# STATE OF MICHIGAN

# COURT OF APPEALS

DAVID J. SCOTT,

Plaintiff-Appellant,

v

MARK GATESMAN,

Defendant-Appellee.

and

GATESMAN & SPICKARD, PLC,

Defendant.

UNPUBLISHED
February 2, 2012

No. 302224
Livingston Circuit Court
LC No. 10-025661-NM

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals the trial court's grant of defendants' motion for summary disposition. In 1997, Judge William E. Collette entered an opinion and order in *Scott v Michigan Department of Corrections*, Livingston Circuit Case No. 97-15667-AA, which barred plaintiff from "filing any future lawsuits in any Michigan Circuit Court or any Michigan Court of Claims without first seeking and obtaining permission from the Chief Circuit Court Judge and Court of Claims Judge Peter D. Houk[1]." The restriction was ordered due to plaintiff's "repeated and consistent filing of frivolous suits." Plaintiff filed a lawsuit in this case against defendants—attorney Mark Gatesman, and Gatesman & Spickard PLC. Defendants denied the allegations in plaintiff's legal malpractice complaint and filed a motion for summary disposition. Judge Collette granted defendants' motion stating that the filing of this lawsuit had not been approved by Judge Houk as required by the 1997 order. We affirm.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We also review de novo as a

[1] At that time, Judge Houk was the Chief Circuit Court Judge in Ingham County, where Michigan's Court of Claims is also located.

question of law the determination whether a party has been afforded due process. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

Generally, an order pursuant to the court's inherent powers cannot completely foreclose a litigant from initiating an action in court. *Ortman v Thomas*, 99 F3d 807, 811 (CA 6, 1996). However, "the right of access to the courts is neither absolute nor unconditional," *Tripati v Beaman*, 878 F2d 351, 353 (CA 10, 1989), and "it is permissible to require one who has abused the legal process to make a showing that a tendered lawsuit is not frivolous or vexatious before permitting it to be filed," *Ortman*, 99 F3d at 811. "There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation." *Feathers v Chevron USA, Inc*, 141 F3d 264, 269 (CA 6, 1998).

Plaintiff argues that Judge Collette lacked authority to enter an order of dismissal because Judge Collette was not the judge assigned to his case. This argument is unpersuasive. As a general rule, a "circuit court judge should not enter orders in a case assigned to another circuit court judge." *Schell v Baker Furniture*, 461 Mich 502, 515 n 13; 607 NW2d 358 (2000). While it is true that an order of dismissal issued by a judge who was not assigned to the case must be set aside, in this case, the register of actions shows that the case was reassigned from Livingston Circuit Judge Michael P. Hatty to Judge Collette on January 5, 2011. *Id.* Apparently through inadvertence or mistake, an order of reassignment was not entered into the record at that time. However, on July 8, 2011, Judge Hatty issued an order *nunc pro tunc* reassigning the case to Judge Collette. "The function of such an order is to supply an *omission in the record* of action previously taken by the court but not properly recorded . . . ." *Sleboede v Sleboede*, 384 Mich 555, 558-559; 184 NW2d 923 (1971) (emphasis in original). Therefore, contrary to plaintiff's argument, Judge Collette was the judge assigned to the case and had authority to enter a dispositive order.

Next, plaintiff argues that Judge Collette's order must be set aside because Judge Collette was disqualified from sitting on the case. Plaintiff's argument is based on the fact that Judge Collette recused himself from an earlier case relating to plaintiff. This argument is without merit. A judge is disqualified when he cannot hear a case impartially. MCR 2.003(B). The party seeking disqualification of a judge must overcome a heavy presumption of judicial impartiality. *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006). Plaintiff has failed to overcome that presumption. That Judge Collette recused himself in a prior case involving plaintiff does not mandate recusal in all subsequent cases filed by plaintiff.

Plaintiff also argues that Judge Collette's order of dismissal denied him his due process rights to notice and the opportunity to be heard. We disagree. Generally, due process in civil cases requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision-maker. *Hinky Dinky Supermarket, Inc, v Dep't of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004). Here, because plaintiff was barred from filing any action in any circuit court without seeking and obtaining approval from the chief circuit court judge, and because plaintiff failed to seek and obtain permission from the chief circuit court judge before initiating this legal malpractice action, his complaint was void ab initio.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens