

United States District Court
Southern District of Florida
Ft. Pierce Division

**HEARTLAND LIBRARY COOPERATIVE,
HIGHLANDS COUNTY BOARD OF COUNTY
COMMISSIONERS, et. al.,**

Plaintiffs,

vs.

MARCELLUS M. MASON, JR.

Defendant

Case No.: 00-14240-CIV-GRAHAM/LYNCH
**DEFENDANT'S MOTION FOR TAXATION OF
COSTS**

CLARENCE J. DODD
CLERK OF COURT
01 JAN 23 11:38
FILED BY [Signature]
D.C.

COMES NOW the DEFENDANT, Marcellus M. Mason, Jr., pursuant Local Rule 7.1 and hereby submits **DEFENDANT'S MOTION FOR TAXATION OF COSTS**. In support of this motion defendant states the following:

1. Plaintiffs filed this action on August 7, 2000.
2. Plaintiffs allege that this was an equitable action to permanently enjoin Defendant from filing or maintaining any civil action against any of the plaintiffs in this action for which the defendant is or was a proponent of unless the defendant was represented by competent counsel.
3. Plaintiffs in their remedies asked the court for, "*An Order permanently enjoining Defendant from filing or maintaining any civil action against any of the above referenced Plaintiffs in the United States District Court for the District of Florida in which he is the proponent of a claim without the representation of an attorney licensed to practice before this court.*"
4. Plaintiffs in their remedies also offer up the following prayer of desperation, "*In the event Defendant does not obtain such representation before proceeding with this litigation, plaintiffs request that thus Court enter an order dismissing with prejudice any pending cases in this Court for which the Defendant is the proponent of a claim.*"
5. This Court rendered a Report and Recommendation granting defendant's motion to dismiss this action on January 16, 2001.

[Signature]
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6. Plaintiff hereby incorporates his Affidavit of Costs, Exhibit 1, as if fully set forth herein.

MEMORANDUM OF LAW

"Rule 54(d)(1) of the Federal Rules of Civil Procedure provides that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs." Morrison v. Reichhold Chems., 97 F.3d 460; 1996 U.S. App. LEXIS 26467,*5 (11th Cir. 1996). "Rule 54(d)(1) states that costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs...." Johnson Enterprises of Jacksonville, Inc. v. FPL Group, Inc., 162 F.3d 1290; 1998 U.S. App. LEXIS 31647,*132 (11th Cir. 1998).

28 U.S.C. § 1920 states:

A judge or clerk of any court of the United States may tax as costs the following:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of this title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title. A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.

This lawsuit was frivolous and there was a total lack of a justiciable issue. Plaintiffs sought to compel defendant to have " *an attorney licensed to practice before this court.*" This notwithstanding the fact that plaintiffs in this matter filed numerous briefs in opposition to defendant's motion for a court appointed attorney in Case No. 99-14027. See (DE #28, 5 pgs.);(DE # 169;170, 5 pgs.); Case No. 99-14042, (DE #57, **13** pgs.). This Court agreed

with the plaintiffs in this matter in that the defendant was not entitled to have the court to appoint him an attorney. The plaintiffs in this matter got exactly what they asked for in that they wanted this defendant to not be represented by " *an attorney licensed to practice before this court.*" Realizing that defendant is not the helpless party and "easy picking" that they [plaintiffs' counsel] perceived him to be, they came lamenting to this court for patently unconstitutional remedies. Plaintiffs lamented to this court for an order compelling defendant to have " *an attorney licensed to practice before this court.*" In order to file any new action. In support of this drastic, extreme, and almost never granted remedy, the plaintiffs cited Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986). Procup had filed at least 176 frivolous lawsuits and the court still would **not** grant injunction requiring Procup to have attorney representing him before he could file a claim. In Procup, the court rejected an injunction issued by the trial court that required Procup to be represented by attorney while acknowledging that such a requirement maybe tantamount to not having access to the courts stated:

*In this Court's judgment, however, the requirement that Procup file suits only through an attorney may well foreclose him from filing any suits at all. *****None has reached the stage of trial on the merits; most have been frivolous....In this Court's judgment, however, the requirement that Procup file suits only through an attorney may well foreclose him from filing any suits at all...An absolute bar against a prisoner filing any suit in federal court would be patently unconstitutional. We, therefore, vacate the injunction and remand for consideration of such modification as will, as much as possible, achieve the desired purposes without encroaching on Procup's constitutional right to court access".*

In the instant case, defendant has not filed so much as one single "frivolous" action and plaintiffs through their learned counsel failed to cite any action that defendant filed that was adjudged to be frivolous. In fact, all alleged actions are still pending either in the district court or on appeal. Defendant has filed no action that has been dismissed with prejudice, absolutely none. The plaintiffs' attorneys who call themselves "expert employment attorneys" knew full well that an injunction in this matter requiring defendant to be represented by an attorney would have been patently unconstitutional. Plaintiffs' counsel knew or should have known that as competent counsel they had no chance of obtaining such

relief. The court in Procup would not allow this kind of relief where Procup had filed a staggering and mind-boggling 176 frivolous lawsuits. In the instant case, defendant has not filed any frivolous lawsuits. Moreover, plaintiffs' attorneys who claim to be "expert employment attorneys" have not even attempted to get summary judgement against an unrepresented defendant.

Plaintiffs' prayer that defendant should be required to have " *an attorney licensed to practice before this court*" is **absolutely** unconstitutional and the court may not issue such an order any circumstance, given a competent party. Moreover, a reluctant court may not even require that criminal defendant in a capital murder case to be represented by counsel when the criminal defendant competently and with knowledge of the consequences refusing representation of counsel. Plaintiffs asked this court to render what appears on its face to be an absolutely unconstitutional remedy, but cited no such authority for their desperate prayer of relief.

Plaintiffs asked to this court to violate the due process rights of this defendant. Plaintiffs' through their attorneys desperately prayed, "*In the event Defendant does not obtain such representation before proceeding with this litigation, plaintiffs request that thus Court enter an order dismissing with prejudice any pending cases in this Court for which the Defendant is the proponent of a claim.*" Such a remedy could never be granted and the plaintiff's through their counsel knew such a remedy is absolutely unconstitutional. Plaintiffs asked this court to dismiss defendant's claim merely because he did or does not have an attorney.

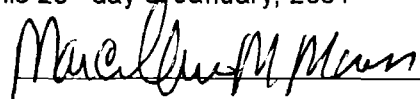
In summary, this action was frivolous. This action should have never been filed. This action had no legal support either by way of statutory authority or case law. This action was simply a "hail Mary pass" by the plaintiffs. The plaintiffs have a \$2,000,000 insurance policy and have little to lose by filing such a frivolous lawsuit. Plaintiffs' counsel sought to play to what they perceived as defendant's ignorance. Plaintiffs' counsel played to an overworked judiciary and court in this matter. The only thing the plaintiffs through their

counsel didn't play to was the law itself. There was no justiciable issue in this matter.

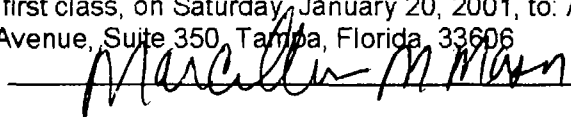
Defendant is proceeding pro se and can not be awarded attorney's fees and the plaintiffs and their counsel are keenly aware of this fact. Plaintiffs have no real disincentive from filing frivolous actions against this defendant. It is extremely doubtful that this court could provide a disincentive to the plaintiffs in this matter to prevent from filing frivolous actions because the plaintiffs in this matter have a \$2,000,000 insurance policy. Notwithstanding the foregoing, defendant asserts that there is absolutely no reason that this court should not tax the defendant's cost in defending this matter to the plaintiffs.

WHEREFORE, and based upon the foregoing, defendant asks that the defendant's costs of \$94.62 of defending this frivolous action be taxed to the plaintiffs. It is extremely doubtful if such a nominal judgement will deter the plaintiffs from filing frivolous actions in the future, but there is no reason that the defendant should have to absorb the costs of defending clearly frivolous actions.

Dated this 20th day of January, 2001



I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via US Mail, postage prepaid, first class, on Saturday, January 20, 2001, to: Allen, Norton & Blue, 324 South Hyde Park Avenue, Suite 350, Tampa, Florida 33606



AFFIDAVIT OF COSTS

STATE OF FLORIDA)

COUNTY OF _____)

Marcellus M. Mason, Jr., first

being duly sworn, deposes and says:

1. I, Marcellus M. Mason have incurred the following costs in defending Case No. 00-14240:

Postage	14.52
Printing and Copying	20.10
Transportation:	
Law Library, Bartow FL, 2 trips 50 miles one way, \$0.30@200	60.00
Total Costs	\$94.62

FURTHER AFFIANT SAYETH NAUGHT.

Marcellus M. Mason
(sign name on above line)

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2000, by _____, who is _____ personally known to me, or who has produced _____ as identification.

Printed Name: _____
My Commission Expires: _____

Exhibit 1