

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-14240-CIV-GRAHAM/LYNCH

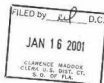
HEARTLAND LIBRARY COOPERATIVE,
HIGHLANDS COUNTY BOARD OF
COUNTY COMMISSIONERS, ET AL.,

Plaintiffs,

v.

MARCELLUS M. MASON, JR.,

Defendant.



**REPORT AND RECOMMENDATION ON DEFENDANT'S
MOTION TO DISMISS [D.E. #13] AND DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE
ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT [D.E. #10]**

THIS CAUSE having come on to be heard upon the aforementioned motions and this Court having reviewed the motions, the responses and otherwise being advised in the premises, makes the following recommendations to the District Court.

The Plaintiffs' Complaint filed herein states that it is an equitable action to permanently enjoin the Defendant from filing or maintaining any civil action against any of the named Plaintiffs without the representation of an attorney authorized to practice before this Court.

This Court is not going to recite the long history of litigation between these two parties. There are other cases presently pending before this Court involving these parties. This Court has handled an inordinate number of motions filed by the parties in those other cases. This Court has also recommended that many of the Defendant's claims be

dismissed, with prejudice. However, several of the Defendant's claims in those other cases still remain viable actions.

It is a very serious undertaking for any court to restrict a citizen's right to file litigation and have access to the courts. While such relief is infrequently granted, this Court points out that it does have the power to permanently enjoin the Defendant from filing any spurious litigation against these parties or any other party.

This Court believes that the Defendant has attempted to retain counsel and has also attempted to have counsel appointed for him involving the litigation between he and the Plaintiffs. This Court has denied the Defendant's application for court appointed counsel since he does not have an absolute right to have counsel appointed in a civil case. This Court also understands that the Volunteer Lawyers Project has reviewed the Defendant's other litigation against these Plaintiffs and declined to accept the case.

It certainly would be helpful to this Court to have the Defendant represented by counsel. However, this Court cannot require the Defendant to obtain counsel and will not appoint counsel in this case or any other litigation presently pending involving these parties. This Court will recommend that Judge Graham consider referring this matter to the Volunteer Lawyers Project again as the circumstances may have changed since the Defendant's original request for an attorney was turned down. This has been very contentious litigation between these parties and having counsel for Mr. Mason would be extremely helpful. Based upon what has transpired since the original request for counsel was rejected, the circumstances may now justify the Volunteer Lawyers Project assigning an attorney for the Defendant in all litigation involving these parties before this Court.

To permanently enjoin the Defendant from filing any other litigation is not appropriate at this juncture. This Court has many options available to it in all the litigation between these parties. This Court has powers to sanction and even dismiss the Defendant's other cases should this Court believe that he is abusing the legal process. However, at this point, none of those other cases have been totally dismissed with prejudice. There are viable pending claims in those cases.

To utilize the injunctive powers of this Court for such a situation seems to be unnecessary. Judge Jordan has written a recent opinion in May v. Shell Oil Company, 2000 WL 1276943 (S.D. Fla. 2000) which this Court believes succinctly summarizes the types of cases in which injunctive relief is appropriate. While there are other pending cases between these parties, there is nothing near the extent of the litigation which this Court and the Eleventh Circuit Court of Appeals usually look to for justifying injunctive relief. The other cases between these parties herein are still pending. Finally, as stated by this Court previously, this Court retains powers to sanction any inappropriate conduct by either of the parties in those other cases should the circumstances so justify.

ACCORDINGLY, this Court recommends to the District Court that the Defendant's Motion to Dismiss [D.E. #13] be **GRANTED** and that Defendant's Motion for Judgment on the Pleadings be **DENIED** as moot and that the District Court once again consider referral of all pending litigation between these parties to the Volunteer Lawyers Project for a re-examination of whether or not the Defendant, as Plaintiff in those other cases, would qualify for counsel.

The parties shall have ten (10) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable Donald L. Graham, United States District Judge assigned to this case.

DONE AND SUBMITTED this 16 day of January, 2001, at Fort Pierce, Northern Division of the Southern District of Florida.



FRANK J. LYNCH, JR.
UNITED STATES MAGISTRATE JUDGE

Copies furnished:

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