UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 2:23-cv-51

PHILIP C. BELLFY, PhD,
Plaintiff,

Hon. Paul L. Maloney
Magistrate Judge Maarten Vermaat

v.

MICHAEL T. EDWARDS and
JOCELYN K. FABRE,
Defendants.

Philip C. Bellfy, PhD
Plaintiff in pro per
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IF NEEDED, IN-PERSON ORAL ARGUMENT REQUESTED

_____/

PLAINTIFF BELLFY'S MOTION TO STRIKE ALL DEFENDANTS' MOTIONS IN THEIR ENTIRETY

The key to understanding this Complaint, and the key to adjudicating it, is simple: (1) did either Defendant send "proper notice" to the Plaintiff, and (2) did either Defendant send the information needed to access the alleged "zoom hearing" to the Plaintiff? The obvious answer is NO on both counts. The Defendants and their attorneys have had ample opportunity and time to simply provide both me and the Court with those documents. More on this failure, a fact not in dispute, below.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiff asks the Court to strike the entirety of Edwards' Motion to Dismiss (and Exhibits) because it states, without equivocation, that the failure of Edwards to provide me with the proper Notice of Hearing (a fact not in dispute) to me was due to "unintentional oversight."

Rule 15 lays out the policy for fixing an "unintentional oversight," inadvertency, etc. And, clearly, many months have passed since that alleged "oversight" was acknowledged by Mr. Edwards (he only gets 21 days, after that, his "oversight" becomes a Binding Judicial Admission which "has the effect of withdrawing a fact from contention." *Martinez v. Bally's La., Inc*., 244 F.3d 474, 476 (5th Cir. 2001)). Consequently, Defendant Edwards' contention (as stated under penalty of perjury by both he and his attorneys) that I "had proper notice of the hearing" is pure fiction/perjury. Everyone agrees that "unintentional oversight" as an excuse to cover up perjury is clearly a violation of the most basic premise of the law --being honest with the Court in every filing and statement-- and is clearly a violation of Rule 11(b)(1-4).

Perjury is considered a crime against justice since lying under oath compromises the authority of courts (*Director of Public Prosecutions v. Humphrys*, [1977] A.C. 1, at p. 40, Canada Supreme Court).

Secondarily, that is, aside from his self-admitted perjury, Mr. Edwards (repeated by his attorneys in their Motion to Dismiss) now claims that he had no responsibility to provide me with a Notice of Hearing --proper or otherwise--!

It is my contention that the use by Edwards (and his attorneys) of the euphemism "unintentional oversight" to describe actual "serial perjury" (as the Court will see below) are sufficient reasons to deny their Motion to Dismiss and grant me Summary Disposition, also laid out below.

STATEMENT OF ISSUE

Did both Defendants, and their attorneys, lie to the Court, that is, commit perjury, about whether or

not Dr. Bellfy received a "proper notice" of the alleged hearing, the key lying at the core of this Complaint?

The answer is YES.

First, if the Defendants have proof that they sent me a proper notice of the hearing, they should have simply provided the Court with that proof in their Motion. And, no, Exhibit C is NOT a "proper notice" as it is clearly not time-stamped by the Court. The lack of the Court's time-stamp is proof beyond a reasonable doubt that neither Defendant sent me a "proper notice" of the alleged hearing, nor did either Defendant send me an email providing me zoom access to the alleged "Notice." Just to clarify, again, both of these "claims" are clearly stated in my Complaint.

Additionally, after I sent a subpoena to the Tribal Court Administrator, Tracy Swan (Docket # 14), Defendant Fabre's attorney, Mr. Barnet, sent me an email suggesting that he would be filing a Motion to Quash the Subpoena. In other words, Mr. Barnet is asking the Court to bar Ms. Swan from sending me the court-stamped "proper" Notice of Hearing. Although he has not yet done so, seeking to have the Subpoena quashed would clearly be a violation of Rule 11(b)(1-4), as both Defendants claim that they have sent such a "proper notice," and yet, if they file a Motion to Quash, they would be asking the Court to bar them from (allegedly) resending that "proper notice" to me. It makes no sense whatsoever, and I hope the Court will agree.

So, by seeking to have my Subpoena quashed, and by stating that their failure to provide Plaintiff Bellfy with "proper notice" of the hearing was and is due to "unintentional oversight" (euphemism for perjury) both Defendants Edwards and Fabre, and their attorneys, say YES, we have committed perjury (and we may ask the Court to bar us from proving otherwise!).

Serial perjury cannot be ignored; there is no genuine dispute as to whether or not Mr. Edwards, Judge Fabre, and their attorneys lied to this Court (and other tribunals) when they falsely claimed that Mr. Edwards sent me a "proper" "notice of hearing." Of course, even if it was sent to me a "notice" sent by Mr. Edwards can never be considered "proper." Sending a "proper notice' is the responsibility of Judge Fabre

and no one else (as Mr. Edwards, through his attorney, clearly stated in his Motion to Dismiss before you), and, there is no dispute that Judge Fabre never sent that "proper notice" to me (which would be easily proved by Ms. Swan's answer to my Subpoena, if the Court orders her to do so).

So now we come to this Motion for Summary Disposition; there is no genuine dispute of these material facts: Mr. Edwards, in collusion with Judge Fabre and their attorneys, have committed perjury in (1) the Tribal Court, (2) in Mr. Edwards' response to the AGC, (3) (presumably) in his response to the criminal complaint investigated by the state AG's Office, and, now their (4) "serial perjury" before this honorable Court.

In summary –people (and their attorneys) cannot claim that all four (or more) instances of perjury were the result of either "unintentional oversight," or "innocent oversight." Committing "serial perjury" can never be "unintentional" or "innocent." What serial perjury really is, is a 15-year felony in Michigan (MCL 750.422), or a 5-year felony violation of 18 U.S. Code § 1621.

In this case, I would simply ask the Court to strike all of the Motions that are being presented to it by the Defendants and their attorneys as they are clearly being filed in direct and serious violation of the most basic tenet of "The Law" –**honesty**. I sincerely hope this Honorable Court will agree with me that a failure to be honest (violating Rule 11) can never be excused as being "unintentional" and/or "innocent" "perjury."

MOTION FOR SUMMARY DISPOSITION

Both Defendants, through their attorneys, are asking the Court to dismiss this case due to my failure to state a claim. So, let me restate those claims from the Complaint so there can be no confusion: "[1] At no time during this litigation did the Court (Fabre) send me a 'Notice of Hearing.' Additionally, [2] at no time during this litigation did the Court [Fabre] send me the access information that I would need to attend [this never-noticed] hearing via Zoom."

In his Motion to Dismiss, Mr. Edwards states that he did not send me the Notice via email due to "unintentional oversight" (N.B. This is Mr. Edwards euphemism for his self-admitted perjury –I would ask the Court to rule that a person cannot commit perjury "unintentionally"). In any case, the question of whether or not Mr. Edwards sent me the "Notice" is moot: the responsibility to "properly notice" me of a hearing date rests with Defendant Fabre and her alone, as was stated by Edwards as part of his Motion to Dismiss (under "II – defense"). Let me paraphrase the argument made there: Edwards owed no duty to Dr. Bellfy to inform him of the hearing, either through email or the USPS. And let me reiterate –Mr. Edwards, and his attorney, appear to be basing their entire argument on the "fact" that Mr. Edwards sent me "proper" notice through the USPS on January 18, 2022, yet the "proper" Notice, presumably in the possession of Judge Fabre, and NOT in the possession of Mr. Edwards (as stated by Mr. Saperstein --see Exhibit A, "Rule 37 Motion"), is date-stamped as received by the Tribal Court on 1-21-2022. So, unless Mr. Edwards has access to a "time machine," it is simple perjury for Edwards and Saperstein to state that the Proper Notice, dated 1-21-2022, was sent to me via the USPS on 1-18-2022!

At any time, Defendant Fabre could have easily disposed of my Complaint by simply submitting electronic copies of her Court's (1) Notice of Hearing, and (2) the Notice of the Court's Zoom meeting access information as part of her Motion --exactly the documents I seek through the Subpoena issued by the Court to Ms. Swan. Consequently, in my reading of these Court submissions (or the lack, thereof) Defendant Fabre has made a binding judicial admission that she did neither (1) nor (2) in a clear and unequivocal willful violation of my rights (and that of my clients) in violation of Rule 11(b)(4)

See also the attached Exhibit A wherein Mr. Saperstein states that "my client [Mr. Edwards] is not in control of documents possessed by Judge Fabry [sic]." As I read this statement, Mr. Saperstein is making a binding judicial admission that Mr. Edwards does not have in his "possession" the "proper Notice of Hearing" that everyone has consistently claimed was sent to me by Mr. Edwards via the USPS. (See Exhibit A).

Despite this obvious contradiction (ie, perjury), there is a logical explanation: Judge Fabre never sent Mr. Edwards a "proper Notice of Hearing" in the Tribal Court case at the core of this Complaint, which, quite obviously supports my claim (which both Defendants' attorneys claim I failed to state) that Judge Fabre never sent a proper Notice of Hearing to me.

In fact, the attached Exhibit A "Rule 37" email exchange makes it more likely than not that the alleged Hearing never took place. If the proper Notice was not sent to either Mr. Edwards (as it is not in his possession) or to me, then it makes sense to assume that the Zoom meeting access information was also NOT sent to either of us.

Therefore, due to the simple fact that (1) neither Defendant (through their attorneys) has even bothered to reference the claims repeated above in their Motions for Dismissal (instead claiming that these claims don't even exist), and neither Defendant (through their attorneys) has (2) provided the Court with evidence that they have, indeed, satisfied my claims, that is, neither Defendant has provided the Court with evidence that Defendant Fabre sent me either of the two documents as stated quite clearly in my Complaint, (and my Subpoena), all of the parties, including Defendants' attorneys, agree that there is no genuine issue of these material facts.

Put another way: all the Defendants and their attorneys had to do in their Motions of Dismissal in order to support their "material fact" "assertions," was simply to provide the Court with the evidence that they did provide me with "proper notice" of the hearing. Because of the constitutional importance of insuring proper notice, courts will not forgive improper notice even where a party receives actual notice (*Jones v. Flowers*, 547 U.S. 220 (2006)), and, to be clear, I did not even receive an "improper notice" from the Court or Mr. Edwards. There is no dispute of this material fact: neither Mr. Edwards nor Judge Fabre ever sent me a "proper Notice," either through email or through the USPS (and they still refuse to do so even though the Tribal Court Administrator has been ordered, by Subpoena, to do so, and they have threatened to ask the Court to quash the Subpoena!).

Given the above facts not in dispute, that is, Exhibit C posted by Mr. Saperstein is clearly NOT "proper notice" as it is dated (and not by the Court) 1-18-2022, and, furthermore, the Court date-stamped the Notice as received by them on 1-21-2022. Without the Court's date-stamp, the Notice is NOT "proper" under any circumstances. Therefore, I am entitled to a Summary Judgement under FRCP 56(e)(3) that dismisses all Motions submitted by the Defendants as a matter of law. If the Court grants my Motion, I ask it to simultaneously grant me the Relief requested in the Complaint (revised, below, to reflect this Summary Judgement Motion).

RELIEF REQUESTED

I seek the following relief under Rule 56, given that there is no genuine dispute as to any material fact as stated in my Complaint or in this Motion. That is: there is no genuine dispute of the fact that Defendants Edwards and Fabre, and their attorneys, willfully and knowingly failed to provide this Court with any evidence to dispute the material fact claims at the core of this Article III Complaint as stated (again) above.

Therefore, I seek actual damages of at least $1,000,000 from the Defendants' personal funds, and an additional $1,000,000 in Rule 11 sanctions from their attorneys, in compensation for damage to my reputation and the loss of income suffered by me as a consequence of the Defendants' (and their attorneys') perjury, and all Defendant parties' willful and knowing violation of my Due Process and Equal Protection rights and those of my clients in the "election challenge" Tribal Court Complaint, under the 14th Amendment to the US Constitution.

I also ask the Court to find the Defendants guilty of conspiring, through perjury, to commit a willful, knowing, and malicious violation of my rights, and those of the 30,000+ clients I represented in the Tribal Court case at hand, to deprive us of our Constitutional 5th and 14th Amendment rights to due process and equal protection by failing to send me a proper notice of hearing, and, under the inherent power of the Court (Artl.S1.3.3), to impose any punitive damages and/or fines that the Court feels are equitable and just

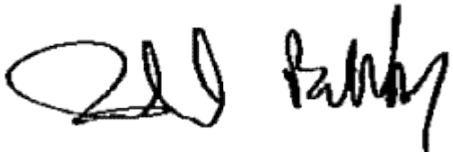
under Title 18 U.S.C. Section 242 (that is, in addition to the actual damages, cited above). Additionally, as a consequence of the above, I also ask the Court to simply state for the record that the Defendants and their attorneys conspired, through perjury, to violate my rights to Due Process by failing to "properly notice" me as to their alleged "hearing."

If the Court does not grant my Motion for Summary Disposition and my Plea for Relief, I respectfully ask that the all of the issues in this case [except those of the Defendants' that have been, or may be submitted in clear in violation of Rule 11(b)], be decided by a jury as is my right under the 7th Amendment [Rule 38(a), & (b)(2)].

Finally, I ask the Court to note that, regardless as to how it rules in this civil matter, I retain my right to file a criminal complaint, and/or to amend the one already filed with the Michigan Attorney General (2023-ne01131539758-A); and/or to file a separate criminal complaint with the federal District Attorney in this matter; and/or to refer the underlying issues from the Tribal Court to the Michigan Supreme Court for adjudication (dismissal of all orders, and the imposition of superintending control of the "election challenge" case) under MCR 2.615.

PROOF OF SERVICE (electronically filed)

Philip C. Bellfy, PhD Plaintiff's Signature



Date 06-13-2023

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