

{¶1} Appellant, Samuel L. Buoscio, pro se, appeals the judgment entry of the Mahoning County Court of Common Pleas, Probate Division, dated October 8, 2008, denying his petition to increase his monthly distribution from a testamentary trust by \$1,000 for a five-month period.

{¶2} However, the Summit County Court of Common Pleas declared Appellant to be a “vexatious litigator,” pursuant to R.C. 2323.52, in *Buoscio v. Oborn*, Case No. CV 2006-05-3135, on December 11, 2006. Accordingly, before we are permitted to consider Appellant’s substantive arguments in this appeal, we must first determine whether Appellant has complied with the requirements set forth in R.C. 2323.52.

{¶3} According to R.C. 2323.52(D)(3), a person who has been designated a “vexatious litigator” may not institute or continue any legal proceedings in a court of appeals, or make any application other than an application for leave to proceed pursuant to subsection (F)(2) of the statute. Subsection (F)(2) reads, in pertinent part:

{¶4} “A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the

court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application.”

{¶15} R.C. 2323.52(I) reads, in its entirety:

{¶16} “Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.”

{¶17} Last year, the Ohio Supreme Court addressed the application of R.C. 2323.52 in *State ex. rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500. In that case, a writ of prohibition was filed in the Ohio Supreme Court to prevent a court of appeals from exercising further jurisdiction over the appeal of the respondent, Larry Berman, from an order designating him to be a vexatious litigator.

{¶18} Without first seeking permission of the appellate court to institute the appeal, Berman filed a notice of appeal from the vexatious litigator order. The appellees in the case filed a motion to dismiss the appeal based upon R.C. 2323.52(I). In response to the motion to dismiss, Berman filed his R.C. 2323.52(F)(2) application for leave to proceed, which was granted by the appellate court.

{¶19} In granting the writ of prohibition, the Supreme Court held that the “leave to proceed” rule announced in R.C. 2323.52(F)(2) is applicable to all actions in a court of appeals, including the direct appeal of a judgment entry designating a party

to be a vexatious litigator. Id. at ¶26. Pertinent to the above-captioned case, the Ohio Supreme Court further held that “when relators alerted the court of appeals to Berman’s failure to comply with these provisions, the court of appeals was required to dismiss the appeal pursuant to R.C. 2323.52(I).” Id. at ¶24. Of equal import, the Ohio Supreme Court wrote that the appellate court erred in granting Berman’s “belated” application for leave to proceed because it was filed after the notice of appeal and after the time to appeal had expired. Id. at ¶27.

{¶10} The same is true in the case sub judice. Appellant did not file an application for leave to proceed before this Court either before he filed his notice of appeal or during the pendency of this appeal. Even if we liberally construed Appellant’s pro se brief in this matter as an application to proceed on appeal, the application would be untimely because the brief was filed on December 16, 2008. For the foregoing reasons, Appellant’s appeal is dismissed.

{¶11} Costs taxed against Appellant.

Waite, J., concurs.

Vukovich, P.J., concurs.

Trapp, J., concurs.