

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 99-14027-CIV-GRAHAM/LYNCH

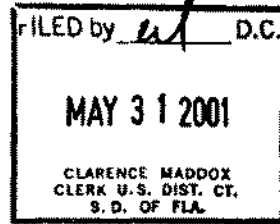
MARCELLUS M. MASON, JR.

Plaintiff,

v.

HEARTLAND LIBRARY COOPERATIVE,
et al.,

Defendants.



**REPORT AND RECOMMENDATION ON DEFENDANTS'
MOTION AND SECOND MOTION FOR SANCTIONS IN THE
FORM OF DISMISSAL OF PLAINTIFF'S ACTION [D.E. #511 & D.E. #646]**

THIS CAUSE having come on to be heard upon the above captioned motions and this Court having issued an Order to Show Cause and having held a show cause hearing on May 23, 2001, this Court makes the following recommendations to the District Court:

1. On March 2 and April 9, 2001, Defendants filed Motions for Sanctions in the Form of Dismissal of Plaintiff's Action. On March 9, 2001, Defendants filed a Motion to Compel Plaintiff's Response to Defendants' First Interrogatories. Pursuant to those motions, this Court issued an order on March 27, 2001, directing the Plaintiff to file, on or before April 6, 2001, a response addressing the authenticity of all e-mails purportedly sent by him as set forth in Exhibit 1 to the Defendants' Motion for Sanctions [D.E. #511].

2. The Plaintiff did not file a response in accordance with this Court's order. The purpose for this Court's order was to resolve Plaintiff's challenge to the authenticity of the e-mails attached to Defendants' Motion and Defendants' request, in their Motion to

est
7/6/01

Compel, to obtain certain information concerning Plaintiff's e-mail service providers. This Court was not going to allow that information to be obtained by the Defendants if the Plaintiff admitted the authenticity of those e-mails. In the event the Plaintiff denied the authenticity of those e-mails, then the Defendants would be entitled to discover information to determine if it was, in fact, the Plaintiff who was sending these e-mails to them.

3. Although Plaintiff failed to respond in any fashion to the order requiring a response by April 6, 2001, Plaintiff did file a motion [D.E. #608] requesting an evidentiary hearing on Defendants' Motion for Sanctions. On April 10, 2001, this Court issued separate orders; the previously mentioned Order to Show Cause, which set a hearing for May 9, 2001, and an order granting Plaintiff's request for an evidentiary hearing, which set the evidentiary hearing for the same day as the show cause hearing.

4. Prior to the May 9, 2001 hearing, the Plaintiff filed a Notice of Unavailability and Non-Attendance. This Court entered an order on May 8, 2001 continuing the hearing because the Plaintiff alleged that he would be unavailable and unable to attend. In this Court's order of May 8, 2001, this Court reset the hearing requested by the Plaintiff and the hearing on this Court's Order to Show Cause for May 23, 2001, at 9:30 a.m. On May 21, 2001, two days prior to the rescheduled hearing, the Plaintiff filed a Response to Show Cause Hearing. On page 12 of his response, the Plaintiff stated that he will not participate in any show cause hearing on the Defendants' Motion for Sanctions in the Form of Dismissal, even though he was the one that requested a hearing on that matter. Plaintiff's response goes on to indicate, on page 12, that the Plaintiff believes that "any hearing is illegitimate and lacks substantial legal authority." He states that he "will not lend credibility and legitimacy to any hearing" on the Motions for Sanctions in the Form of Dismissal and

denies all allegations raised by the Defendants in those motions. The Plaintiff continues on page 12 of that response to state that "This court may now consider the plaintiff in contempt of court orders, DE #201 and DE #246."

5. The Plaintiff alludes to this Court's rulings, issued June 19 and July 25, 2000, directing that he should not contact any of the Defendants or individual Defendants, including their supervisory employees, regarding any matter related to this case except through their counsel of record. If the Plaintiff was represented, his attorney would know that this is proper procedure. The Plaintiff questions this Court's authority to enter an "injunction" as he calls it preventing him from contacting the parties directly. This Court has entered numerous orders on this issue in ruling on Plaintiff's many requests for clarification/to vacate, etc., of this issue and has attempted to clearly point out to the Plaintiff that it is a discovery issue and not one appropriate for injunctive relief. The Plaintiff has appealed those orders to the District Court and they have been affirmed by Judge Graham. Also, this Court points out to the District Court that on innumerable occasions the Plaintiff has seen fit to simply disregard this Court's previous orders and/or continually ask for "clarification" or "renew" requests for relief that have already been ruled upon on several occasions.

6. This Court's order of July 25, 2000 further provided that any violations will result in sanctions including a recommendation of dismissal with prejudice. In their Motions for Sanctions, Defendants contend that the Plaintiff has violated the June 19th and July 25th Orders in that he has continued to communicate with the Defendants and/or their supervisory employees both personally and through e-mail. Some of the e-mails received by Defendants, their counsel, and their supervisory employees reflect the following: 1)

"ANYBODY, who supports your position on this matter is a racist and is part of the problem. I fear no man!!! This include white men wearing robes."; 2) "You don't have enough insurance and smart lawyers to outrun the law and defeat me."; 3) "I ain't going to have a handfule of white bigots run over me."; 4) "Now go call your daddy in Fort Pierce and see if he can get you out of this mess."; 5) "... the hell I would give them, hell like you are getting... I ain't going to be bully by no racist white man." (Exhibit 1, D.E. #646). These purported contacts with the Defendants represented herein are another reason why this Court believes that the e-mails were a significant discovery issue which needed to be resolved before this Court would permit the Defendants to simply begin obtaining otherwise private information from the Plaintiff's e-mail providers.

7. On page 13 of the Plaintiff's response filed May 21, 2001, he asserts that he "will seek public records under Florida Law" and "will not abide by any ruling of this court and a Magistrate Judge that attempts to impose conditions upon the plaintiff to pursue public records under Florida Law." He continues with "A Federal Magistrate Judge does not have the legal authority to impose any, zero, conditions on how the plaintiff's (sic) accesses public records under Florida Law."

8. The Plaintiff continues on page 13 of his response to state that: "Plaintiff is a man of principle and will no longer be bullied by a misguided Magistrate Judge that appears to be making up laws as he goes along. Plaintiff is quite willing to bet his lawsuit that he is right and is quite content to take this matter up on appeal."

9. Another interesting point is made by the Plaintiff in his response on page 13. Previously, this Court has recommended on various occasions that portions of the Plaintiff's Amended Complaint be dismissed with prejudice for lack of legal foundation.

However, there remain, as this Court recommended, various viable claims for trial. Those claims still are before the Court based upon Judge Graham's adoption of this Court's most recent Report and Recommendation in respect to dismissal. However, on page 13 of his response filed May 21, 2001, the Plaintiff asserts that he is "unclear" as to how the Court can dismiss a lawsuit that was dismissed on February 13, 2001. Plaintiff states that he "has made it abundantly clear that he will not rewrite his complaint until he is heard on appeal from the 11th Circuit Court of Appeal." He goes on to further state, "There is no complaint for this court to dismiss... Frankly, this court no longer has jurisdiction of this case."

10. When this Court called the matter for a hearing on the Plaintiff's request for an evidentiary hearing on the pending Motions for Sanctions in the Form of Dismissal as well as this Court's Order to Show Cause on May 23, 2001, the Plaintiff did not appear. This Court handled other unrelated criminal matters prior to calling this civil case for a hearing on May 23, 2001. While the hearing was set for 9:30 a.m., this Court did not call this matter for hearing until 10:01 a.m. The Plaintiff was not present and did not answer the call of the Court.

11. It is this Court's firm belief that the Plaintiff has continually and knowingly violated this Court's previous orders in respect to numerous matters. Specifically, this Court has set forth herein the most recent and intentional violation by failing to even respond to this Court's order directing a response to be filed in respect to the questionable e-mails. Once the Plaintiff requested an evidentiary hearing on the pending Motions to Dismiss, this Court granted that request by the Plaintiff and set the hearing for the same time as this Court's Order to Show Cause. When the Plaintiff filed a pleading indicating

he would be unavailable for the May 9, 2001 hearing, this Court reset the hearing for two weeks later to give the Plaintiff ample opportunity to attend. The Plaintiff chose to not attend.

12. It is clear by the Plaintiff's own words quoted by this Court herein as taken from his pleadings that he has no intention of following this Court's orders or directives. This Court understands that the Plaintiff is acting pro se and in previous orders has indicated that it is attempting to bend over backwards to give the Plaintiff every consideration in that regard. However, this Court cannot allow the Plaintiff to willfully disregard this Court's previous orders directing him to do things as well as to even show up at a hearing. He requested a hearing, this Court set it and he still refused to attend.

13. This Court is also puzzled by the fact that the Plaintiff says that he no longer has a complaint pending in this court and that this Court has no jurisdiction to do anything. He further states that all he wishes to do is appeal to the Eleventh Circuit. However, there are viable claims still pending which this Court recommended not be dismissed.

14. In the light of the e-mails allegedly sent by the Plaintiff, in his own words, he believes himself to be in contempt of this Court. This Court cannot permit any litigant to violate the rules of this Court or flaunt the authority of this Court. This Court believes that it has given the Plaintiff more than ample opportunity to address these issues and he has chosen not to do so. Further, the Plaintiff has had the right to appeal every ruling made by this Court, has done so, and those rulings have been upheld by the District Court. The Plaintiff filed a Renewed Motion to Vacate on May 21, 2001. On the last page of that motion, the Plaintiff submits that the orders in respect to the discovery issue prohibiting him from contacting the parties directly in this case, as referred to above, were not: "properly

submitted to an Article III Judge for disposition, these orders are illegal and have no legal effect and as such all pretense otherwise must be vacated and abandoned expeditiously. The intransigence of the Magistrate Judge is only protracting this litigation and ultimately harming the defendants because these orders will continuously be attacked until legal authority has been established. Plaintiff simply will not allow himself to be bullied by a misguided Magistrate Judge.”

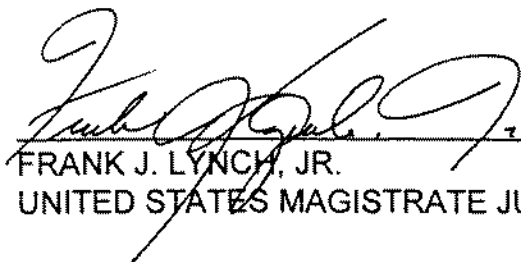
15. Based upon this Court’s finding that the Plaintiff has intentionally and continually violated this Court’s orders, and has indicated his intention to not abide by this Court’s orders and to continue filing pleadings in total disregard of this Court’s rulings, this Court has no alternative but to recommend dismissal of all remaining claims with prejudice. See Gratton v. Great American Communications, 178 F.3d 1373 (11th Cir. 1999); Vargas v. Peltz, 901 F.Supp. 1572 (S.D. Fla. 1995).

ACCORDINGLY, this Court recommends to the District Court that the Defendants’ Motions for Sanctions in the Form of Dismissal of Plaintiff’s Action [D.E. #511, D.E. #646] be **GRANTED** and that, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the Plaintiff’s remaining claims be **DISMISSED** with prejudice and that all other pending motions be **DENIED** as moot.

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 31st day of May, 2001, at Fort Pierce, Northe

Division of the Southern District of Florida.



FRANK J. LYNCH, JR.
UNITED STATES MAGISTRATE JUDGE

Copies furnished:

Hon. Donald L. Graham
Marcellus Mason, pro se
Maria Sorolis, Esq.