

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.

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**DEFENDANT MICHAEL T. EDWARDS' RESPONSE IN OPPOSITION TO PLAINTIFF  
BELLFY'S MOTION TO STRIKE ALL DEFENDANTS' MOTIONS IN THEIR  
ENTIRETY [ECF NO. 15]**

**Oral argument requested only if Plaintiff is granted oral argument**

**DEFENDANT MICHAEL T. EDWARDS' RESPONSE IN OPPOSITION TO PLAINTIFF BELLFY'S MOTION TO STRIKE ALL DEFENDANTS' MOTIONS IN THEIR ENTIRETY [ECF NO. 15]**

Defendant Honorable Jocelyn Fabre filed a Motion to Dismiss on 4/26/23 [ECF No. 8]. Defendant Michael Edwards filed a Motion to Dismiss on 4/27/23 [ECF No. 10]. Under Local Rule of the Western District of Michigan 7.2(c), Plaintiff had 28 days to file a response. Plaintiff did not do so. Accordingly, both dispositive motions are ripe to be granted.

Plaintiff's motion provides no support for the procedural relief that it requests, namely the striking of Defendants' motions. Rather, this motion simply seeks to respond to the Defendants' motion to dismiss. It is improper and an abuse of the rules to use Plaintiff's separate motion to make such an untimely response. If Plaintiff wanted to file a response to the respective motions to dismiss, then he should have filed a motion for leave to file an untimely response.

*Response to Plaintiff's Request for Summary Disposition*

To the extent that this motion should be considered Plaintiff's own motion for summary disposition, that request must be denied. Plaintiff has not adequately addressed the reasons that Plaintiff's Complaint against Defendant Michael T. Edwards must be dismissed in its entirety, including that Plaintiff lacks standing to pursue this action, that Edwards owed no duty to Plaintiff under Michigan law, and that Plaintiff had proper notice of the motion to dismiss and the hearing.

As to standing, Plaintiff wholly ignores that he does not have standing under *Garland v. Orlans, PC*, 999 F.3d 432, 436 (6th Cir. 2021). The Complaint can and should be dismissed on that basis alone.

As to the lack of duty, Plaintiff has not offered any argument, facts, or law to suggest that Defendant Edwards owed him a duty under Michigan law, particularly *Friedman v. Dozorc*, 412 Mich. 1, 20, 23-25; 312 N.W.2d 585 (1981). As stated in Edwards' brief in support of his Motion

to Dismiss, Plaintiff's arguments regarding alleged procedural violations do not establish an independent cause of action, but instead, if alleged properly and proven, would be a basis for an appeal in the underlying action. Plaintiff's failure to file an appeal of the underlying case provides an independent reason to dismiss the current Complaint.

As to proper notice of the hearing on the underlying motion to dismiss, Plaintiff attempts to address the issue, but does so inadequately. First, on a procedural level, Plaintiff's arguments would only be relevant to an appeal of the underlying case, but he chose not to file such an appeal. The arguments, even if proven, do not give rise to an independent cause of action. Substantively, Plaintiff offers no response whatsoever that service of a notice of a hearing is accomplished by mailing under Fed. R. Civ. Proc. 5(C). Plaintiff does not dispute that Defendant Edwards mailed him a proper notice of hearing. Thus, service was complete upon mailing under Fed. R. Civ. Proc. 5(C). Plaintiff's argument regarding email service are irrelevant under Fed. R. Civ. Proc. 5(C) because he received proper notice by mail. Furthermore, Plaintiff's insinuation that perjury was committed as a result of an unintentional oversight displays not only a misunderstanding of law, but represents the type of personal aspersions disfavored by the Sixth Circuit. *Howard v Secy. of Health & Human Services*, 932 F.2d 505, 509 fn. 2 (6<sup>th</sup> Cir. 1991). Indeed, Plaintiff's personal attacks and inflammatory rhetoric are further support for the need of a speedy and decisive decision on Defendant's Motion to Dismiss.

Finally, Plaintiff attempts to argue that Exhibit C is not time stamped. Defendant Edwards would only have such a copy if he requested a time-stamped copy from the Sault Ste. Marie Chippewa Tribal Court. He does not typically ask for such a copy, and did not do so in this case. Plaintiff's argument about "time travel" is impossible to follow. Exhibit A shows that Plaintiff filed his Complaint in the underlying case on or about 12/16/21. Exhibit B shows that Defendant

Edwards filed his Appearance, Answer to Complaint, and Motion to Dismiss on behalf of the underlying Defendant on 1/17/22. Exhibit C shows that Defendant Edwards mailed Plaintiff and the Court with a Notice of Hearing on 1/18/22, which indicated that the hearing on the motion to dismiss would be heard on 3/1/22. Exhibit D shows that Plaintiff had undoubtedly received the Motion to Dismiss as he responded to it on 1/25/22. Plaintiff's argument makes no sense.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiff's Motion to Strike, grant Defendant Edwards' Motion to Dismiss, and dismiss Plaintiff's Complaint.

Respectfully submitted,

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

/s/ David M. Saperstein

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Dated: June 29, 2023

**Certificate of Compliance**

Pursuant to Local Rule 7.2 (b) (ii), the attorney for Defendant Michael T. Edwards certifies that Defendant Edward's Response in Opposition to Plaintiff's Motion to Strike Defendants' Motions in Their Entirety is 1,024 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,

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

/s/ David M. Saperstein

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Dated: June 29, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on June 29, 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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DATED: June 29, 2023