

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

PHILIP C. BELLFY

Plaintiff,

v

**MICHAEL T. EDWARDS and
HON. JOCELYN K. FABRY**

Defendants.

CASE NO.: 2:23-CV-51

HON. PAUL L. MALONEY

Mag. Judge Maarten Vermaat

Philip C. Bellfy

Plaintiff, in pro per

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**THE HONORABLE JOCELYN K. FABRY'S RESPONSE TO
PLAINTIFF BELLFY'S MOTION FOR JUDGMENT ON THE
PLEADINGS UNDER FRCP RULE 12(C)**

NOW COMES Defendant, the Honorable Jocelyn K. Fabry, by and through her attorneys, GREWAL LAW PLLC, and for her Response to Plaintiff Bellfy’s Motion for Judgment on the Pleadings Under FRCP Rule 12(c), states as follows:

STATEMENT OF FACTS¹

Plaintiff is a former lay advocate that filed an “election challenge” in the Sault Ste. Marie Tribe of Chippewa Indians (the “Tribe”) Tribal Court.² At the time of the allegations contained within Plaintiff’s Complaint, Mr. Michael T. Edwards was the attorney representing the Tribe’s Election Commission, and the Honorable Jocelyn Fabry, the Chief Tribal Court Judge, was the presiding judge in the “election challenge.”³

Plaintiff filed his Complaint in this matter alleging that Mr. Edwards and the Hon. Fabry “conspired to deprive [Plaintiff of his] 14th Amendment Constitutional rights to due process and equal protection by failing to ‘notice’ [Plaintiff] of an alleged ‘hearing’” in the Tribal Court election challenge.⁴ Both Mr. Edwards and Hon. Fabry filed Motions to Dismiss Plaintiff’s Complaint in its entirety, which remain pending before this Honorable Court.

On April 26, 2023, Judge Fabry filed her Motion to Dismiss Pursuant to Rule 12(b), arguing that she has immunity from suit, that the Court lacks subject matter jurisdiction, and that Plaintiff failed to state a claim under the 14th Amendment or 18 USC § 242 upon which relief can be granted.⁵ One day later, on April 27, 2023, Mr. Edwards filed his Motion to Dismiss Pursuant to Rule 12(b)(6).⁶ Pursuant to Local Rule 7.2(c), Plaintiff had 28 days to respond to Defendants’

¹ Judge Fabry incorporates by reference her statement of facts from her Motion to Dismiss, **ECF 8**, and Brief in Response to her Motion to Dismiss, **ECF 9**, as if fully restated herein

² **ECF 1**: Plaintiff’s Complaint, PageID.1.

³ *Id.*

⁴ *Id.* at PageID.2.

⁵ **ECF 8**: Hon. Fabry’s Motion to Dismiss, PageID.15-19.

⁶ **ECF 10**: Defendant Edwards’ Motion to Dismiss, PageID.45-46.

dispositive Motions to Dismiss, meaning no later than May 24, 2023, and May 25, 2023, respectively. Plaintiff did not file a response to either Motion to Dismiss.

Instead of responding to either Motion to Dismiss and addressing the legal challenges in this matter, Plaintiff filed his “Motion for Summary Disposition” [sic] without properly citing to any legal or factual authority to adequately support his argument and burden.⁷ Plaintiff now files his Motion for Judgment on the Pleadings,⁸ and this Response timely follows.

STANDARD OF REVIEW

“The standard of review for a Rule 12(c) motion is the same as for a motion under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.”⁹ “For purposes of a motion for judgment on the pleadings, all well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment.”¹⁰ A motion brought pursuant to Rule 12(c) is only properly granted “when no issue of fact exists and the party making the motion is entitled to judgment as a matter of law.”¹¹ The following will show that Plaintiff has not met his burden and his motion should be denied.

APPLICABLE LAW AND ARGUMENT

Plaintiff is not entitled to judgment as a matter of law because he failed to state claims upon which relief can be granted. Plaintiff is also required to put forth factual allegations that

⁷ **ECF 15:** Plaintiff’s Motion for Summary Disposition, PageID.243-246.

⁸ **ECF 25.**

⁹ *Fritz v. Charter Tp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010) (citing *Ziegler v. IBP Hog Market, Inc.*, 249 F.3d 509, 511–12 (6th Cir. 2001)).

¹⁰ *S. Ohio Bank v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 479 F.2d 478, 480 (6th Cir. 1973) (internal citations omitted).

¹¹ *Paskvan v. City of Cleveland Civ. Serv. Commn.*, 946 F.2d 1233, 1235 (6th Cir. 1991) (citing *General Cinema Corp. v. Buena Vista Distrib. Co.*, 681 F.2d 594, 597 (9th Cir. 1982)).

support a valid and actionable legal basis, which he has likewise failed to do. Plaintiff also improperly included factual allegations in his Motion that are not supported by the record. Stated otherwise, Plaintiff's Motion is an attempt to expand the record with unfounded allegations.

In attempt to save this Court and the parties time and expense, Judge Fabry incorporates by reference as if fully restated herein the legal and factual arguments contained in her Motion to Dismiss (ECF 9), Brief in Support of her Motion to Dismiss (ECF 10), her Corrected Response to Plaintiff's Motion to Strike (ECF 22), and her Response to Plaintiffs First Motion for Summary Judgment (ECF 24). By way of further response, Judge Fabry objects to the authenticity and admissibility of Plaintiff's Exhibit (ECF 25-1), as the same has clearly been edited and editorialized, and should not be considered in determining a Rule 12(c) motion. Although there are exceptions to the general rule,¹² none would apply to ECF 25-1, and this Court should not consider the same. Plaintiff has continually failed to follow the rules of his Court, costs Judge Fabry additional time, costs, and fees, and his Motion should be denied.

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated in Hon. Fabry's Motion to Dismiss and those reiterated herein, Plaintiff's claims under the 14th Amendment and 18 USC § 242 legally fail and Plaintiff is not entitled to any relief as a matter of law. Plaintiff did not attempt to address these legal issues in response to Hon. Fabry's Motion, nor does he attempt to do so here. Instead, Plaintiff relies on

¹² See *Barany-Snyder v. Weiner*, 539 F.3d 327, 332 (6th Cir. 2008) (Although the court's decision "rests primarily upon the allegations of the complaint," "matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint[] also may be taken into account.") (quoting *Amini v. Oberlin Coll.*, 259 F.3d 493, 502 (6th Cir. 2001) (quoting *Nieman v. NLO, Inc.*, 108 F.3d 1546, 1554 (6th Cir. 1997)).

factual allegations only, which are not properly supported by citations to particular parts of materials in the record.

WHEREFORE, Defendant, Hon. Judge Jocelyn Fabry, respectfully requests this Honorable Court to:

- A. Deny Plaintiff's Motion for Summary Disposition in its entirety;
- B. Award Hon. Fabry fees and costs for having to defend this matter; and
- C. Grant her any further relief this Honorable Court deems equitable and just.

Respectfully submitted,

GREWAL LAW PLLC

Dated: June 26, 2023

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Certificate of Compliance

I hereby certify that this Brief contains 1,054 words, including headings and footnotes, as computed by Microsoft Word.

Respectfully submitted,

GREWAL LAW PLLC

Dated: August 9, 2023

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