

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001371-MR
AND
NO. 2012-CA-001401-MR

EDWARD H. FLINT

APPELLANT

v. APPEALS FROM JEFFERSON CIRCUIT COURT
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 12-CI-003106

COACH HOUSE, INC.

APPELLEE

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Edward H. Flint brings these *pro se* appeals from August 3, 2012, and August 8, 2012, judgments of the Jefferson Circuit Court permanently enjoining Flint from filing additional civil actions against Coach House, Inc.

(Coach House) without prior court approval and awarding Coach House \$11,579.20 in attorney's fees and costs. We vacate and remand.

On June 4, 2012, Coach House filed an action against Flint in the Jefferson Circuit Court. Therein Coach House alleged, *inter alia*, that Flint:

3. During the past five years [Flint] acting pro se and without probable cause, has engaged in a course of conduct in which he has filed six (6) separate lawsuits against the Homeowners Association and/or the former or present unpaid members of its board of directors.

4. In each of the lawsuits filed against the Homeowners Association, Flint also sued and requested damages from the individual members of the Homeowners Association board of directors and its managing agent.

5. The aforementioned lawsuits were enumerated and disposed of in the trial court as set forth below:

- a. 07-CI-10558 – summarily dismissed
(dismissal sustained on appeal)
- b. 09-CI-004506 – summarily dismissed
(dismissal sustained on appeal)
- c. 10-CI-006750 – summarily dismissed
(dismissal sustained on appeal)
- d. 11-CI-05284 – summarily dismissed
(dismissal sustained on appeal)
- e. 12-CI-01614 – Motion For Summary Judgment
under submission
- f. 12-CO-06403 – filed on May 18, 2012

6. Flint further abused the justice system and wrongfully damaged the Homeowners Association, its individual board members and its managing agent by causing them to defend against multiple and meritless pro se appeals of the aforementioned lawsuits.

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8. Flint has also filed a pro se lawsuit against an attorney for the Homeowners Association, establishing a potential conflict of interest whereby the Homeowners Association has been deprived of the services of an attorney of its choosing.

9. Related to the lawsuit against the Homeowners Association's former attorney, Flint acting pro se filed a meritless lawsuit in the U.S. District Court for the Western District of Kentucky against Kentucky Governor Steve Beshear, Kentucky Supreme Court Justices Mary C. Noble and Lisabeth H. Abramson; and Kentucky Supreme Court Special Justices Bradley P. Rhoads and John S. Reed (Civil Action No. 3.11 CV-276-S). The lawsuit was summarily dismissed for lack of subject matter jurisdiction.

10. In order to further annoy, harass and cause damage to the Homeowners Association, Flint has,

- a) After harassing a former board member and officer into resigning, Flint filed suit against him and then threatened to sue the Homeowner Association if its insurance carrier picked up the defense costs;
- b) Threatened a board candidate by stating that if she were elected he would more than likely sue her even if she didn't do anything that he thought was wrong;
- c) On May 4, 2012[,] threatened to sue a board member unless she resigned from the board within ten (10) days. True to his word Flint did file suit against her.
- d) As recently as May 30, 2012[,] threatened to sue another board member unless she resigned from the board within ten (10) days.

11. In spite of cease and desist notices forwarded to Flint on October 18, 2011[,] and again on April 24, 2012, Flint has continued to harass and annoy the Homeowners Association and its board members by threatening and filing repetitious and frivolous lawsuits.

12. In addition to the annoyance and anguish that Flint continues to inflict on the Homeowners Association and the individual unpaid members of its board of directors, the homeowners in general have been and will continue to be damaged in the following ways:

- a) qualified individuals have declined to serve as officers and directors for fear of being sued thus depriving the Homeowners Association of their services;
- b) the Homeowners Association's former insurance carrier refused to renew coverage necessitating that the Homeowners Association obtain alternate coverage with substantially higher premiums;
- c) owners wishing to sell their condominium units are required to disclose all pending and threatened lawsuits on their Section 52 disclosure forms; and
- d) maintenance fees paid by the owners have been and continue to be expended in defending against repetitious and frivolous lawsuits.

13. [Flint's] aforementioned actions have caused and, unless enjoined, will continue to cause irreparable harm for which there is no adequate remedy at law.

Verified Complaint at 1-4 (citations omitted).

Eventually, the circuit court conducted a hearing upon whether to grant Coach House an injunction against Flint. After Coach House presented its arguments at the hearing, the circuit court refused to allow Flint to present any argument because he was not an attorney and was proceeding *pro se*. Thereupon, the circuit court summarily granted a permanent injunction against Flint enjoining him from filing any actions against Coach House, its officers, employees, or attorneys without prior court approval. The circuit court also awarded Coach

House attorney's fees and costs associated with the action (\$11,579.20). These appeals follow.

Flint contends that the circuit court erred by granting the permanent injunction and by awarding Coach House \$11,579.20 in attorney's fees and costs. For the following reasons, we conclude that the injunction and award of attorney's fees/costs must be vacated and that Flint must be afforded the opportunity to present arguments before the circuit court.

It is well-established that a court may enter an injunction restricting a *pro se* plaintiff from filing abusive, frivolous, or repetitious actions. *Calhoun v. Lenahan*, 261 Ky. 601, 88 S.W.2d 288 (1935); *Cardwell v. Commonwealth*, 354 S.W.3d 582 (Ky. App. 2011); see also 42 Am. Jur. 2d *Injunctions* § 181 (2ed. 2014). The power to grant such an injunction rests in the equity jurisdiction of the court. *Calhoun*, 88 S.W.2d 288. However, a permanent injunction may only be granted after a hearing on the merits of the case. 43A C.J.S. *Injunctions* § 359 (2014).

In this case, it was clear error for the circuit court not to permit Flint to present arguments at the hearing simply because he was proceeding *pro se*. A *pro se* litigant must be given full access to the court system. Hence, the circuit court committed reversible error. Accordingly, we vacate the August 3, 2012, and August 8, 2012, judgments and remand for the circuit court to conduct a hearing.¹

¹ Our Opinion should not be misconstrued as passing upon the merits of the underlying action. We merely hold that it was reversible error to render a permanent injunction without permitting Edward H. Flint to advance any arguments at the hearing because he was proceeding *pro se*.

At the hearing, the circuit court may not prohibit Flint from presenting arguments merely because he is proceeding *pro se*.

For the foregoing reasons, the judgments of the Jefferson Circuit Court are vacated and remanded for proceedings consistent with this Opinion.

CLAYTON, JUDGE, CONCURS.

MAZE, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

Edward H. Flint, *Pro Se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Harold W. Thomas
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