Defendant filed an Ohio Civil Rights Commission complaint against Plaintiffs, File No. COL71(41835)06102015, alleging that she was treated differently due to her sex and her religion. The Commission's initial investigation found that there was "insufficient information to establish that Respondent unlawfully discriminated" against Defendant. Defendant filed a "Request for Reconsideration" on April 12, 2016, and the Commission yet again issued a "no probable cause" finding on May 19, 2016.

**Wood County Embezzlement Complaint**

26. On February 29, 2016, Defendant filed an embezzlement complaint against Fritz and William Griffioen, two members of RRL and officers of Firefly/IHT, in Wood County, Ohio, Case No. 2016-CV-0127. This case is currently stayed pending final resolution of the Franklin County case (which Stewart has repeatedly delayed). The claims are

baseless and rest on similar allegations to those rejected by the arbitration panel.

#### **Federal Court ERISA Action**

27. Less than two weeks later, Stewart filed an action against Firefly/IHT and RRL in the United States District Court for the Southern District of Ohio, Case No. 2:16-CV-00210, alleging violations of ERISA. This case is also currently stayed pending arbitration of the Franklin County case. Again, the claims are baseless.

#### **Bar Grievance Against Plaintiffs' Attorney**

28. On May 4, 2016, Defendant filed a grievance with the Supreme Court of Ohio Office of Disciplinary Counsel, File No. B6-0961, against one of Plaintiffs' attorneys, Zachary Madden, alleging a conflict of interest. This file was closed on May 19, 2016 without any finding of wrongdoing.

#### **Claims Against Stewart's Former Attorneys**

29. Stewart has also been sued for \$15,614.83 in unpaid fees by one of her former law firms, Mowery Youell & Galeano, Ltd., in Franklin County, Case No. 18- CV-001994. On May 16, 2018, Stewart (acting pro se) filed a 42-page, 295- paragraph counterclaim and third-party complaint seeking more than \$1.5 million in damages. Stewart then removed the case to federal court (S.D. Ohio Case No. 18- CV-503), where it remains pending. On August 15, 2018, the federal court requested briefing on federal jurisdiction, as it does not appear Stewart had any legitimate basis for removing the case.

30. Stewart's substantive counterclaims are premised on the same made- up "embezzlement" scheme

involving RRL and Firefly/IHT that Stewart has raised in the past. Although they are not parties to this case, Stewart's counterclaim makes numerous baseless accusations of criminal activity against RRL and Firefly/IHT, as well as their members, employees, and attorneys. Needless to say, all of these accusations are baseless.

**FIRST CLAIM FOR RELIEF - VEXATIOUS  
LITIGATOR DECLARATION (R.C. § 2323.52)**

31. Plaintiffs incorporate the foregoing factual allegations.

32. Stewart's conduct has served merely to harass or maliciously injure Plaintiffs and third parties; was not warranted under existing law and was not supported by a good faith argument for an extension, modification, or reversal of existing law; and/or was imposed solely for delay. Her conduct constitutes vexatious conduct pursuant to R.C. § 2323.52.

33. Stewart has habitually, persistently, and without reasonable grounds engaged in vexatious conduct.

34. Defendant is a vexatious litigator as defined by R.C. § 2323.52.

35. Defendant is certain to continue to engage in further vexatious conduct unless she is prohibited from doing so by an Order of this Court.

**WHEREFORE**, Plaintiffs pray that this Honorable Court grant the following relief:

- a. Declare that Defendant is a vexatious litigator pursuant to R.C. § 2323.52.
- b. Issue an Order, pursuant to R.C. § 2323.52(D), indefinitely prohibiting Defendant from instituting any litigation, continuing any litigation, or making any application in any

litigation, in any court of the State of Ohio or its subdivisions, without first obtaining leave from this Court.

c. Award Plaintiffs attorney fees and costs for this action.

d. Grant any further relief to which Plaintiffs are entitled in the interest of justice.

Respectfully Submitted,

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**APPENDIX R**

**[File Date: December 20, 2019**

**Franklin County Ohio Common Pleas Court,  
18CV7212 *RRL Holding Company of OH LLC,*  
*et al v. Merrilee Stewart.***

**Decision: Judgement entry granting Plaintiffs  
Motion for Summary Judgement.]**

**IN THE COURT OF COMMON PLEAS,  
FRANKLIN COUNTY, OHIO CIVIL DIVISION**

RRL Holding Company  
of Ohio, LLC, et al.,  
Plaintiffs,

Case No.  
18-CV-7212

v

Merrilee Stewart,  
Defendant.

JUDGE  
KIM J BROWN

**JUDGMENT ENTRY  
GRANTING PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT  
FILED NOVEMBER 7, 2019**

Rendered this 20th day of December, 2019

This matter is before the Court upon Plaintiffs, RRL Holding Company of Ohio, LLC and Firefly Agency, LLC's (collectively "Firefly") motion for summary judgment filed November 7, 2019. Defendant, Merrilee Stewart ("Stewart") filed her opposition memorandum on November 21, 2019. Firefly filed its reply memorandum on November 25, 2019. On December 5, 2019, this Court issued an order to both parties to supplement their arguments with evidence as required under Civ.R. 56(E). Only Firefly complied

with the order. The motion is now ripe for the Court's consideration.

### **INTRODUCTION**

In this case, Firefly seeks to declare Stewart a vexatious litigator under R.C. 2323.52. The parties have been engaged in long-drawn-out litigation since Stewart was removed as President of Firefly/IHT and as a member of RRL Holding in late 2014. Firefly, through this action, seeks to curtail anymore litigation by having Stewart declared a vexatious litigator. The procedural history of this case is detailed in the Court's decision filed November 12, 2019, and will not be repeated here.

### **FINDINGS OF FACT**

The Court finds the following facts to be material and undisputed:

1. Stewart was removed as President of Firefly/IHT and as a member of RRL Holding Company of Ohio ("RRL Holding"). Kemp Affidavit, Ex. 1. After that, an action in Franklin County Common Pleas Court was filed and designated Case No. 2015-CV- 1842 ("Initial case"). Id On November 10, 2015, the Initial case was stayed and ordered to arbitration. Id A three-member arbitration panel found the removal of Stewart to be lawful and consistent with the parties' governing documents. Id
2. After the arbitration panel's decision, Firefly had to move to compel enforcement of the arbitration award in the Initial case because Stewart refused to comply. Id, Ex. 2.
3. On January 7, 2018, Stewart filed a motion to vacate the arbitration award. Id, Ex. 3.

A week later she filed a notice of appeal of the trial court's November 10, 2015 order to stay the case pending arbitration. Id Ex. 4. That appeal was dismissed as untimely. Id, Ex. 5.

4. On February 5, 2018, the trial court entered judgment confirming the arbitration award. Id, Ex. 6. Stewart appealed that decision. Id, Ex. 7. The court of appeals affirmed. Id, Ex. 9. Undeterred, Stewart sought jurisdiction in the Supreme Court of Ohio. Id Ex 10. The Supreme Court declined jurisdiction. Still undeterred, Stewart moved the Supreme Court to reconsider that decision. Id Ex. 11. The Supreme Court again declined.

5. After Stewart exhausted her appeals, she then refused to comply with the trial court's judgment affirming the arbitration award. This refusal resulted in multiple motions for sanctions, magistrate hearings on those motions, magistrate decisions awarding sanctions, objections to the magistrate decisions, appeals, and appeals being dismissed. Id Ex. 15, 16, 17, 18, 21, 24, 28, 30, 31,32, and, 33.

6. Stewart's conduct has spilled into Wood County Common Pleas Court. Id, Ex. 34. That case is stayed pending the outcome of the Initial case. Id, Ex. 35. Stewart appealed that stay and it was dismissed by the Sixth District Court of Appeals. Id, Ex. 36 and 37.

7. In this action, Stewart filed a counterclaim and third-party complaint, and then improperly removed to federal court. Id, Ex. 43. The case was later remanded. Id, Ex. 44.

8. Another notable act, at one point in the Initial case Stewart moved for an advancement of her fees. Id Ex. 27. The motion was denied. Id, Ex. 29.

9. Examples of Stewart's conduct beyond the Franklin County Common Pleas Court include: filing an ERISA

claim in federal court repeating her theories about Firefly raised in Franklin County Common Pleas Court (Motion, Ex. F.); and filing a complaint with the Ohio Civil Rights Commission which in response issued a finding of no probable cause Id, Ex. J.

## **LAW AND ANALYSIS**

### **Motion for Summary Judgment**

To prevail upon a motion for summary judgment, the moving party must inform the court of the basis for the motion and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. Ohio Supreme Court precedent explains:

the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. These evidentiary materials must 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. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.

*Dresher v. Burt*, 75 Ohio St. 3d 280, 292-93, 662 N.E.2d 264 (1996).

Additionally, it is well-established that the party responding to a motion for summary judgment has some burden to provide the Court with evidence as to their reasons for opposition. "A motion for summary judgment forces the nonmoving party to produce evidence on any issue for which that party bears the burden of production at trial." *Wing v. Anchor Media*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). "It should be noted that placing the above-mentioned requirements on the moving party does not mean the

nonmoving party bears no burden. Requiring that the moving party provide specific reasons and evidence gives rise to a reciprocal burden of specificity for the nonmoving party." *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988). The nonmoving party may not rest upon the allegations or denials in the pleadings but must affirmatively demonstrate the existence of a genuine issue of material fact to prevent the granting of a motion for summary judgment. *Cunningham v. Bone Dry Waterproofing, Inc.*, 66 N.E.3d 187, 2016-Ohio-3341, i 7 (10th Dist.) citing *Misteff*

The facts of Stewart's conduct are well documented by the voluminous filings. Furthermore, the facts are uncontested. As such, the Court must now determine whether Firefly is entitled to judgment as a matter of law.

#### **VEXATIOUS LITIGATOR STATUTE**

The question before the Court is whether Stewart is a "vexatious litigator" under RC. 2323.52. To be a "vexatious litigator" the party must engage in "vexatious conduct." The Court starts its analysis with the statutory definitions of these terms.

A "vexatious litigator" is:

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

R.C. 2323.52(A)(3). "Vexatious conduct" is defined as the conduct of a party in a civil action that "obviously serves merely to harass or maliciously injure another party to the civil action," "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 "is imposed solely for delay." State ex rel. Sapp v. Franklin County Court of Appeals, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, i 17 quoting RC. 2323.52(A)(2) (a-c).

The Court's review is not limited to Stewart's conduct in this case. In determining a party a vexatious litigator, a court may consider the consistent rejection of a party's argument or legal theories. E.g., *Farley v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, i 23; Prime Equip. *Grp. Inc. v. Schmidt*, 66 N.E.3d 305, 2016-Ohio-3472 (10th Dist.). Also, courts may consider prior conduct in other cases. *Watkins v. Perry*, 107 N.E.3d 574, 2017-Ohio-9347, i 35 (11th Dist.) citing Prime Equip.

#### **FIREFLY'S ARGUMENT IN SUPPORT OF SUMMARY JUDGMENT**

Firefly argues Stewart is a vexatious litigator because for four years she has engaged in habitual litigation that repeated the same unfounded theories about a multi-million-dollar criminal enterprise hatched by her former business partners. Firefly has presented a staggering-list of what it claims is vexatious conduct. Rather than address all the instances individually, the Court will consider them in totality.

This ordeal started when Stewart was removed from her position as a member of RRL Holding. The removal brought about the Initial case. The Initial case was sent to arbitration to determine the legality of Stewart's removal. The arbitration panel determined Stewart was properly removed, and ordered appropriate relief to terminate that relationship. The arbitration award was confirmed by this Court. Stewart appealed that decision, and the decision was affirmed. She tried to appeal that decision to the Supreme Court of Ohio, which declined to hear the case. Unsatisfied, Stewart moved for reconsideration, which was also denied. To this point, Stewart was not engaging in vexatious conduct, but defiantly-and maybe quixotically-litigating the merits of her removal from RRL Holding. However, Stewart's conduct after that point is different.

Ever since Firefly prevailed on the merits, Stewart has refused to accept the result. She has been sanctioned multiple times for refusing to sign the closing documents which would end the Initial case. She has filed more appeals in that case which have been dismissed.

Beyond the Initial case, Stewart improperly delayed this case by removing it to federal court. Stewart has filed other meritless actions in other Ohio Courts and administrative agencies. There is no good faith basis for Stewart's actions because they are all attempts to relitigate the merits of her removal from RRL Holding.

Taken together, Stewart's activates are habitual and persistent conduct that meets the definition of "vexatious conduct." *Ealy v. McLin*, 2nd Dist. Montgomery No. 21934, 2007-Ohio-4080, I 25 (Affirming the trial court's summary judgment that

Ealy's filing of four lawsuits in a six-month period, all of which were unsupported by any good faith argument or existing law, was vexatious conduct.). Since Stewart's conduct lacks a good faith basis and has been imposed solely for delay, it is vexatious conduct and she is a vexatious litigator. Thus, Firefly is entitled to judgment as a matter of law.

### STEWART'S ARGUMENTS AGAINST SUMMARY JUDGMENT

After reviewing Stewart's opposition to the motion for summary judgment, the Court finds it necessary to describe some of the differences between a motion for summary judgment and a motion to dismiss for failure to state a claim upon which relief can be granted. They are different filings and serve different purposes in litigation. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. State ex rel. *Hanson v. Guernsey County Ed of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A decision granting a motion to dismiss is not a judgment on the merits of the complaint. Id 547-48. "In resolving a Civ.R. 12(B)(6) motion to dismiss, the trial court may consider only statements and facts contained in the pleadings, and may not consider or rely on evidence outside the complaint." *Stainbrook v. Ohio Sec'y of State*, 10th Dist. No. 16AP-314, 2017-Ohio-1526, i 11.

Differently, a motion for summary judgment seeks a decision on the merits. A motion for summary judgment allows the trial court to determine if the moving party is entitled to affirmative relief Civ.R. 56. The motion for summary judgment must be supported by evidence that shows there is no genuine



issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Id

Stewart's arguments against summary judgment are the same arguments she raised in her motion to dismiss and the majority of her arguments are not merit arguments. Stewart argues summary judgment should be denied because: (1) Firefly's claim does not meet basic pleading requirements; (2) Firefly's claim violates claims splitting; (3) protected activity; and (4) res judicata. Stewart's arguments about failure to meet pleading requirements and claim splitting were rejected in the Court's November 15, 2019 decision denying her motion to dismiss and will not be revisited here. Likewise, Stewart's fourth argument, although not directly addressed in the Court's November 15, 2019 decision, fails for similar reasons. The November 15, 2019 decision explained that the vexatious litigator statute expressly provides for a party to bring a separate action to declare another party a vexatious litigator. For that same reasoning, bringing a separate action under RC. 2323.52(B), is permissible regardless of the parties' separate pleadings in the Initial case and res judicata does not apply.

Stewart's lone merits argument is that her activities are protected by statute and therefore not vexatious conduct. In support she cites R.C. 4113.52(A)(1)(a). It states:

If an employee becomes aware in the course of the employee's employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct, and the employee reasonably believes that the violation is a criminal offense that is likely to

cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution, the employee orally shall notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation 1, within twenty-four hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where the violation occurred, with a peace officer, with the inspector general if the violation is 1, within the inspector general's jurisdiction, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.

R.C. 4113.52(A)O) (a). Stewart argues, per this statute, she had a statutory duty to expose Plaintiff's activity and that this vexatious litigator action is improper retaliation. Stewart's argument fails for two reasons.

First, Stewart's argument lacks a factual foundation. Her opposition states she is serving as "an inside informant for the Federal Bureau of Investigation and the United States Department of

the Treasury" to expose Firefly's redlining and anti-trust violations. However, her claim is not supported with evidence to prove these facts, such as an affidavit with documentation from these agencies avowing her work.

Second, Stewart has not complied with the statute's procedural requirements to obtain relief. Assuming Firefly's removal of Stewart was retaliation for her reporting a felony as she claims, to claim a remedy under the statute, she must prove she complied with the statute's requirements. She needs to show she properly reported the felony by filing a report with sufficient detail. R.C. 4113.52(A)(1)(a). After, she is required to "bring a civil action ...within one hundred eighty days after the disciplinary or retaliatory action was taken." R.C. 4113.52(D). Stewart has failed to provide evidence that she complied with this statute, such as attaching the reports she would have filed according to R.C. 4113.52(A)(1)(a). Also, she has failed to show she claimed this remedy within 180 days of the alleged retaliation under R.C. 4113.52(D). Thus, the Court finds Stewart's arguments against summary judgment unpersuasive.

### CONCLUSION

For these reasons, the Court finds there is no material question of fact and that Firefly is entitled to judgment as a matter of law. Therefore, Firefly's motion for summary judgment is GRANTED.

In accordance with the grant of summary judgment, the Court ORDERS this relief pursuant to R.C. 2323.52:

Pursuant to the Court's finding and R.C. 2323.52(D)(1)(a-c), without first seeking leave of this Court, Stewart: shall not institute legal proceedings in the

court of claims or in a court of common pleas, municipal court, or county court; shall not continue any legal proceedings that Stewart has instated in the court of claims, court of common pleas, municipal court, or county court; shall not make any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by Stewart or another person in the court of claims, court of common pleas, municipal court, or county court;

This order will run indefinitely, pursuant to R.C. 2323.52(E); and

The Clerk shall send a certified copy of this order to the Supreme Court of Ohio for publication in a manner the Supreme Court of Ohio deems appropriate under R.C. 2323.52(H).

All court costs are to be paid by Stewart.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just cause for delay and this Judgement Entry is final.

\*\*\* THIS IS A FINAL APPEALABLE ORDER. \*\*\*  
IT IS SO ORDERED

Franklin County Court of Common Pleas  
Date: 12-20-2019  
Case Title: RRL HOLDING COMPANY OH ET AL -  
VS- MERRILEE STEWART  
Case Number: 18CV007212  
Type: JUDGMENT ENTRY

It Is So Ordered.  
/s/ Judge Kim Brown  
Electronically signed on 2019-Dec-20