

3-1-2001 511  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT PIERCE DIVISION

MARCELLUS M. MASON,

Plaintiff,

CASE NO.: 99-14027-CIV--GRAHAM/LYNCH  
CONSOLIDATED WITH  
CASE NOS.: 99-14042 and 99-14257

v.

HEARTLAND LIBRARY COOPERATIVE, *et al.*,

Defendants.

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**DEFENDANTS' MOTION FOR SANCTIONS IN THE FORM OF DISMISSAL OF  
PLAINTIFF'S ACTION AND SUPPORTING MEMORANDUM OF LAW**

COME NOW the Defendants, Highlands County Board of County Commissioners, Heartland Library Cooperative, *et al.*, by and through their undersigned counsel, and hereby files its Motion for Sanctions and asks this Court to Dismiss Plaintiff's action in its entirety. In support of its motion, Defendants show as follows:

- (1) On June 15, 2000, Defendants filed a Motion for Preliminary Injunction in this matter asking the Court to prohibit the Plaintiff from contacting any of the Defendants and/or their supervisory employees except through counsel with regard to any matter that is related to the lawsuit pending before this Court. This request was based upon Plaintiff's repeated contact with the individual Defendants and supervisory employees for the purpose of harassment despite their representation by counsel. The frequency of the communications interfered with the productive work these recipients needed to perform during the workday and Plaintiff refused to cease this conduct notwithstanding Defendants' counsel's request. (Exhibit 1).

- (2) On June 19, 2000, this Court granted Defendants' Motion for Preliminary Injunction and ordered that the Plaintiff was prohibited from contacting any of the Defendants including their supervisory employees and/or the individual Defendants regarding any matter relating to this case. The Court further order that the Plaintiff shall correspond only with Defendants' counsel. (Exhibit 2).
- (3) Subsequent to this Court's Order of June 19, 2000, Plaintiff continued to contact the Defendants whom he was directed not to contact. His communications were intimidating and were made in an attempt to undermine several witnesses' ability to testify truthfully. Plaintiff executed this purposeful disregard for this Court's authority under the guise of allegedly believing that the scope of this Court's June 19, 2000 Order was limited to communications with Defendants *regarding issues regarding the instant case*. (Exhibit 3).
- (4) On July 6, 2000, Defendants filed a renewed Motion for Preliminary Injunction based upon Plaintiff's blatant violations of this Court's June 19, 2000 Order. In their motion, Defendants requested that this Court enter an Order prohibiting Plaintiff from directly contacting them *for any matter*. Id.
- (5) On July 25, 2000, this Court granted Defendants' Renewed Motion for Preliminary Injunction and ordered Plaintiff to refrain from contacting any of the Defendants including their supervisory employees and/or the individual Defendants regarding any matter related to this case. This Order provided that Plaintiff shall correspond only with Defendants' counsel, including any request for public records. The Order also prohibited Plaintiff from contacting any of the named Defendants in this case, including their supervisory employees and/or the

individual Defendants, who are parties in other actions (Fellin, St. Germain, etc.) and are represented by counsel in those actions regarding any matter related to those cases. In this Order the Court explicitly held that any future violations of the Order would result in this Court imposing sanctions against the Plaintiff, including a recommendation of dismissal with prejudice as to all claims. (Exhibit 4).

- (6) During the week of February 5, 2001, Plaintiff knowingly violated this Court's Orders of June 19, 200 and July 25, 2000. Plaintiff appeared at the office of Fred Carino, Human Resource Director of Highlands County and a supervisory employee of a named defendant in this action, and demanded to view his personnel file. This request was made directly to Mr. Carino's office and not through Defendant Highlands County's counsel.<sup>1</sup> Notwithstanding, his file was produced to him. During this visit, Plaintiff pointed out that certain portions of the contents of his personnel file should be removed. (Exhibit 5). These acts were done with apparent intent to challenge this Court's authority to issue Orders enjoining Plaintiff's conduct.
- (7) On February 13, 2001, Plaintiff appeared at Fred Carino's office and demanded to view attorney billing records from Defendant Highlands County's counsel relevant to its defense of his litigation. Mr. Mason left before the records could be produced. Id.

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<sup>1</sup> In an effort to cooperate with Plaintiff, Defendants' counsel has allowed the *production* of a document to take place at Mr. Carino's office. Notwithstanding, Defendants' counsel has always required Plaintiff to make his *request* for the particular production only through them.

- (8) On February 14, 2001, Plaintiff returned to Fred Carino's office and demanded to view attorney billing records from Defendant Highlands County's counsel relevant to its defense of his litigation. This request was made directly to Mr. Carino's office and not through Defendant Highlands County's counsel. Notwithstanding, the records were produced to him. Id.
- (9) After reviewing the records, Mr. Mason penned a note to Mr. Carino stating that he wanted *unredacted* portions of billing records and if he did not get them he will file a lawsuit by February 16, 2001.<sup>2</sup> Id.
- (10) Mr. Mason returned to Mr. Carino's office a second time on February 14, 2001 and knowingly violated this Court's Orders of June 19, 200 and July 25, 2000. He demanded to view Defendant Highlands County's Insurance Document of Coverage, a document that had previously been produced to him. This request was made directly to Mr. Carino's office and not through Defendant Highlands County's counsel. Notwithstanding, the document was produced to him. Id.
- (11) During this visit, Plaintiff became loud, aggressive, disruptive, and questioned the need for Mr. Carino's presence during his review of the document. Plaintiff suggested to Mr. Carino that his time could be better spent responding to Plaintiff's many interrogatories. Id.
- (12) During his confrontation, Mr. Mason made threatening gestures to Mr. Carino with his hands that came within six (6) inches of Mr. Carino's face. Plaintiff threatened Mr. Carino numerous times that Plaintiff would have him arrested if he

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<sup>2</sup> Any and all redactions made to billing records produced to Plaintiff are done in full compliance with Florida Public Records law.

did not turn over whatever documents Plaintiff demanded. Plaintiff also threatened to go directly to the courthouse and file suit against Highlands County and Mr. Carino individually. Plaintiff promised Mr. Carino that he would continue to return to his office to demand public records and documents. Id.

- (13) Subsequent to these events, and up to the time of the filing of this motion, Plaintiff has continued to violate this Court's Order by personally contacting Mr. Carino's office for discovery matter in a harassing manner without first going through Defendant's counsel. (Exhibit 7).
- (14) Plaintiff has demonstrated a blatant disregard for this Court's authority and a resolve indicative of bullying his way through this litigation on his own terms. (Exhibit 6).
- (15) Plaintiff's conduct in violation of this Court's Orders of June 19, 2000 and July 25, 2000 require a dismissal with prejudice of all of plaintiff's claims in the above-referenced matter.

WHEREFORE, Defendants' request that this Court dismiss with prejudice all of Plaintiff's claims in the above-referenced matter.

#### MEMORANDUM OF LAW

A district court is authorized, on a defendant's motion, to dismiss an action for failure to prosecute or to obey a court order or federal rule. Goforth v. Owens, 766 F.2d 1533 (11<sup>th</sup> Cir. 1985). Specifically, Rule 41(b) of the Federal Rules of Civil Procedure ("Fed.R.Civ.P"), provides:

**Involuntary Dismissal: Effect Therof.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the

court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

Rule 41(b), Fed.R.Civ.P.

The court's power to dismiss is an inherent aspect of its authority to enforce its orders and insure prompt disposition of lawsuits. Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962); Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983). The legal standard to be applied under Rule 41(b) is whether there is "a clear record of . . . willful contempt and a finding that lesser sanctions would not suffice." Id.; Hildebrand v. Honeywell, Inc., 622 F.2d 179, 181 (5<sup>th</sup> Cir. 1980). Such dismissals are to be with prejudice and operate as an adjudication on the merits. Rule 41(b), Fed.R.Civ.P.; Reynolds v. Wabash Railroad Co., 236 F.2d 387 (8<sup>th</sup> Cir. 1956); Henderson v. Consolidated Merchandizing Corp., 286 F.Supp. 697 (N.D. Ga. 1968). Rule 41(b) dismissals for a plaintiff's failure to comply with a court order are not limited to situations involving court orders made during trial. Syracuse Broadcasting Corporation v. Newhouse, 271 F.2d 910 (2d Cir. 1959).

Dismissal under Rule 41(b) may also be appropriate to alleviate the burden that a party's misconduct places on the judicial system or to punish an abuse of the system and deter future misconduct. Hilgeford v. People's Bank, Inc., 113 F.R.D. 161 (D. Ind. 1986); Donohoe Const. Co., 795 F.2d 1071 (D.C. Cir. 1986). In Hilgeford, a court on its *sua sponte* analysis of a cause, dismissed the cause with prejudice pursuant to Rule 41(b), Fed.R.Civ.P. due to the plaintiff's failure to comply with one of the court's orders. In so doing, the court wrote:

Lesser monetary sanctions have been imposed . . . and a stay was imposed in this case. Those sanctions have not adequately served the interests of justice. Goforth v. Owens, 766 F.2d 1533 (11<sup>th</sup> Cir. 1985). In voiding this court's orders, the [plaintiffs] have manifested their willful contempt for this court. A clearer record of contumacious conduct could not be found. The [plaintiffs] have harassed the defendants and burdened the court. The record is full of self-serving documents manufactured by the [plaintiffs] which are unsupported in fact and without basis in law. This is the third lawsuit filed by the [plaintiffs] which has imposed upon these same defendants the burden of defending themselves against outlandish claims supported only by vague and irrelevant notions of law and twisted and self-manufactured facts. To allow this lawsuit to continue, in view of plaintiffs' history, in view of plaintiffs' blatant disregard for this court, and in view of the fact that less drastic sanctions have proved inadequate, would severely prejudice the defendants and burden this court. This cause is therefore dismissed with prejudice.

Hilgeford v. People's Bank, Inc., 113 F.R.D. at 163-64.

In Martin-Trigona v. Gellis & Melinger, 830 F.2d 367 (D.D.C. 1987), the court dismissed a plaintiff's complaint with prejudice because of the plaintiff's deliberate violation of a court-ordered injunction which restricted the terms and conditions of instituting subsequent legal proceedings in that court. The court wrote:

[Plaintiff] has deliberately elected, and announced her intention, not to comply with the court's orders in any respect. Even when the court, in its show cause order, specifically alerted her to the possibility of dismissal, she stood her ground, asserted her position and stated her intention not to respond to the "harassing and frivolous" order of the court. Such calculated, deliberate disregard of the court's authority and the force of its orders is no [sic] utterly inconsistent with the administration of justice and orderly conduct of the business of the court that it cannot be tolerated. If the court is to discharge its function, its orders must be obeyed. When a party deliberately refuses to comply with an order, and persists in such refusal in the face of impending dismissal, the court has no choice but to use the remedy provided by Rule 41(b) to dismiss.

The Courts' language in Hilgeford and Martin-Trigona, could not be more directly on point. In the instant case, there is a clear record of willful contempt and any lesser sanction would not suffice. Plaintiff has blatantly disregarded two of this Court's Orders and espoused a complete lack of concern for this Court's authority and any


ramifications resulting from his behavior. His behavior has had the effect of harassing named Defendants' supervisory personnel and burdening this Court, all for the purpose of pursuing frivolous litigation.<sup>3</sup> This Court expressly warned Plaintiff that "any future violations of this order will result in this Court imposing sanctions against the Plaintiff, including a recommendation of dismissal with prejudice as to all claims." (Exhibit 4).

Defendants remain prejudiced by Plaintiff's actions. His refusal to obey this Court's Orders preclude Defendants the opportunity to properly object to Plaintiff's discover requests and public records requests. It also prevents them from properly protecting potential witnesses from Plaintiff's calculated undue influence.

WHEREFORE, Defendants' request that this Court dismiss with prejudice all of Plaintiff's claims in the above-referenced matter.

Dated: February 28, 2001

Respectfully submitted


(fn)   
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<sup>3</sup> In its February 13, 2001 Order, this Court adopted Magistrate Lynch's Report and Recommendation dismissing twenty (20) of Plaintiff's twenty-seven (27) claims with prejudice on the basis that they had no basis in fact or law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via first-class Regular U.S. Mail, on March 1, 2001, to:

Marcellus Mason, Jr.  
218 Florida Drive  
Sebring, FL 33870

  
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Attorney