No. 21-1235

Supreme Court of the United States

Robert Grundstein Esq.

vs

State of Ohio

On Petition for Writ of Certiorari to the Ohio Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1.

Is the Ohio Vexatious Litigator Statue, ORC 2323.52, Unconstitutional on the basis of vagueness and insufficient standards?

Is it subject to abuse on these bases?

Does it illegally restrict a party's First Amendment Right to Court Access and violate Federal law with respect to filing restrictions?

2.

Was the Ohio Vexatious Litigator Statute applied in a Constitutional manner with respect to Petitioner?

3.

Circuit Splits: The Ohio Vexatious Litigator Statute is in contrast to all other jurisdictions and Federal standards. See 9th Circuit example "Cromer v Kraft Foods Inc." 390 F.3d 812, infra.

It provides no objective criteria by which a party is found to be vexatious or the grounds on which "leave to proceed" can be granted after a party is designated "vexatious".

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ to examine the Constitutionality of Ohio's Vexatious Litigator statute, ORC 2323.52.

It is a statute which permanently bars a pro se litigant from All Ohio courts, including appellate and supreme courts.

The statute makes no reference to objective standards and is regularly used to exclude inconvenient and blameless litigants.

The Due Process requirements are regularly disregarded and parties are denied their First Amendment Right of Court Access without Notice or Hearing.

LIST OF PROCEEDINGS IN LOWER COURTS

1. November 9, 2021 Ohio Supreme Court Order.

There was no Opinion or Analysis. It was a one line statement denying permission to file an Original Action for Writ of Prohibition.

The Ohio State Supreme Court has original jurisdiction for Writs of Prohibition.

STATEMENT OF JURISDICTION

This Court's jurisdiction is based on 28 U.S.C. 1257.

Petitioner seeks review of a one sentence, summary denial to allow him to file a writ of Prohibition on November 9, 2021.

CONSTITUTIONAL PROVISIONS

STATEMENT OF THE CASE

Permanent Filing Restrictions Imposed without Due Process or Petitioner Court Activity
Ohio Supreme Court Refuses to Exercise Original Jurisdiction for Writ of Prohibition
Ohio Supreme Court Issues One Line Order without Opinion or Analysis

On July 24, 2019, Cuyahoga County, Ohio J. John Russo imposed filing restrictions against Petitioner under ORC 2323.52.

No Due Process Under Fifth, Sixth and Fourteenth Amendments
No Active Suit in Ohio, No Complaint, No Charges, No Service, No Notice

This was in error. The Court had no jurisdiction to act without the formalities required by ORC 2323.52 which requires a new action which entails a New Complaint, Service, Notice, Hearing/Trial. A new action was not filed against Petitioner nor was he served with a Complaint. A trial was never had.

No Active Case or Wrongdoing in Lower Court

In addition, there was no active case before J. Russo at the time. There was no activity in which Petitioner Grundstein could have been found to engage in any conduct, good or bad.

Once a party is declared "vexatious", he/she cannot file ANYTHING in any Ohio Court, including the Appellate and Supreme Courts, or anything in an active case (motions, etc.) without "Leave to Proceed". One lower court in Ohio can determine jurisdiction for all the rest of the courts in Ohio, even those above it.

There are no standards for "Leave to Proceed" and it is arbitrary with respect to its application. It does not examine the merits of the case or provide a decision which is res judicata on the merits, but is a standardless Prior Restraint on filing an action.

Petition to Ohio Supreme Court for Writ of Prohibition

Petitioner Grundstein filed an action in the Ohio Supreme Court which has original jurisdiction for a Writ of Prohibition. "Leave to Proceed" was denied on November 9, 2021. There was no Opinion or Analysis. The Writ was not decided on the merits.

The Ohio Supreme Court order was a one line statement denying permission to file an Original Action for Writ of Prohibition.

REASONS TO GRANT WRIT

1

Ohio 3d Appellate District Declared ORC 2323.52 Unconstitutional
Denies Right of Access to Courts without Reference to Objective Standards
Should Be Heavy Presumption against Its Application

Even Ohio doesn't like ORC 2323.52. The Third District said the statute denies a party's right of access to the courts without reference to objective standards under Civ. Rules 11 and 12.

The Third District ("Mayer v. Bristow" 1999 Ohio App. 933 and cited in "Ohio Transit Authority v Timson", 132 Ohio App.3d at 53), declared ORC 2323.52 unconstitutional. See below;

"the procedure established by R.C. 2323.52, the vexatious litigator statute, fails to provide a reasonable and meaningful substitute for direct access to Ohio's trial courts. We therefore determine that the statute is unconstitutional in its entirety as violative of Ohio Const., Art. I Sec. 16 ...."

Ohio Statute Standardless, Arbitrary,
without Fact Requirements
One Trial Court Cannot Determine Jurisdiction
for All Other State Courts

The court continued to say;

"no means of review, whether through mandamus proceedings or direct appeal, could "remedy the wholly vague and arbitrary nature of the underlying determination." In support, the court reasoned that "the vexatious litigator statute vests complete authority to determine the validity of virtually all of a person's statewide legal actions in one trial court," while leaving unresolved "[e]xactly what constitutes 'an abuse of process' * * * [or] what situations might constitute 'reasonable grounds' for leave to proceed." In addition, the statute does not require "any sort of fact finding process" and "there is no requirement that the trial court articulate upon the record whatever factual or legal grounds may have been the basis for its decision to deny leave to proceed." Accordingly, the court concluded, leave could be arbitrarily and summarily denied "upon a formally proper complaint that would ordinarily survive a motion to dismiss under Civ.R. 12(B)(6)."

Civil Rule 12 and res judicata/collateral estoppel can easily dispose of cases which fail to state a claim or which involve serial attempts to litigate the same matter after it has been dismissed.

2

ORC 2323.52 Violates Federal Law and Supremacy Clause
See "Cromer v Kraft Foods Inc." 390 F.3d 812
Filing Restrictions Only Good with Notice/Hearing
Must Be Limited to One Party and One Litigation
The Ohio Statute Violates Suggested Federal Standards for
Application of "Gatekeeper" Orders

"Cromer v. Kraft Foods North American, Incorporated", 390 F.3d 812 (4th Cir. 2004), is the leading Fourth Circuit case on the standards for issuance of a gatekeeper order. In addition to adopting the Safir list of factors to be considered

the court offered this guidance:

• A pre-filing injunction is a drastic remedy to be used sparingly and only when exigent circumstances justify it.

• Use of such measures against a pro se litigant should be approached with particular caution.

• The pre-filing injunction must be narrowly tailored to fit the circumstances. (In "Cromer" the injunction was NOT narrowly tailored because it restricted the defendant from filing any lawsuit without court approval although his history showed only vexatious litigation related to his employment discrimination lawsuit.) Filing restrictions are best suited against one subject matter/set of facts relative to one party aggrieved by serial filing.

• The litigant must be given notice and an opportunity to be heard before a gatekeeper order is entered.

3

Ohio Vexatious Litigator Statute Unconstitutional as Applied to Petitioner
Petitioner Not Given Due Process
There Was No Notice, Hearing or Jurisdiction During Which He Could Have Been Found to Be "Vexatious"

A

Ohio Requires Commencement of a Civil Action to Declare a Party Vexatious Under ORC 2323.52

"Gevedon v Gevedon" 167 Ohio App.3d 450, 2006-Ohio-3195

ORC 2323.52 (Vexatious Statute) Requires a New Action with a New Complaint, Summons, Filing Fee and Service

A Motion is Not Sufficient to Attach Jurisdiction

See quote from "Gevedon", below:

"In the present case, Joel Gevedon did not commence a civil action against Kenneth Gevedon under R.C. 2323.52(B). Instead, Joel filed a motion in a pending domestic violence case,"...para 26....the remedy in R.C. 2323.52 requires commencement of a civil action against the alleged vexatious

litigator." para 29... As we noted, the requirements in R.C. 2323.52 are quite particular and relief must be requested in the manner outlined in the statute."...The sixth District noted that the motion was made at oral argument, but the remedy under R.C. 2323.52 is to commence a civil action." "Gevedon", id. Para 31.

See also "Kinstle v. Union Cty. Sheriff's Office", 2007-Ohio-6024";

"ORC 2323.52 unambiguously requires the commencement of a "civil action" and we have determined that a motion is not the equivalent of a complaint." para. 10.

"As noted in above, R.C. 2323.52 requires a "civil action" which may be instituted by the filing of a complaint. Although we do not determine whether a counterclaim is sufficient for R.C. 2323.52, Cincinnati did not file a counterclaim....since a separate civil action was not commenced seeking a vexatious litigator declaration, the judgment entry of March 6, 2007 is void insofar as it declares Kinstle a vexatious litigator." para 11.

B

A Trial Court Lacks Jurisdiction to Enter a Judgment
Absent Proper Service of Process
Judgement without Due Process or Jurisdiction is Void
"Stonehenge Condominium Assn. v Davis" 2005-Ohio-4637,
10th App. Dist.
"Pennoyer v. Neff", 95 U. S. 714, 95 U. S. 732-733(1878).

"Absent proper service of process, a trial court lacks jurisdiction to enter a judgment, and if a judgment is nevertheless rendered, it is a nullity and void ab initio. "Stonehenge" id. citing "Don Ash Properties v. Dunno", Franklin App. No. 03AP-375. 2003-Ohio-5893, at "Miley v. STS Sys., Inc.", 153 Ohio App.3d 752, 2003-Ohio-4409, at para. 16.

"A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere". "Pennoyer v. Neff", 95 U. S. 714, 95 U. S. 732-733(1878). "Due process requires that the defendant be given adequate notice of the suit", "Mullane v. Central Hanover Trust Co.", 339 U. S. 306, 339 U. S. 313-314 (1950), "and be

subject to the personal jurisdiction of the court", "International Shoe Co. v. Washington", 326 U. S. 310 (1945).

C

Under "Ohio Receivables LLC v Landaw" 2010-Ohio-1804
A Court May Not Enforce a Void Judgment
A Void Judgment MUST Be Vacated
Any Court Can Vacate a Void Judgment

A judgment without jurisdiction must be vacated. See, "Ohio Receivables, LLC v. Landaw", 2010-Ohio-1804:

"We agree that the lower court lacked jurisdiction to issue another judgment entry. The court did not have jurisdiction to act. Id. As such, the court's August 26, 2009 judgment is a nullity and must be vacated pursuant to this Court's inherent authority to vacate void judgments. "Van DeRyt v. Van DeRyt" (1996), 6 Ohio St.2d 31, 36 ("A court has inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity."). We do not address Ohio Receivables' assignments of error on the merits, as this Court does not have jurisdiction to consider the merits of an appeal from a void judgment.

Conclusion

Ohio Fails Any Constitutional Standard and Represents Divergence from Other Circuits and Federal Standards

Ohio's vexatious litigator statute is conspicuous with respect to all other Circuits because it doesn't articulate any set of conditions or behaviors by which a party can be designated "vexatious". It makes no reference to Rule or Civil Procedure 11 or 12 and bars a party from all courts, in all cases, for life.

It also denies a party the right of appeal to challenge a determination of vexatious. Petitioner tried to appeal his designation in Ohio and the appellate court refused to grant "leave to proceed".

This is in contrast to the Ninth Circuit which has found filing restrictions are appropriate if specific behaviors have occurred such as filing the same document/subject matter against the same parties after a ruling against the motion/pleading, or having lost five cases as a pro se plaintiff over the prior seven years. (California Code of Civil Procedure, sec. 391(b).

It is also contrary to Federal Standards of practice as described in "Cromer v Kraft Foods Inc." 390 F.3d 812, (heading "2", supra) in which filing restrictions are only enforceable after notice and hearing and must be limited to one party in one litigation

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