MONTANA SIXTH JUDICIAL DISTRICT, PARK COUNTY, MONTANA

DANIEL K. O'CONNELL and VALERY A. O'CONNELL,	)	Cause No. DV-11-114
Plaintiffs,	)	
vs.	)	
GLASTONBURY LANDOWNERS ASSOCIATION, INC. and CURRENT GLA BOARD OF DIRECTORS	)	
Defendants.	)	

FINDINGs OF FACT, CONCLUSIONS OF LAW AND ORDER ON MOTION TO HAVE PLAINTIFFS AND THEIR CHILDREN DECLARED AS VEXATIOUS LITIGANTS

Defendants Glastonbury Landowner's Association, Inc. (the Association) and the GLA Board of Directors (the Board or the Board of Directors) requested that the Court declare Daniel K. O'Connell and Valery A. O'Connell (collectively the O'Connells) vexatious litigants and subject them to limited access to this Court. In addition to the O'Connells, the Defendants requested that that the Court include the O'Connell's children, Christal, Shannon and Vesta (collectively the O'Connell children) in its ruling and similarly limit their access to this Court. Specifically, the Association and the Board of Directors requested that the Court sanction the O'Connell's and O'Connell children so that they must obtain Court approval before being allowed to file an action (any type of action) against the Glastonbury Landowner's Association,

Inc. and/or any member of the Association Board of Directors involving a Director's actions relating to Board membership.

The Court held a hearing on this matter on February 7, 2017. The Association and the Board were present represented by their limited scope counsel, Alanah Griffith. The O'Connell's were not present. After proof heard and good cause appearing, this Court makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

The Court takes judicial notice of all of the O'Connell's filings in this and all other cases in Park, Gallatin and other Montana locations. They are summarized below. Based on the O'Connell's past behavior in this and other cases, the Court will detail those cases for the Montana Supreme Court, in case of the appeal of this order. The court notes that many of the cases were appealed to the Montana Supreme Court by the O'Connells multiple times. Therefore, the Montana Supreme Court may be familiar with those cases. This Court notes that the O'Connells have a history of filing civil actions, not only against the Association and Board of Directors, but against many people, all of which were summarily dismissed by the designated Court.

I. CASES

1. Park County, DV-08-25 Valery O'Connell v. Park County 2/12/2008

This was the first action filed by the O'Connells in Park County. It was filed by Valery O'Connell (Valery) against Park County. In this case, Valery was represented by counsel. Valery filed a Writ of Mandamus against the county. One day after the hearing on the Writ, the District Court entered an order denying the Writ. This case is mentioned only because it then led to the next case.

2. **Park county DV-10-198 Wittich Law Firm v. Valery and Daniel O'Connell 10/27/10**

While the O'Connells were the defendants in this case, the Court finds that it is still instructive in that it shows how the O'Connells increase the cost of litigation by filing unnecessary and legally unsupportive briefs, requests and demands. This case was litigated over approximately $93.00 of legal fees. The O'Connells appealed this matter to the Montana Supreme Court twice.

In this case, the O'Connells owed the Wittich Law Firm attorney's fees (for the above mentioned case.) The Wittich Law Firm chose to file an action to collect the debt. The O'Connells defaulted by failing to file a timely answer after being served and default judgment was entered. Then, the O'Connells attempted to have the default set aside, which lead to a number of unnecessary filings by the O'Connells.

These included, but are certainly not limited to, "Defendant's Motion & Brief for relief from Court Orders," filed 2/3/12 (Doc. No. 20) which was in "response" to the Judge's order denying their motion to set aside the default judgment. Much like many of the motions in this case and other O'Connell matters, the motion demanded that the judge understand that he was wrong, and to rewrite the Order Denying the Motion to Set Aside the Default to favor the O'Connell's motion. The Court summarily entered judgment against the O'Connells.

After entry of judgment, the O'Connells filed yet another brief. This was entitled "Defendant's Motions and Brief to suspend Judgment and motion for Relief From Judgment and Alternative Appeal notice and Response to Plaintiff's Replies." (Doc No. 25 and 26). These motions were filled with illogical arguments which had no legal basis. The point, once again, was that the Judge was wrong and should change his mind. These motions were also duplicative

of the prior motion, which is a continuing theme in all of the O'Connells cases.

The Plaintiffs were forced to respond, which unnecessarily increased the cost of Plaintiff's work. Defendant's Reply was entitled "Defendants reply to IRS motion, response and motion to reconsider/vacate attorney fees." Doc. No. 28. Filed 3/20/12. The reply, like the prior motions, was incomprehensible. The next day, the Judge summarily denied all of Plaintiffs motions. (Doc. No. 29.)

A review of the record show that this pattern of filing motions for "relief from judgment" continued up to the transfer of the case to the Montana Supreme Court (in which the district court's decision was upheld) and even after the judgment was confirmed by the Montana Supreme Court. It is likewise a pattern that has continues throughout all of the O'Connells' filings including this matter.

When the case returned from the Montana Supreme Court, there was another round of motions, this time a Rule 60(3) motion made by the O'Connells, which was clearly untimely. The Court denied the second motion to set aside the default, which again went to the Montana Supreme Court. The Montana Supreme Court summarily dismissed thc second appeal. It is a non-cite opinion, but it simply shows that the Supreme Court agreed there was no merit. *Wittich Law Firm, P.C. v. O'Connell*, 2014 MT 23N.

This case is just the first in a long line of cases over the last half decade. If anything, the pattern seen in this first case is just the beginning of the O'Connells abuse of the judicial system, which has significantly increased the district court's workload and certainly vexatiously increased costs for all of the other parties involved.

3. **Valery and Daniel O'Connell v. Department of Labor and Industry, filed in Park County, DV-11-96 and Valery and Daniel O'Connell v. Kris Gray, filed in**

Lewis and Clark County, Judge McCarter, DV-11-762. Appealed to the Montana Supreme Court. *O'Connell v. Gray,* 2013 MT 196N, 372 Mont. 548, 317 P.3d 202.

Both of these cases arose from a wrongful termination complaint filed by Kris Gray against her employers, the O'Connells. Mrs. Gray sought unpaid wages. The O'Connells operated a cellular phone business in Livingston. Mrs. Gray filed her complaint with the Department of Labor and Industry. Compliance Specialist Amy Smith investigated the complaint. *O'Connell v. Gray,* 2013 MT 196N, ¶2 372 Mont. 548, 317 P.3d 202.

Mrs. Smith sent a notice to the O'Connells at two separate addresses. The O'Connells did not respond. On March 11, 2010, Mrs. Smith issued her determination that Mrs. Gray was entitled to wages. Notice of the determination was sent to the same two addresses and the O'Connells requested a redetermination. *O'Connell v. Gray,* ¶2. The O'Connells asserted that Gray was an independent contractor. Mrs. Smith investigated further and determined that Gray was an employee. *O'Connell v. Gray,* ¶3.

The O'Connells did not appeal their redetermination. The Department then applied to the First Judicial District Court for an Order of Judgment for Gray. This was issued and the Department filed a Notice of Satisfaction of Judgment on January 27, 2011. Most would have considered this matter closed. However, the O'Connells did not.

In July 11, 2011, the O'Connells filed DV-11-96 in Park County against the Department. The O'Connells asked the Court to relieve them of the Department's determination. The district court dismissed the action as untimely.

Not stopping there, the O'Connells filed a second case, this time in Lewis and Clark County against Mrs. Gray, the Department of Labor, and the various agents who worked on the

underlying complaint. When referring to the document filed by the O'Connells, the Montana Supreme Court states "O'Connells filed a confusing document denominated 'Civil Petition/Claim for Relief Review, & Redress.'" *O'Connell v. Gray*, ¶6. This Court notes that the Montana Supreme Court's description applies to most of the O'Connells filing in all of their cases. The Montana Supreme Court's confusion mirrors this Court's own confusion regarding many of the O'Connells filings in this case.

The Department treated it as a request to set aside the judgment and argued that it was not timely. The District Court, apparently confused by the O'Connells filing, requested they file "A clear, concise statement of allegation setting forth claims for relief that are independent of the wage claim issues resulting in the default judgment." *O'Connell v. Gray*, ¶6. In response, the O'Connells filed "an equally confusing and nearly identical petition to their original petition." *Id.* The Department moved to dismiss the Department and its agents. The Court granted that dismissal. *Id.*

The case stayed dormant for a year when the O'Connells moved to default Mrs. Gray for failing to answer the second filed complaint. Thc Court denied the motion, and instead dismissed the whole Complaint based on the ruling that the exact same issues were decided by the Sixth Judicial District Court, and thus the matter was barred from re-litigation. *O'Connell v. Gray*, ¶7. The O'Connells appealed and the Montana Supreme Court affirmed. The Court finds that this case clearly demonstrates that the O'Connells simply have no respect for the judicial system.

4. **Valery and Daniel O'Connell v. Glastonbury Landowner's Association and the Board, DV-11-114 (this matter) Filed June 21, 2011.**

If this matter is appealed to the Montana Supreme Court, then this record will speak for itself.

Thus, the court will not go into detail about the voluminous, confusing and duplicative filings in this matter. The Court notes that all of the claims filed in the Amended Complaint by the O'Connells were summarily dismissed in summary judgment orders. They were simple claims requesting that the Court review the plain language of the Association's governing documents and make a determination whether the Association was applying the language correctly.
The Court notes that based on the Court's experience with these types of matters, these are usually very simple, so long as the language in the governing documents is unambiguous.

In this case, the Court found that yes, the language was unambiguous, and yes, the Association was applying the language correctly. This ruling was appealed, and then upheld by the Montana Supreme Court.

Based on experience, typically these cases (contract cases with unambiguous language) have few filings. In this Court's experience, there would typically be a Complaint, Answer with a possible counterclaim, and another answer. Then there would be a scheduling order, and after some basic discovery, a motion for summary judgment on the contract interpretation question, a response and reply, and last, the Judge's Order determining what the language meant. The Court finds that typically, at most, a contract interpretation case would have approximately 20 filings.

In this case, there are over 200 filings. Most of the filings were initiated by the O'Connells. This Court notes that few, if any of the O'Connells filings had merit (there were motions for extension of time and the like that were granted, but noting of "substance" had merit.). Most of the O'Connells' filings were filed erroneously or without any legal support.

For example, (and there are certainly many) before the Association was even served, the O'Connells had a default judgment entered by the Clerk of Court without actually satisfying the legal requirements before entering default. When the Court correctly set aside the default, like

the Wittich case, the O'Connells filed a motion asking the judge to reconsider his decision because he was wrong. There was absolutely no legal basis for this motion. This is just one of the many, many examples of harassing, duplicative and vexatious behavior from the O'Connells in this lawsuit.

Another clear example is found by comparing the claims made in DV-12-164 (cited below) and this case. In both cases, the O'Connells argued that the Board erroneously granted a variance on the Erickson property. Judge Gilbert disposed of that matter by summary judgment in DV-12-164. The O'Connells appealed that decision to the Montana Supreme Court. Judge Gilbert's order was upheld by the Montana Supreme Court. Even though the Erickson matter was clearly disposed of in DV-12-164, the O'Connells continued to argue in DV-11-114 that the Erickson variance was erroneously granted.

The Court finds that the Association had to spend a large amount on attorney's fees to resolve the duplicitous issue in DV-11-114. This behavior is certainly the hallmark of a vexatious litigant.

5. **Valery O'Connell and Glastonbury Landowner's Association v. Laura Boise, DV-11-185, Filed October 14, 2011, Park County.**

In this matter, Valery filed an action, naming herself and the Association as Plaintiffs. Valery is not an attorney, and certainly does not represent the Association. Valery is also not a member of the Board and was never a member of the Board. However, this did not stop Valery from filing a Complaint on behalf of the Association against Mrs. Boise.

Mrs. Boise moved to dismiss this matter soon after being served. This court dismissed this case finding that there was no merit to Valery's complaint.

6. **Daniel and Valery O'Connell v. Glastonbury Landowner's Association, Inc.**

DV-11-193. Filed October 21, 2011, Park County.

This was another action filed by the O'Connells against the Association. Like all of the cases filed by the O'Connells against the Association, the O'Connells claimed that the Association was not correctly interpreting its governing documents. Like the other cases, this case was full of vexatious motions.

For example, soon after the Association answered the O'Connell's compliant, the O'Connells filed a "Plaintiff's Reply to Defendants 'answer' to Civil Complaint & Motion/Brief for Judgment on the Pleadings & Court Order." Two days later, the Court entered an order denying the motion. This type of behavior continued throughout this matter.

In this case, the court finds that they O'Connells continually abused the discovery process. They subpoenaed multiple witnesses for depositions without first checking with counsel for dates and times. Many times the subpoena only gave a few days' notice to the witness and counsel. There were a number of motions to quash the O'Connell's untimely discovery, all of which were granted by the Court. The O'Connells filed voluminous motions, none of which were understandable.

The Court ordered the parties to attend a settlement conference. The O'Connells filed a motion to be relieved of having to go to the settlement conference. The Court denied this motion and the O'Connells appealed the order to the Montana Supreme Court. Richard Bolen, President of the Association at the time of this settlement, testified that in an attempt to work with the O'Connells, the Association extended their hand across the table, and entered into a settlement. Mr. Bolen was a member of the Board for seven years and served as the President of the Board for many of those years. He is a retired attorney from Tennessee.

By the time this matter was settled, there were already 73 items docketed in the file.

According to Mr. Bolen, the hope was that the O'Connells would see that the Association and the Board were trying to find common ground outside of litigation and thus, there would be less threat of litigation from the O'Connells. As part of the settlement, both parties agreed that no one was at fault.

Mr. Bolen testified that if anything, the settlement with the O'Connells increased the O'Connell's vexatious nature. Soon after, the O'Connells were posting on their website that they had won the case and that they would continue to work to oppose the Board and Association.

Alyssa Allen also testified. She served on the Board for over a decade, and is also a past President of the Board. She also testified that since the settlement, the O'Connells continued their threats and rhetoric regarding bringing future suits against the Association and Board.

Once again, this case illustrates the O'Connells vexatious nature.

7. **Daniel and Valery O'Connell v. Glastonbury Landowner's Association, Inc., DV-12-164, filed September 24, 2012 Park County and Daniel and Valery O'Connell v. Glastonbury Landowner's Association, Inc., DV-12-220, filed initially in Gallatin County, move to Park County and combined with DV-12-164.**

In both of these cases, the O'Connells made claims that the Association was once again not interpreting their governing documents correctly. Thus, the Association was violating their own rules when it, 1. Granted a variance to the Ericksons, 2. Improperly calculated the annual assessment, 3. Improperly retained Minnick Management; and 4. Incorrectly allocated the votes a member could cast.

The O'Connells filed the first action in Park County. Then, while the first action was pending, they filed an action in Gallatin County. The Gallatin County and Park County actions

contained similar claims. The Association moved to change the venue of the Gallatin County case as the parties, the contracts, and the claims all took place in Park County. That motion was granted, and Park consolidated the case.

All claims made by the O'Connells were resolved on summary judgment in favor of the Association. They were addressed by Judge Gilbert in a summary fashion. The Judge found no merit in any of the O'Connells' claims. The O'Connells appealed the district court decision.

The Montana Supreme Court upheld the district court in an unpublished disposition. O'Connell v. Glastonbury Landowners Ass'n, Inc., 2013 MT 359N, 373 Mont. 442, 318 P.3d 174.

The fact that the O'Connells filed suit in both Park and Gallatin Counties, especially since they had already tried that tactic and failed in the Laura Boise case, shows that the O'Connells will simply not learn from past mistakes, and will continue to file claims against the Association that have no legal basis.

8. *In re Guardianship of S.M.*, 2014 Mont. 101N, 375 Mont 552, 246 P.2d 1132, initially filed in Gallatin County.

This was a guardianship filed in Gallatin County, MT. S.M. is Mrs. O'Connell's mother. S.M. suffers from dementia. Mrs. O'Connell filed a petition to be appointed as S.M.'s guardian and conservator. Mrs. O'Connell's sister, Chris Sheehan (Mrs. Sheehan) intervened. Judge Salvagni found that there was no question that S.M. needed a guardian/conservator.

The visitor in the case recommended that the Court appoint a third party because of "family dynamics" and "communication difficulties" between the sisters. *In re Guardianship of S.M.*, ¶3. However, S.M. did not have the financial means to hire a third party. Therefore, Judge Salvagni appointed Mrs. O'Connell conservator and Mrs. Sheehan guardian.

Instead of appealing, Mrs. O'Connell repeated her performance in the Glastonbury cases and "filed a flurry of motions seeking Sheehan's removal as guardian and "O'Connell's appointment as guardian." *In re Guardianship of S.M.,* ¶4. She then amended her original petition, filed a motion to be appointed as guardian, and a motion for the removal of Mrs. Sheehan. Then, before the district court could rule, Mrs. O'Connell appealed to the Montana Supreme Court.

The Montana Supreme Court, in a non-cite opinion, summarily dismissed Mrs. O'Connell's appeal. *In re Guardianship of S.M.,* ¶10. While this case should not be cited for law, it is simply one other example of how the O'Connells are vexatious litigants.

II. THE O'CONNELLS BEHAVIOR AT ASSOCIATION MEETINGS.

Since filing the first case, the O'Connells have continually attended Board of Director meetings, which pursuant to the Bylaws, must be open to all of the membership. Mr. Bolen, Ms. Allen and the current Board President, Dennis Riley, all testified that the O'Connells attend most of the Board meetings. Board meetings, pursuant to the governing documents, must be open to the membership. Valery in particular is incredibly disruptive, and they both threaten the Board and Association continually with lawsuits. The Court finds that at these meetings, for more than half a decade, the O'Connells continually threaten to file new lawsuits.

According to Mr. Bolen, Ms. Allen and Mr. Riley, almost every time the Board makes a decision, the Board is warned by the O'Connells that it could result in a new lawsuit being filed by the O'Connells. These threats have had a significantly negative impact on the Board and Association.

One of the greatest impacts is to Board membership. All three testified that each time the O'Connells threaten to sue, more Board members are intimidated by the threat. Directors have resigned from the Board because of O'Connells threat of the lawsuits. Others feel that they

simply cannot vote on an issue, because of the chilling effect of the O'Connell threats. Mr. Bolen testified that recruitment to the Board was difficult because others do not want to deal with the O'Connells.

Ms. Allen and Mr. Riley testified that now, before voting, many times the Association requests that the Association attorney write a legal opinion on the vote, to ensure that the vote would be "legal." Usually, these matters are very simple and would not be considered important enough for a legal opinion. The Association's costs are driven up because of the necessity of protecting the Association from potential threatened lawsuits.

The Court finds that the O'Connells' behavior outside of the courtroom is further justification for the sanctions requested by the Association and Board. In order to continue to serve their members is a positive and productive manner, the Board and Association must be able to do so without the constant threat of litigation.

III. THE ASSOCIATION'S INSURANCE.

A non-profit Board and Association may purchase errors and omissions insurance which protects the Association from the costs of suit should the Association be sued by a member. However, because of the slew of cases filed by the O'Connells, Ms. Allen testified that the Association's insurance company refused to renew coverage in 2014. Furthermore, other insurance companies refused to write policies for the Association. Finally, Ms. Allen testified that the Association was offered coverage by one insurance company, with a high deductible, and a rider that it would not cover any lawsuits filed by the O'Connells. The Court notes that Exhibit B was consistent with this testimony.

Ms. Allen testified that after review of the offer and looking at the cost versus benefit, the Board determined that it made no sense to purchase this insurance. Instead, the Board created a

legal fund to set aside money to cover the cost of litigation if the O'Connells sued again.

The Court finds that the loss of insurance is a direct result of the O'Connells vexatious filings. Being a non-profit corporation, when sued, the Association must be represented by an attorney. Because of the duplicative and vexatious filings, the cost of these suits is far more than one would expect from similar lawsuits involving non-vexatious litigants.

All Associations should be able to find insurance. The fact that the Association was denied insurance specifically because of the vexatious nature of the O'Connells is further justification to grant the sanction requested by the Association.

IV. COST OF LITIGATION

Ms. Allen testified that as Board President and then Secretary for the Board, she is aware of the cost, both paid by the Association and paid by the Association's insurance company thus far to defend against the various O'Connell suits. Ms. Allen did not have the exact number, but she testified that it was $120,000.00-$130,000.00. The court finds that Ms. Allen's testimony is credible. In all of the cases, the O'Connells filed many incomprehensible, duplicative and unnecessary motions and other "requcsts" that the Association had to respond to. This drove up litigation costs significantly, even though the underlying issues were very simple, and subject to summary judgment.

V. THE O'CONNELL CHILDREN.

At the beginning of December 2016, Christal O'Connell, who just turned 18, filed a new Complaint that contains almost identical claims that her parents attempted to file in the DV-12-114 case. The space in the header for the name of the Plaintiff (which was Valery and Daniel O'Connell) is even whited out and Christal's name was inserted.

At this time, the Association has had no contact with Christal about the matter. Instead, her

mother Valery has answered all emails and correspondence sent from the Association regarding the matter. Mr. Bolen testified that Christal and her sisters live with their parents. According to Mr. Bolen, all of the O'Connell children are homeschooled by the O'Connells. They have very little contact with the outside world at all. The Court notes that all of the O'Connell children are titled owners to the O'Connells' Glastonbury property, and as such, are members in the Association.

Mr. Riley testified that since August 2016, Valery and Christal both have attended monthly membership meetings. At those meetings, it is clear to Mr. Riley that Christal is very uncomfortable being present, and that Valery urges her daughter to stand up and speak to the Association. Typically, in the end, Christal does not speak and Valery does the speaking. It is Mr. Riley's opinion that Christal is simply an extension of her mother, and truly has no voice of her own.

The Court finds that Christal and the other O'Connell children are proxy for the O'Connells. It is clear to the Court that as December 18, 2013, a quit claim was filed adding the O'Connell children to the deed. That was after the Association counterclaimed to add a claim to determine that Valery and Daniel O'Connell were vexatious litigants. It is clear to the Court, based on the testimony from Mr. Riley, a review of Christal's filings and the timing of the deed, that the O'Connells planned to use their children as proxies, knowing that they would be determined vexatious litigants. This is consistent with this Court's multiple dealings with the O'Connells. While this behavior would typically shock this Court, it is sadly consistent with the Court's intimate knowledge of their gamesmanship. Therefore, the Court finds that if not included in a sanction, the O'Connells, through their children, will continue to file vexatious lawsuits against the Association and/or against the Board of Directors.

CONCLUSIONS OF LAW

Any conclusions of law contained in the foregoing Findings of Fact are hereby incorporated into these Conclusions of Law.

Issue 1: Are the O'Connells vexatious litigants?

The Montana Supreme Court adopted a five part test to examine whether a pre-filing order (such as requested here) is justified. The Court must determine:

a. The O'Connells' history of litigation and, in particular, whether it has entailed vexatious, harassing or duplicative lawsuits;
b. The O'Connells' motive in pursuing the litigation; e.g., whether the O'Connells have an objective good faith expectation of prevailing;
c. Whether the O'Connells are represented by counsel;
d. Whether the O'Connells have caused needless expense to other parties or have posed an unnecessary burden on the courts and their personnel; and
e. Whether other sanctions would be adequate to protect the courts and other parties.

Motta v. Granite County Com'rs, 2013 MT 172, ¶20, 370 Mont. 469, 304 P.3d 720.

In this case, the O'Connells clearly meet the test.

a. The O'Connells' have a long history of litigation which certainly has entailed vexatious, harassing or duplicative lawsuits.

As shown by a review of the cases filed in Montana by the O'Connells, it is obvious that the O'Connells have filed many, many unnecessary filings in each of their complaints that have no merit. These filings simply raise the cost for the Association to defend itself for what is obviously, in each case, a frivolous lawsuit.

Not only are there an extraordinary amount of filings, but the complaints are also without merit. Some of these complaints involved the exact same issues as previous filings that were already resolved in the other lawsuit. Others were simply frivolous suits filed to harass the Association. The record is clear, the O'Connells are vexatious litigants.

b. The O'Connells' did not have a good faith expectation of prevailing in this, or any matter filed by them.

The Court concludes that the O'Connells did not have a good faith reason for filing the above mentioned cases. While the O'Connells may say that they are just trying to protect the membership from the might of the Association, as none of the filings have any merit, the O'Connells are clearly just increasing attorney's fees for the membership, costing the Association time, worry and funds and unnecessarily increasing the Court's own workload. This Court and others have warned the O'Connells about their filings and yet, they continue to file more and more briefs that have no legal basis. Furthermore, they continue to file the same briefs; for example, a motion to be relieved of the Court's order) even after being told there is no legal basis for such a request. This behavior shows that the O'Connells are not filing their complaints, motions and their briefs, with good faith.

c. The Court concludes that the O'Connells are not represented by Counsel.

This is simply a box checked. The fact that they do not have counsel is indicative of a vexatious litigant.

d. The O'Connells have clearly caused needless expense to other parties, and have placed an additional, unnecessary burden on the Court.

Cases involving questions of contract interpretation are usually relatively simple cases, where unless the contract is ambiguous, there are few filings, little discovery and the case is

resolved in one or two summary judgment motion(s). That is not the case in any of the O'Connells' cases. While the Court found, in every one of the cases involving the Association, that the O'Connells claims should be summarily dismissed, those cases have literally hundreds of filings generated by the O'Connells. There is no reason for this other than the vexatious nature of the O'Connells.

The O'Connells' vexatious nature has also resulted in an additional burden on the Court. The Court has had to wade through multiple, incomprehensible filings in order to rule on the multitude of motions, only to be asked to set aside the Court's order because the Court obviously did not understand the law. Then, when the Court denied those motions, the O'Connells untimely appeal those rulings which results in the Court having to prepare the filing for the Supreme Court. This behavior is clearly vexatious.

The Court concludes that the O'Connells are vexatious litigants pursuant to the four part test outlined by the Montana Supreme Court.

Issue 2. Is the requested for sanction appropriate based on the O'Connells history of filings?

The Association has narrowly tailored its request to limit the sanction to filings against the Association and its Board members, past and present, in any Montana Court. The Association and its Board members are who seem to bear the brunt of the O'Connells filings. The Court concludes that a sanction where the O'Connells must receive a Montana Court's approval before filing any action against the Association and/or its Board Members is what is required to protect the injured parties.

Issue 3: Should This Sanction Include all of the O'Connell Children?

This is the most difficult of the issues presented by the Association and Board. However,

after hearing testimony and reviewing the recent filing made by Christal O'Connell, the Court cannot help but conclude that Christal is merely a proxy for her parents. Furthermore, based on the O'Connells past behavior, the Court finds that the O'Connell will certainly continue using their children to file actions against the Association and Board in the future.

It is clear that Christal O'Connell's first complaint is nearly identical to her parents' proposed amended complaint that was rejected by the Court in DV-11-114. The fact that Valery and Daniel's names were clearly whited out and Christal's was substituted also shows that Christal is simply a proxy for her parents. Last, the fact that as of today, the only person to communicate with the Association is Christal's mother, Valery, also leads to the conclusion that Christal is simply a proxy for her parents. Therefore, the Court must sanction all three O'Connell children in the same manner, since it is clear that the O'Connells will use that loophole to continue their harassing litigation. Therefore, the Court concludes that it must include the O'Connell children in this sanction.

Issue 4: Should the Association be awarded attorney's fees and costs?

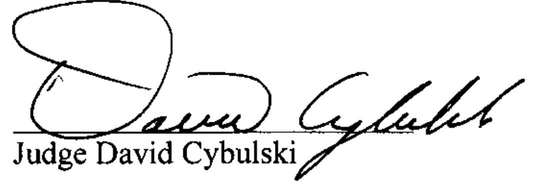
Pursuant to *Motta v. Granite County Com'rs*, 2013 MT 172, ¶29, 370 Mont. 469, 304 P.3d 720, the Court may award attorney's fees and cost if the Court declares one or more of the parties in a matter to be vexatious. Furthermore, an attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct. Mont. Code Ann. § 37-61-421The Court concludes that pursuant to Montana code and the equitable doctrine, the Association and the Board of Directors are awarded their attorney's fees and costs.

ORDER

It is HEREBY ORDERED:

1. That Valery, Daniel, Christal, Shannon and Vesta O'Connell are declared vexatious litigants.
2. That prior to filing any action against the Glastonbury Landowner's Association, Inc. and/ or any Board Member of the Association, past or present for matters relating to the Board Member's duties/decisions/work for/with the Association, Valery, Daniel, Christal, Shannon and/or Vesta O'Connell must obtain the approval of a Montana Court.
3. The Court notes that all Montana courts should pay close attention to any filing made by Christal, Shannon and/or Vesta O'Connell, and to allow those filing should the Court determine that the filing is made by Christal, Shannon and/or Vesta O'Connell on their own as opposed to a filing made as a proxy of their parents.
4. The Association and the Board of Directors shall submit an affidavit of attorney's fees and costs by April 1, 2017. The O'Connells shall respond, if necessary, in the time allowed under the rule. The Court notes that any response made by the O'Connells should be an objection to the actual amount of the attorney's fees and costs. Should the O'Connells respond, then the Court will set a hearing on the issue of fees. Should the O'Connells not respond, the Court will enter a final order which will include the costs and attorney's fees.

Dated this 13th day of March, 2017



Judge David Cybulski

cc: Daniel and Valery O'Connell
Michael P. Heringer, Seth M. Cunningham
Alanah Griffith