

**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 FOR JUDGMENT ON THE PLEADINGS UNDER FRCP RULE  
12(c) [ECF NO. 25]**

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

Defendant Edwards concurs with and adopts the reasoning of Co-Defendant Honorable Jocelyn Fabre in Judge Fabre's Response to Plaintiff's Motion for Summary Judgment (ECF No. 26). Similarly, Defendant Edwards incorporates by reference the arguments and exhibits in his Motion to Dismiss (ECF No. 10 and No. 11), which require a denial of Plaintiff's Motion.

Judge Fabre previously filed a Motion to Dismiss on 4/26/23 (ECF No. 8 and No. 9). Defendant Michael Edwards filed a Motion to Dismiss on 4/27/23 (ECF No. 10 and No. 11). 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 Defendants' dispositive motions are ripe to be granted.

Plaintiff's motion attempts to relitigate the underlying action, and must be rejected for the same reason that Plaintiff's Complaint should be dismissed in its entirety and sanctions awarded against Plaintiff. As argued in Edwards' Motion to Dismiss (ECF No. 10 and No. 11), any procedural errors in the underlying case do not create a private cause of action for Plaintiff, do not give Plaintiff standing to sue, and do not create a duty on behalf of Defendant Edwards. At best, the arguments in Plaintiff's Motion, if proven, would suggest that he would have had an argument to appeal the underlying decision. Plaintiff's attempt to use this motion to file a late response to Defendant Edwards' unopposed dispositive motion is frivolous – as is the Complaint's attempt to file a late appeal. 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.

Plaintiff's argument as to what constitutes a "proper" hearing is incorrect. Service of a notice of a hearing is accomplished by mailing under Fed. R. Civ. Proc. 5(C). Defendant Edwards mailed Plaintiff a notice of hearing (ECF No. 11-4, PageId.86-89). Service was proper. In addition, Plaintiff does not dispute that he responded to the arguments in the Motion to Dismiss

in the underlying case (ECF No. 11-5, PageId.95-96). If Plaintiff did not have Zoom information, he could and should have requested that information before the scheduled hearing. At the least, he could have appealed on that basis. No nonfrivolous grounds exist for bringing up this issue in an independent action that is not even in the name of the party Plaintiffs from the underlying case.

Plaintiff's insinuation that perjury was committed as a result of an unintentional oversight displays a misunderstanding of law, and 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.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiff's Motion for Judgment on the Pleadings (ECF No. 25), grant Defendant Edwards' Motion to Dismiss (ECF No. 10), and order sanctions against Plaintiff for Rule 11 violations (Motion for Sanctions has been served on Plaintiff, and will be filed if Plaintiff does not dismiss Complaint within 28 days of service of that Motion).

Respectfully submitted,

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

/s/ David M. Saperstein

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Dated: August 10, 2023

**Certificate of Compliance**

Pursuant to Local Rule 7.2 (b) (ii), the attorney for Defendant Michael T. Edwards certifies that Defendant Edwards' Response in Opposition to Plaintiff's Motion for Judgment on the Pleadings Under FRCP Rule 12(c) is 671 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: August 10, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 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: August 10, 2023