UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILIP C. BELLFY, PhD,

Plaintiff,

v.

Case No. 2:23-cv-51
Hon. Paul L. Maloney
Magistrate Judge Maarten Vermaat

MICHAEL T. EDWARDS and
JOCELYN K. FABRE,

Defendants.

Philip C. Bellfy, PhD
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DEFENDANT MICHAEL T. EDWARD'S
BRIEF IN SUPPORT OF MOTION TO DISMISS

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STATEMENT OF ISSUES PRESENTED

I. Should the Complaint be dismissed for lack of standing where Plaintiff did not suffer an injury and was not a party to the underlying tribal action?

Defendant answers, "Yes."

Plaintiff presumably answers, "No."

II. Should the Complaint be dismissed where the Defendant attorney was an adversary to Plaintiff in the underlying tribal action and owed no duty to Plaintiff?

Defendant answers, "Yes."

Plaintiff presumably answers, "No."

III. Should the Complaint be dismissed where Plaintiff was provided notice of the underlying dispositive motion and the date of the hearing?

Defendant answers, "Yes."

Plaintiff presumably answers, "No."

CONTROLLING AUTHORITY FOR RELIEF SOUGHT

Garland v. Orlans, PC, 999 F.3d 432, 436 (6th Cir. 2021)

Friedman v. Dozorc, 412 Mich. 1, 20; 312 N.W.2d 585 (1981)

TCR 82.114(2)(b)

Fed. R. Civ. P. 5(C)

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BRIEF IN SUPPORT

Plaintiff Philip C. Bellfy was formerly authorized to serve as a lay advocate in the Sault Ste. Marie Chippewa Tribal Court. As a result of his improper conduct related to the underlying case, those privileges were revoked. This frivolous lawsuit is an example why.

First, despite his claim of relief seeking over $1 million, Bellfy does not have standing and did not suffer an injury. Bellfy was not a party to the underlying suit. He was a lay advocate for the putative Plaintiffs. If anyone was injured (no one was injured), it was the parties. Assuming arguendo that there was any procedural defect, the remedy would have been for Bellfy to file an appeal in the underlying case on behalf of the putative Plaintiffs. This lawsuit seeks to usurp rights that belong exclusively to the parties whom Bellfy said he was representing.

Second, Defendant Michael T. Edwards was involved as an attorney in the underlying case on behalf of the underlying Defendants. Because Edwards represented opposing parties, he owed no duty whatsoever to Bellfy or any of Bellfy's "clients." If Edwards acted improperly (he did not), the remedy would have been for Bellfy to file an appeal in the underlying case on behalf of the parties.

Third, Bellfy received proper notice both of the Motion to Dismiss and the hearing date. Bellfy chose not to answer. As a result, his clients' case was dismissed. Any remedy would have been for Bellfy to file an appeal in the underlying case on behalf of the parties.

STATEMENT OF FACTS

On or about 12/16/21, Bellfy, as a Lay Advocate for the underlying Plaintiffs, filed a Tribal Summons and Complaint in the Sault Ste. Marie Tribal Court against the Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians (**EX A**). The Complaint listed the underlying Plaintiffs as " 'John Does,' and 'Jane Does,' and all enrolled Members of the Sault

Ste. Marie Tribe of Chippewa Indians similarly situated" (*id.*). The Complaint listed Bellfy's address as "5759 S. Ridge Rd., Sault Ste. Marie, MI 49783" and his email as Phil.bellfy@gmail.com (*id.*). The Complaint did not identify Bellfy as a party Plaintiff (*id.*). The Complaint sought declaratory relief, not damages, and asked for a declaration to declare Sault Tribe Code §§ 10.110(1)(c), (e), and (i) as unconstitutional and in violation of the Tribal Constitution (*id.*).

On 1/17/22, Edwards filed an Appearance and Answer to the Complaint on behalf of the Election Committee of the Sault Ste. Marie Tribe of Chippewa Indians (**EX B**). These documents were mailed and emailed to Bellfy at the respective address and e-mail address he listed in the underlying Complaint (*id.*). The Answer noted that the Complaint did not list any actual Plaintiffs, and denied any wrongdoing (*id.*). The Answer asked the Tribal Court to dismiss the matter (*id.*).

On 1/18/22, Edwards filed a Notice of Hearing and provided a check in the amount of $20 for the Motion to Dismiss (**EX C**). The Notice of Hearing stated:

> PLEASE TAKE NOTICE that a hearing on Defendant's Motion to Dismiss will be brought on to be heard before the Hon. Jocelyn K. Fabry at the Sault Ste. Marie Chippewa Tribal Court, on the 1st day of March 2022 at 3:00 p.m." [*Id.*]

As required by the Court Rules, this Notice of Hearing was mailed to Bellfy at his address of record (*id.*). This mail was not returned to Edwards as undeliverable. Bellfy appears to be correct that this Notice of Hearing was not e-mailed to him. This was an unintentional oversight. Email service is not required under the applicable Court Rule. Fed. R. Civ. P. 5.

There is no dispute that Bellfy received the Answer with its request to dismiss the Complaint. On 1/25/22, Bellfy filed an Amended Complaint that responded to the Defendant's allegations in the Answer (**EX D**). In particular, the Amended Complaint added Jacob Wolf as a

named Plaintiff (but not Plaintiff himself) in response to the argument that there were no named Plaintiffs (*id.*). In addition, Bellfy's Amended Complaint listed as Defendants the individual members of the Board of Directors in response to various arguments in the Answer that Bellfy received (*id.*). **Bellfy's Amended Complaint asked the Tribal Court not to consider the Motion to Dismiss** until it decided the issues raised in the original Complaint and also requested *ex parte* relief (*id.*). The Amended Complaint does not contain a prayer for monetary relief (*id.*).

On 2/9/22, Edwards filed an Appearance (on behalf of the new Defendants), Answer to First Amended Complaint, Response to Motion to Strike, Response to Amended Motion for Summary Judgment, and Response to Motion for Stay (**EX E**). These documents were emailed and mailed to Bellfy at his address and email address of record (*id.*). The Answer to First Amended Complaint requested dismissal of all the requested relief, and denied any wrongdoing (*id.*). The Response to Motion to Strike reiterated that the Tribal Court lacked jurisdiction because Bellfy had not secured a waiver of sovereign immunity by the Tribal Board of Directors (*id.*).

Of crucial importance are Defendants' Response to Plaintiffs' Amended Motion for Summary Judgment and Defendants' Amended Motion for Summary Judgment (**EX E**). This pleading specifically mentioned the hearing date of March 1, 2022, that had been mailed to Bellfy previously (**EX C**). **The amended dispositive motion stated that it was "scheduled to be heard on March 1, 2022."** (**EX E**) Unsurprisingly, Bellfy did not email or mail Edwards with any question about that March 1, 2022, hearing date because that Notice of Hearing had already been mailed to him (**EX C**). The amended dispositive motion argued that the Tribal Court lacked jurisdiction since the Board of Directors had not waived sovereign immunity and no federal law permitted the Tribal Court to exercise jurisdiction (**EX E**).

Bellfy did not appear at the hearing on 3/1/22. The Tribal Court issued an Order granting the Motion to Dismiss (**EX F**), ruling that "this Court lacks jurisdiction to address Plaintiffs' grievances as Defendants are cloaked with sovereign immunity."

Two days later, on 3/3/23, Bellfy filed a "Request for Expedited Consideration." This Request did not mention any concerns about notice of the hearing date of 3/1/23, but instead addressed the merits of the sovereign immunity argument (**EX G**). The Court emailed Bellfy back the same day, indicating that the matter was closed, and that Bellfy's motion for reconsideration would not be accepted for filing (**EX H**).

At this point, Bellfy's filings became increasingly erratic. On 3/4/23, Bellfy emailed the Court (and several others) a second motion for reconsideration, stating:

> Judge Wichtman,
>
> I understand that this Appeal may not follow the Tribe's protocol, but, in all honesty, the Trial Court abandoned protocol from the very first day that this Complaint was filed.
>
> Also, in all honesty, I have no expectation that the Appeal Court will overturn the Court's Order of Dismissal and, and sign the attached Order.
>
> Lastly, given the election schedule, it is imperative that you make your decision immediately (see PPS, below). [**EX I**.]

Attached to this email was the previously rejected Motion for Expedited Consideration (*id.*). No mention was made of any defect in notice of the hearing on Defendants' Motion to Dismiss.

It gets stranger. On 3/7/23, Bellfy dropped off an ex parte envelope for Judge Fabry marked "Personal and Confidential" (**EX J**). Inside was a typed letter. Although the letter omitted any reference to improper notice of the dispositive hearing (the premise of the instant Complaint), the letter attacked the Judge's ethics and accused the Judge of criminal conduct:

> Once upon a time, there was a Judge who was confronted by two Orders, simultaneously. Signing one would require her to commit

> perjury, and, additionally, the substance of that Order is legally indefensible. Furthermore, by signing that Order, she would be acting in direct conflict with her Oath of Office, and her Lawyer's Oath, and, most importantly, in violation of the Supremacy Clause of the US Constitution. If she signed this Order, she would, therefore, be putting her job and her law license in jeopardy. At the same time, signing the other Order is mandated by those same Oaths and, again, most importantly, mandated by the Supremacy Clause and legal precedent. She could resolve this legal, moral, and professional dilemma by vacating the perjured Order, and signing the other. [**EX K**.]

Unsurprisingly, this diatribe cost Bellfy his privilege of acting as a Lay Advocate in the Tribal Court (**EX L**). Judge Fabry found that Bellfy had hand-delivered the letter, personally giving it to the Court Clerk (*id.*). Judge Fabry found that the letter was inappropriate for multiple reasons:

> The very submission of the letter, as well as its content, speaks for itself. It plainly smacks of the disrespect and harassment of our Tribal justice system. It demonstrates that Mr. Bellfy does not understand the appropriate procedures in Tribal Court or structure and function of the Court. §87.110(1)(g),(h). Most importantly, such a letter, hand-delivered to a Court for a judge, containing threats and innuendo, absolutely flies in the face of the ethical obligations that lay advocates must abide by. [*Id.*]

Bellfy was afforded twenty days to respond (*id.*). Based upon information and belief, he did not do so and is no longer eligible to practice as a Lay Advocate in Tribal Court.

STANDARD OF REVIEW

To survive a Rule 12(b)(6) motion, the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Watermark Senior Living Ret. Communities, Inc. v. Morrison Mgmt. Specialists, Inc.*, 905 F.3d 421, 425 (6th Cir. 2018). The "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id.* If public records, including documents from other court proceedings, refute a plaintiff's claim, a court can consider them in resolving the Rule 12(b)(6) motion without converting the motion to dismiss into a Rule 56 motion for summary judgment. *Id.* at 425-426. The documents attached to this Motion are public records that are appropriate to be considered in a Rule 12(b)(6) motion.

ARGUMENT

I. Plaintiff lacks standing to pursue this action.

To sue in federal court, a plaintiff must have standing under Article III of the Constitution, which "limits the judicial power to resolving actual 'Cases' and 'Controversies.' " *Garland v. Orlans, PC*, 999 F.3d 432, 436 (6th Cir. 2021). The oft-repeated constitutional standing test has three elements: "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Id.* To have standing, a plaintiff must have suffered an injury in fact—"an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.*

Here, although the Complaint is sparse, it appears that Plaintiff Bellfy complains of an injury caused by the dismissal of the underlying action. Bellfy was not listed as a Plaintiff in either the underlying Complaint (**EX A**) or Amended Complaint (**EX C**). It was Bellfy's clients,

the underlying Plaintiffs, who would have suffered any injury from the dismissal of the Complaint. Because Bellfy did not suffer an injury, he lacks standing to bring this action. *Id.*

II. Defendant Edwards owed no duty to Plaintiff under Michigan law.

Under Michigan public policy, an attorney owes no duty to an adverse party. *Friedman v. Dozorc*, 412 Mich. 1, 20; 312 N.W.2d 585 (1981). The Michigan Supreme Court has noted that any other rule would subject an attorney to the potential for conflicts of interest that would undermine an attorney's loyalty to a client:

> The attorney's decision-making and future conduct on behalf of both [a client and the client's adversary] would be shaped by the attorney's obligation to exercise due care as to both parties. Under such a rule an attorney is likely to be faced with a situation in which it would be in the client's best interest to proceed in one fashion and in the adversary's best interest to proceed contrariwise. However he chooses to proceed, the attorney could be accused of failing to exercise due care for the benefit of one of the parties.
>
> * * *
>
> **[C]reation of a duty in favor of an adversary of the attorney's client would create an unacceptable conflict of interest which would seriously hamper an attorney's effectiveness as counsel for his client**. Not only would the adversary's interest interfere with the client's interest, the attorney's justifiable concern with being sued for negligence would detrimentally interfere with the attorney-client relationship.

Friedman, *supra*, at 23-25 (emphasis added).

In this case, Bellfy was adverse counsel to Edwards. As such, under Michigan law, Edwards owed no duty to Bellfy. *Friedman, id*.

This does not mean that Edwards was free to break Court rules (or other misconduct) with impunity. Rather, it only means that Bellfy does not own an independent cause of action for such alleged conduct. Bellfy was free to bring up any alleged impropriety with the Tribal Judge. See Sault Ste. Marie Chippewa Trial Court Rules of Court (TCR) 81.201 ("In the

absence of a specific rule governing proceedings brought pursuant to this Chapter, the Federal Rules of Civil Procedure shall govern to the extent that they are not inconsistent with this Chapter.") (**EX L** and **EX M**). Bellfy never raised the issues contained in this Complaint with the Court that would have had the jurisdiction to consider the merits (see **EX G** and **EX I**).

Similarly, once the Tribal Judge dismissed the case (**EX F**), Bellfy could have appealed that decision on the basis of any alleged impropriety. See TCR 82.109 ("The Court of Appeals shall have exclusive jurisdiction to review the decisions of the Tribal Court as provided in this Chapter") (**EX N**); TCR 82.110 ("Any person adversely affected by a decision of the Tribal Court in a civil case may appeal"); TCR 82.111 ("An appeal is properly before the Court of Appeals if it concerns: (1) a final judgment or order of the Tribal Court…") Bellfy had thirty days from 3/1/22 to file an appeal of the Tribal Court's Order under TCR 82.113(1). An appeal is perfected by the filing of a notice of appeal with the Clerk of the Tribal Court of Appeals. TCR 82.114(1). Although the grounds for appeal are limited, one of them specifically includes "irregularities or improprieties in the proceedings." TCR 82.114(2)(b). As was true in the Tribal Court, Bellfy did not raise the issues contained in this Complaint with a timely filed appeal.

What the law did not permit Bellfy to do is what he in fact decided to do, which is file a frivolous Complaint against Edwards. Because Edwards owed no duty to Bellfy, this Complaint must be dismissed. *Friedman, supra*. The same argument would be dispositive of any complaint filed by any of Bellfy's "clients," if the Complaint were amended.

III. Alternatively, Bellfy had proper notice of the Motion to Dismiss and the hearing.

Alternatively, there is no genuine question that Bellfy received the Answer to the Complaint, which requested that the Complaint be dismissed (**EX B**). Bellfy's receipt is not in question because he specifically addressed the arguments raised in the request to dismiss when Bellfy filed an Amended Complaint and requested the Court not to address it (**EX C**). Nor is

there a question of whether Bellfy received Edwards' amended dispositive motion, which was both mailed and emailed to Bellfy at his listed address and email address (**EX E**). The amended dispositive motion stated that it was "scheduled to be heard on March 1, 2022." (**EX E**)

Conspicuously absent in Bellfy's two requests for reconsideration (**EX G** and **EX I**) are any mention that he did not have notice of the hearing date. It appears to be true that Edwards did not email a copy of the Notice of Hearing to Bellfy. However, email service is supplementary to proper service, which is accomplished by mailing. Fed. R. Civ. P. 5(C). This Rule applies in the absence of a Tribal Court Rule to the contrary. TCR 81.201 (**EX M**). Under Fed. R. Civ. P. 5(C), service was complete upon mailing. See also *Crawford v. State*, 208 Mich. App. 117, 121-122, 527 N.W.2d 30, 32 (1994) (presumption that items properly addressed and placed in the mail reach their destination).

CONCLUSION

Bellfy has no one to blame for his predicament but himself. He was mailed the Notice of Hearing (**EX C**) and received the amended dispositive motion that noted the date of hearing (**EX E**). The case was dismissed when Bellfy did not appear at the hearing. After the underlying case was dismissed, Bellfy chose not to raise the notice issue in two motions for reconsideration (**EX G** and **EX I**). Then, while his "clients" still had a right to appeal, Bellfy lost his right to practice before the Tribal Court because of his contemptuous conduct (**EX K** and **EX L**).

Substantively, neither Bellfy nor his "clients" have a viable cause of action against Edwards. Bellfy does not have standing since he was not a party to the underlying case. *Garland, supra*. Edwards did not owe a duty to Bellfy as an adverse counsel. *Friedman, supra*. Finally, and in the alternative, Edwards properly served Bellfy under Fed. R. Civ. P. 5(c).

Bellfy's only remedy was to file an appeal in the underlying case, not an independent federal case.

WHEREFORE Defendant Edwards respectfully requests that this Court grant this Motion to Dismiss.

Respectfully submitted,

MADDIN, HAUSER, ROTH & HELLER, P.C.

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Dated: April 27, 2023

L. CIV. R. 7.2(B)(II) CERTIFICATE OF COMPLIANCE REGARDING DEFENDANTS' MOTION TO DISMISS

Pursuant to Local Rule 7.2 (b) (ii), the attorney for Defendant Michael T. Edwards certifies that the Brief in Support of Motion to Dismiss is 3,083 words in length inclusive of headings, footnotes, citations and quotations. The name and version of the word processing software used to generate this word count is Microsoft Word 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2023 I electronically filed the above document(s) with the Clerk of the Court using the ECF system, which will send notification of such filing to those who are currently on the list to receive e-mail notices for this case.

/s/ David M. Saperstein

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