

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

DERRICK D. BLASSINGAME,	:	APPEAL NO. C-210495
Relator-Appellant,	:	TRIAL NO. A-2101923
vs.	:	<i>JUDGMENT ENTRY.</i>
AFTAB PUREVAL,	:	
and	:	
CHRISTOPHER WAGNER,	:	
Respondents-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relator-appellant Derrick D. Blassingame appeals pro se the trial court’s order declaring him a vexatious litigator and dismissing his complaint for a writ of mandamus against the respondents-appellees. For the following reasons, we overrule all five of Mr. Blassingame’s assignments of error and affirm the judgment of the trial court.

In September 2020, Derrick D. Blassingame filed a complaint (“*Pureval I*”) for a writ of mandamus against the respondents-appellees in their capacity as public officials seeking to compel them to provide public records that would supposedly establish a pattern of discriminatory debt collection practices. Mr. Blassingame failed to properly caption that complaint, and the trial court dismissed the case accordingly. Mr. Blassingame immediately appealed that judgment. That appeal was pending when Mr. Blassingame filed an identical complaint (“*Pureval II*”) that was properly captioned.

The respondents-appellees moved to dismiss *Pureval II* for failure to state a claim. A little over one month later, after Mr. Blassingame failed to respond to the motion to dismiss, the respondents-appellees filed a motion to declare Mr. Blassingame a vexatious litigator. The trial court granted the respondents-appellees' motion and dismissed *Pureval II* with prejudice. Mr. Blassingame appealed *Pureval II* later that month, challenging his designation as a vexatious litigator. We subsequently dismissed *Pureval I* for failure to file an appellant brief. Now the sole question is whether the trial court erred by declaring Mr. Blassingame a vexatious litigator in *Pureval II* (as Mr. Blassingame does not assign error to the dismissal of *Pureval II*).

Mr. Blassingame's first assignment of error challenges the denial of (1) his request for oral argument on the motion to declare him a vexatious litigator and (2) his motion for the recusal of the trial judge.

We review the denial of a request for oral argument for an abuse of discretion. *Losey v. Diersing*, 12th Dist. Clermont No. CA2012-06-048, 2013-Ohio-1108, ¶ 13. The respondents-appellees correctly point out that Mr. Blassingame never requested oral argument below. But even if Mr. Blassingame had requested oral argument, we see no basis for concluding that the trial court would abuse its discretion in denying such a request here, nor does Mr. Blassingame point us any reason that the trial court's decision would constitute an abuse of discretion under these circumstances.

Turning to Mr. Blassingame's motion to recuse the trial judge, he insists that the trial judge should have recused because he was biased against him. However, "[t]his court does not have the authority to determine whether a trial judge was biased or prejudiced. * * * The exclusive means for judicial review of a judge's potential bias or prejudice is to file an affidavit of disqualification with the Ohio Supreme Court pursuant to R.C. 2701.03." *Taft, Stettinius, & Hollister, LLP v. Calabrese*, 2016-Ohio-4713, 69 N.E.3d 72, ¶ 29 (1st Dist.), citing *Beer v. Griffith*, 54 Ohio St.2d 440, 441, 377 N.E.2d 775 (1978). Accordingly, we cannot find that the trial court erred by failing to grant Mr.

Blassingame’s request for recusal of the trial judge, and thus overrule Mr. Blassingame’s first assignment of error in full.

We discuss the second and fourth assignments of error together because they ostensibly raise the same issue—whether the trial court could determine that Mr. Blassingame was a vexatious litigator under R.C. 2323.52 on this record. R.C. 2323.52 provides:

(2) “Vexatious conduct” means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

(c) The conduct is imposed solely for delay.

(3) “Vexatious litigator” means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct * * *.

“R.C. 2323.52 allows a party that has repeatedly encountered vexatious conduct to have the offending person declared a ‘vexatious litigator.’ ” *City of Madeira v. Oppenheimer*, 1st Dist. Hamilton No. C-200458, 2021-Ohio-2958, ¶ 5. “In determining whether a party is a vexatious litigator, the trial court may consider the party’s conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought.” *Davie v. Nationwide Ins. Co. of Am.*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 41. “We review a vexatious-litigator determination for an abuse of discretion.” *State ex rel. Newell v. Cuyahoga Cty. Court of Common Pleas*, 165 Ohio St.3d 341, 2021-Ohio-3662, 179 N.E.3d 84, ¶ 19.

The motion to declare Mr. Blassingame a vexatious litigator identified 13 lawsuits (including *Pureval I*) he filed in 2020 and 2021. At the time, ten of those lawsuits had

already been dismissed. Five of these lawsuits were dismissed for want of prosecution. One was dismissed for failure to state a claim, and another was dismissed for lack of subject-matter jurisdiction. Others were dismissed for various procedural defects such as improper venue and failure to file an amended complaint. Mr. Blassingame does not dispute the fact that he filed these lawsuits or the disposition of those claims.

We believe that the trial court could find that Mr. Blassingame engaged in vexatious conduct based on his conduct in these cases. Even though most of these lawsuits were disposed of before the trial court reached the merits, Ohio courts have recognized that a pattern of failing to prosecute claims and filing procedurally defective complaints over a short period of time may constitute vexatious conduct. *See, e.g., Herron v. Bramel*, 7th Dist. Columbiana No. 17 CO 0008, 2018-Ohio-1029, ¶ 19-21, 25 (repeated filing of identical complaints in the same court over a short period of time, supposedly to correct deficiencies in prior filings, constituted vexatious conduct where the plaintiffs were informed that the court lacked subject-matter jurisdiction over the action); *Ealy v. McLin*, 2d Dist. Montgomery No. 21934, 2007-Ohio-4080, ¶ 25-26 (filing baseless complaints and failing to prosecute those complaints constituted vexatious conduct). In fact, the *Ealy* court affirmed the trial court’s finding that the plaintiff’s “failure to prosecute the actions establishes that the suits serve merely to harass and are imposed solely for delay.” *Id.* Like in *Ealy*, here the trial court could infer that Mr. Blassingame’s repeated failure to prosecute his claims establishes that his suits were merely intended to harass or cause delay. Accordingly, we cannot find that the trial court abused its discretion by declaring Mr. Blassingame a vexatious litigator under R.C. 2323.52. We overrule the second and fourth assignments of error.

As for Mr. Blassingame’s third assignment of error, he argues that his designation as a vexatious litigator forecloses his access to the courts in violation of his constitutional rights. He cites just one authority to support this theory—*Martin-Trigona v. Shaw*, 986 F.2d 1384 (11th Cir.1993). While that case recognized that injunctions against abusive and vexatious litigation may not “completely foreclose[]” litigants from “any access to

the court,” the Eleventh Circuit ultimately affirmed the district court’s injunction against the plaintiff’s “abusive litigation.” *Id.* Thus, *Martin-Trigona* merely establishes that, at least under the law of the Eleventh Circuit, a vexatious litigator statute may not completely foreclose a litigant’s access to the courts. But R.C. 2323.52 does not completely foreclose Mr. Blassingame’s access to the courts. It merely “prohibit[s] the vexatious litigator from instituting, continuing, or making an application in any legal proceeding without first seeking leave of the trial court making the designation.” *Oppenheimer*, 1st Dist. Hamilton No. C-200458, 2021-Ohio-2958, at ¶ 5. Because Mr. Blassingame has failed to cite authorities to support his theory that his vexatious litigator status violates his constitutional right to access the courts, he has failed to advance a cognizable argument. *See* App.R. 16(A)(7) (“The appellant shall include in its brief * * * [a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies.”). We overrule his third assignment of error for that reason.

Mr. Blassingame’s fifth assignment of error rehashes the theories he raised in his other assignments of error. That is, (1) his designation as a vexatious litigator violates his constitutional right to access the courts, (2) the record does not support his designation as a vexatious litigator, and (3) the trial judge should have recused for judicial bias. Based on our resolution of those issues above, we overrule the fifth assignment of error.

In light of the foregoing, we overrule all five assignments of error and affirm the judgment of the common pleas court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

BERGERON, P.J., CROUSE and BOCK, JJ.

To the clerk:

Enter upon the journal of the court on 08/26/2022,
per order of the court _____.

Presiding Judge