

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

MARCELLUS M. MASON,

Plaintiff, v.

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

HEARTLAND LIBRARY COOPERATIVE, *et al.*,

Defendants.

DEFENDANTS' SECOND 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 Second 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) Defendants hereby incorporate their previous Motion for Sanctions in the Form of Dismissal in its entirety (D.E. #511).
- (2) As previously set forth in Defendants' prior Motion for Sanctions, 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.
- (3) On June 19, 2000, this Court granted Defendants' Motion 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 ordered that Plaintiff correspond only with Defendants' counsel.

- (4) Subsequent to the Court's June 19th Order, 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. In defense of his actions, Plaintiff claimed that he believed that the scope of the Court's June 19th Order was limited to communications with Defendants *regarding issues regarding the instant case*.
- (5) On July 6, 2000, Defendants filed a renewed Motion for Preliminary Injunction based upon Plaintiff's willful violations of the Court's June 19th Order. In their motion, Defendants requested that the Court enter an Order prohibiting Plaintiff from directly contacting them *for any matter*.
- (6) On July 25, 2000, the 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. In its 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.
- (7) On August 2, 2000, Plaintiff filed a Motion for Clarification of the Court's July 25th Order. (D.E. #262). The Court subsequently issued another Order denying Plaintiff's Motion for Clarification, and again informed Plaintiff that he comply

with the Court's previous July 25, 2000 Order and that "any violations of the order will result in the imposition of sanctions or dismissal with prejudice as to all Plaintiff's claims." (D.E. #281).

- (8) Despite ample warnings by this Court, Plaintiff continues to violate this Court's Order(s). As set forth in Defendants' recent Motion for Sanctions in the Form of Dismissal (D.E. #511), which is currently pending before this Court, during the week of February 5, 2001, Plaintiff knowingly contacted supervisory employees and/or individual Defendants in this matter, apparently with the intent of challenging this Court's authority to issue Orders enjoining Plaintiff's conduct.
- (9) After receiving Defendants' aforementioned Motion for Sanctions, the Court issued an Order on March 27, 2001, instructing Plaintiff to file a response addressing the authenticity of e-mail communications that were sent to supervisory employees and/or individual Defendants, which were attached as Exhibits to Defendants' Motion.
- (10) Since April 3, 2001 - subsequent to the Court's March 27th Order - Plaintiff has repeatedly personally contacted supervisory employees and/or the individual Defendants about matters related to this case. Specifically, Plaintiff sent e-mail communications directly to supervisory employees of the Defendants, which discussed the "no trespass warnings" that were issued against Plaintiff, Plaintiff's tortious interference claim, as well as Allen, Norton & Blue's "track record" of litigating appeals (including Eleventh Circuit appeals). (Exhibit 1).
- (11) Clearly, Plaintiff's "no trespass" and tortious interference claims were an integral part of Plaintiff's present litigation, and involve the same set of facts that Plaintiff

continues to rely on in pursuing his present claims. Indeed, Plaintiff's Fourth Amended Complaint alleged several causes of action based on the issuance of the "no trespass" warnings against Plaintiff. Although Plaintiff's "no trespass" claims were ultimately dismissed by the Court (D.E.'s #435; 466), Plaintiff has recently indicated his intent to appeal the Court's dismissal of all claims in his Fourth Amended Complaint. (Exhibit 2). Consequently, the issuance of the "no trespass" warnings against Plaintiff are still part of this present litigation.

- (12) In addition, Plaintiff's communications regarding Defendants' counsel's Eleventh Circuit "track record" clearly have no relevance to his state court claim(s), and pertain only to his federal litigation.
- (13) All of Plaintiff's claims arise from the same set of facts and are all related, and he should simply not be allowed to continuously disregard Orders of this Court and blatantly challenge the Court's authority.
- (14) Plaintiff has continued to violate this Court's Order by personally contacting these individuals, despite clear warnings by the Court that any future violations will result in the recommendation of dismissal with prejudice of Plaintiff's claim(s). Plaintiff has demonstrated a blatant disregard and disdain for this Court's authority, as evidenced by Plaintiff's statement that *"ANYBODY, who supports your position . . . is a racist and is part of the problem. I fear no man!!! This includes white men wearing robes"* and *"I aint afraid of a white men wearing robes of any color."* (Exhibit 1, e-mails dated 4/03/01 at 10:57 a.m. and 4/06/01 at 8:33 a.m. respectively)

(15) Plaintiff's continuous violation of this Court's Orders mandate a dismissal of all of plaintiff's claims in the above-referenced matter with prejudice.

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 (11th 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 (5th 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 (8th 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 Fed. R. Civ. P. 41(b), 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 (11th 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.' 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."

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 discovery and public records requests. It also prevents Defendants from properly protecting potential witnesses from Plaintiff's calculated undue influence. Although Plaintiff claims to be communicating with these individuals under the guise of his state court action (see E-mails contained at Exhibit 1 hereto), Plaintiff's communications

clearly encompass matters that are related to his present claim in federal court. Plaintiff previously attempted to employ this same tactic of asserting that he is only communicating with individuals about claims other than the present one (as referenced in paragraphs 4-6 of this Motion, *infra*) upon his earlier violations of this Court's Order, at which time the Court again instructed Plaintiff that he is not to communicate with these individuals about any matter related to this case. Plaintiff's willing refusal to comply with this Court's Orders warrants dismissal of Plaintiff's remaining claims as directed in the Court's June 19th and July 25th, 2000, Orders.

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

Dated: April 6, 2001

Respectfully submitted

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1 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.

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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 April 6, 2001, to:

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



Attorney