

**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
Plaintiff in pro per
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**DEFENDANT MICHAEL T. EDWARDS' RESPONSE IN OPPOSITION TO PLAINTIFF
BELLFY'S MOTION FOR SUMMARY JUDGMENT [ECF NO. 31]**

Oral argument requested only if Plaintiff is granted oral argument

Rather than respond to the dispositive arguments raised in Defendant Edwards' Motion to Dismiss (ECF No. 10 and No. 11), Plaintiff has now filed a third motion making the same, premature and incorrect argument. The third repetition of Plaintiff's argument does not make it stronger. Rather, it strengthens the need for this Court to not only deny Plaintiff's multiple motions, but to grant the Defendants' motions to dismiss and for sanctions.

Defendant Edwards' Motion to Dismiss, which was filed nearly six months ago on 4/27/23, argued that regardless of the merits of Plaintiff's allegation of lack of receipt of notice of a Zoom hearing, this case must be dismissed for various independent reasons, including: 1) Plaintiff lacks standing (ECF No. 11, PageId.57-58); 2) Defendant Edwards owed no duty to Plaintiff (*id.*, PageId.58-59); 3) the time and place to raise Plaintiff's notice argument was in the underlying case or on appeal (*id.*, PageId.58-59); and 4) Edwards provided Plaintiff with the notice of the hearing that Edwards was required to provide under Fed. R. Civ. P 5(C) (*id.*, PageId.59-60). **Plaintiff has yet to respond to this Motion to Dismiss.** He had 28 days to file a response.

On 6/13/23, Plaintiff made the same argument that he now makes. In ECF No.15, PageId.242, Plaintiff argued

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.

Later in the motion, Plaintiff argued that he never received a notice of hearing or the access information to attend the hearing via Zoom, and that he was entitled to summary judgment under Rule 56 (*id.*, PageId.243-246).

Defendant Edwards responded (ECF No. 23) to that motion, and incorporates that response for purposes of this Motion making the same argument.

On 7/26/23, Plaintiff filed a new motion that repeated the same argument that he made in ECF No. 15, and that he now makes in a third motion. In ECF No. 25, PageID.389-390, Plaintiff argued that he never received a proper notice of hearing, that he never received the access information necessary for the hearing. Defendant Edwards responded (ECF No. 27) to that motion, and incorporates that response for purposes of this Motion.

Plaintiff now makes the same arguments in a third Motion, arguing once again that summary judgment is proper because he did not receive notice of the underlying hearing or access information. Plaintiff has yet to address the merits of Defendants' Motion to Dismiss (ECF No.11). Even assuming *arguendo* that Plaintiff never received the proper information or notice, Plaintiff was acting in the underlying case in his role as a lay advocate for the underlying Plaintiff and does not have standing to pursue this action. Even assuming *arguendo* that Plaintiff never received the proper information or notice, Defendant Edwards did not owe him a duty under Michigan law as a matter of law. Even assuming *arguendo* that Plaintiff never received the proper information or notice, the time and place for Plaintiff to raise that argument was in the underlying case or on appeal. Plaintiff did neither.

Moreover, for the reasons stated previously, Defendant Edwards gave Plaintiff the notice that was required under Fed. R. Civ. P 5(C). As to the current 56(c) Motion for Summary Judgment, Defendant Edwards is under no obligation to provide discovery before the Rule 16

scheduling conference has taken place and this Court has already quashed Plaintiff's subpoena and stayed discovery (ECF No. 30). This Motion is an attempt to ignore and subvert the Court's Order.

Defendant Edwards previously filed a Motion for Sanctions, arguing that Plaintiff's Complaint was both frivolous and filed for an improper purpose (ECF No. 29). The fact that Plaintiff has now filed three motions based on the same argument provides further proof of the improper purpose and the need for the Court to impose sanctions on Plaintiff.

WHEREFORE, Defendant respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment (ECF No. 31), grant Defendant Edwards' Motion to Dismiss (ECF No. 10), and grant Defendant Edwards' Motion for Sanctions (ECF No. 29).

Respectfully submitted,

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

/s/ David M. Saperstein

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Dated: October 11, 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 for Summary Judgment is 718 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: October 12, 2023

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 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: October 12, 2023