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ORIGINAL

FILED
MAY 16 10:10
LARD... WILSON
BY 

6 Defendants In Pro Se

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

9 RICHARD W. LEWIS, PhD.,
10 Plaintiff,

11 v.

12 LINDA DUFF and TYRONE DUFF,
13 Defendants.

Case No. CV-N-99-386-ECR(RAM)

MOTION FOR RECONSIDERATION OF THE
ORDER (DOC.#286) FILED MAY 2, 2003

14 COMES NOW, Defendants, TYRONE DUFF and LINDA DUFF, In Pro Se,
15 (hereinafter "Duff Defendants") files their Motion for Reconsideration of the
16 Order (Doc.#286) signed on May 1, 2003, filed May 2, 2003, postmark on May 7,
17 2003 and Duff Defendants did not receive until May 12, 2003. This motion is
18 based on the following Memorandum of Points and Authorities, exhibit attached
19 hereto and all pleadings, exhibits and affidavits filed herein.

20 DATED this 15th day of May, 2003.

21
22 By: 
23 TYRONE DUFF

24
25 By: 
26 LINDA DUFF

27 Defendants In Pro Se

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

The Duff Defendants file their Motion for Reconsideration of the Order (Doc.#286) dated May 1, 2003, filed May 2, 2003 and postmarked May 7, 2003 (Exhibit A), in which the Duff Defendants did not receive until May 12, 2003. District Judge Reed states the Duff Defendants' Motion to Dismiss is not timely. The fact is this entire action under Section 1983 was dismissed with prejudice in District Judge Reed's Order (Doc.#139) filed July 12, 2001. The fact is the Plaintiff's Motion to Strike (Doc.#280) and his Reply, dated April 23, 2003, produces no points and authorities, pursuant to LR 7-2(d). District Judge Reed now states in his Order (Doc.#286) "that the settlement of the pretrial order is referred to the Magistrate Judge pursuant to motion by plaintiff, filed on April 4, 2003 (Doc.#281)".

District Judge Reed has dismissed, with prejudice, in his Order, Doc.#139 and Doc.#232, the following:

- 1) Defendant, State of Nevada, which dismissed the "TORT ACTION" required by law, pursuant to N.R.S. 41.0337 and N.R.S. 41.031, for an action for redress under 42 U.S.C. §1983.
- 2) The Nevada Attorney General's Office
- 3) The Nevada State Board of Psychological Examiners
- 4) Elizabeth Richett, PhD. (State Defendant)
- 5) Richard Weiher, PhD. (State Defendant)
- 6) David Antonuccio, PhD. (State Defendant)
- 7) Louis Mortillaro, PhD. (State Defendant)
- 8) Dennis Ortwein (State Defendant)
- 9) Christa Peterson, PhD. (State Defendant)

District Judge Reed, in his Order (Doc.#232) on page 7, lines 8-9 and lines 14-18, page 8, lines 11-16 and page 9, lines 2-4 states the following.

1 "Dr. Lewis cannot state a deprivation of constitutional rights,
2 and, therefore, cannot maintain a section 1983 claim".
(Emphasis added).

3 "First, Mr. Duff filed his complaint with the board in 1993. Dr.
4 Lewis alleges that the conspiracy began in 1995 after he asked
5 for payment from the Division of Child and Family services.
There is no way that a complaint filed in 1993 could be the
basis for a conspiracy that began in 1995". (Emphasis added).

6 "To begin, this is not the basis for Dr. Lewis's complaint. Dr.
7 Lewis's complaint specifically refers "only" to a filing of a
8 complaint in 1995, not a revival of a past complaint and Dr.
Lewis never moved to amend his complaint to add this new basis
for liability."(Emphasis added).

9 "Therefore, Dr. Lewis has not produced any admissible evidence
10 that supports his claim of conspiracy". (Emphasis added).

11 Based on the facts set forth herein, everything has been dismissed, with
12 prejudice pertaining to the Plaintiff's complaint (Doc.#74) by this Court.
13 Therefore, unless the Plaintiff has filed a new action against the Duff
14 Defendants for redress under Section 1983, there are no claims against them by
15 the Plaintiff that has not been dismissed, with prejudice, by this Court.

16 II.

17 LAW AND ARGUMENT

18 The Plaintiff's Motion to Strike (Doc.#280) and his Reply, dated April 23,
19 2003, produces no points and authorities, pursuant to LR 7-2(d) which states,
20 "the failure of moving party to file points and authorities in support of the
21 motion shall constitute a consent to the denial of the motion". Therefore, the
22 Plaintiff's Motion and Reply, by law, should of been denied automatically by
23 this Court.

24 A Motion to Strike is proper when a pleading is not properly before the
25 court for decision and would be considered impertinent. Harrison v. Perea, 168
26 US 311, 18 S.Ct. 129, 42 L.Ed. 478 (1897). In accordance with Fed.R.Civ.P.
27 12(f), "the Court may order stricken from any pleading insufficient defense or
28 any redundant, immaterial, impertinent or scandalous material."

1 The Duff Defendants' Motion to Dismiss (Doc.#279) was properly before the
2 Court to dismiss an action for redress under Section 1983 that is in a
3 stalemate position as it cannot proceed without a "TORT ACTION" and "STATE
4 DEFENDANTS", which this Court dismissed in its' Order (Doc.#139) filed July 12,
5 2001.

6 The Duff Defendants have produced the fact that United States District
7 Judge Edward C. Reed, Jr. dismissed all the legal requirements in his Order,
8 Doc.#139, filed July 12, 2001, with prejudice, as set forth herein, in order for
9 the United States District Court, District of Nevada to maintain jurisdiction in
10 the above entitled matter under Section 1983.

11 Producing the fact, District Judge Reed's Order (Doc.#139) dismissing
12 Defendant, State of Nevada, with prejudice, which dismissed the "TORT ACTION"
13 required by law, pursuant to N.R.S. 41.0337 and N.R.S. 41.031 for an action for
14 redress under 42 U.S.C. §1983, also dismissed the Plaintiff's Second Amended
15 Complaint (Doc.#74) in its entirety, with prejudice.

16 42 U.S.C. §1983 governs deprivation of civil rights, creates separate
17 federal rights that is special statutory claim independent of common law.
18 Cook v. Cox, (1973 D.C.Va.) 357 F. Supp. 120.

19 Under 42 U.S.C. §1983 provides civil action for deprivation of civil
20 rights. Two elements are necessary for recovery; 1) plaintiff must prove that
21 defendant has deprived him of rights secured by "Constitution and Laws" of the
22 United States, and that defendants deprived him of this constitutional right
23 "under color of any statute, ordinance, regulation, custom or usage, or any
24 State or Territory; 2) this second element requires that plaintiff show that
25 defendant acted "under color of law". Adickes v. S.H.Kress & Co., 398 US 144,
26 26 L.Ed. 2d 142, 90 S.Ct. 1598 (1970).

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1 The above cites produces the legal fact, it is impossible for the Duff
2 Defendants to act under color of State law, without a "TORT ACTION and STATE
3 DEFENDANTS", pursuant to N.R.S. 41.0337 and N.R.S. 41.031, in which District
4 Judge Reed dismissed, with prejudice, in his Order (Doc.#139). The Plaintiff's
5 complaint (Doc.#74) fails to meet the legal requirements for an action under
6 Section 1983, as set forth herein. District Judge Reed has denied four (4)
7 Motions to Dismiss, with prejudice, filed by the Duff Defendants, producing the
8 fact of District Judge Reed's collusion with, including but not limited to, the
9 Plaintiff, Richard W. Lewis, PhD., his attorneys of record, the Law Office of
10 Kevin J. Mirch, Esq., the Nevada Attorney General's Office and State Defendants
11 to defraud the Duff Defendants of their rights by the forms of law or to obtain
12 an object forbidden by law. Therefore, any further action by District Judge
13 Reed to proceed to trial in this matter without a tort action and State
14 Defendants is a "MALICIOUS ABUSE OF THE LEGAL PROCESS" to obtain an object
15 forbidden by law, through a criminal conspiracy to deprive the Duff Defendants
16 of their rights under color of law, to procure personal gain through greed,
17 graft and corruption, will only further the United States liability in this
18 case.

19 Based on the facts set forth herein, the Duff Defendants reaffirm their
20 prior decision and will not participate in this case any further, other than
21 the appellant process.

22 District Judge Reed should consider the liability he has already caused to
23 the United States and not further that liability by proceeding any further with
24 this action, that ended with his Order (Doc.#139) July 12, 2001.

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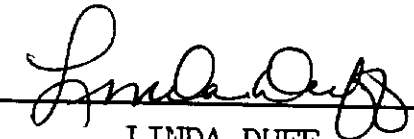
III.

CONCLUSION

Based on the foregoing and exhibit attached hereto, the Duff Defendants' Motion for Reconsideration of the Order (Doc.#286) must be granted, and for this Court to file its' Order to rescind its' Order (Doc.#286) granting the Plaintiff's Motion to Strike (Doc.#280) and grant the Duff Defendants' Motion to Dismiss, with prejudice (Doc.#279).

DATED this 15th day of May, 2003.

By: 
TYRONE DUFF

By: 
LINDA DUFF

P.O.Box 2512
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Defendants In Pro Se

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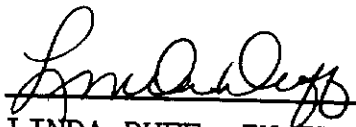
CERTIFICATE OF MAILING

The undersign hereby certifies that on the 15th day of May, 2003, they mailed a true copy of the foregoing MOTION FOR RECONSIDERATION OF THE ORDER (DOC.#286) in case CV-N-99-386-ECR(RAM) to the following party:

Kevin J. Mirch, Esq.
201 W. Liberty St., Suit 201
P.O.Box 5396
Reno, Nevada 89513



TYRONE DUFF, IN PRO SE



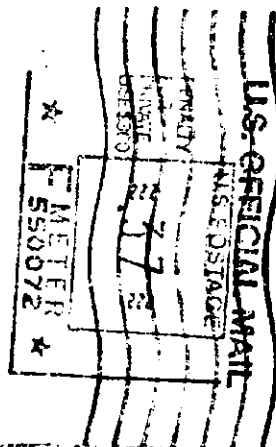
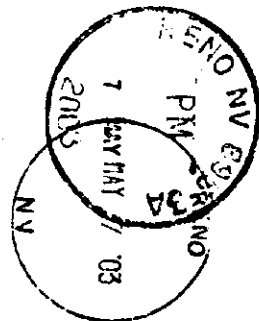
LINDA DUFF, IN PRO SE

EXHIBIT
A

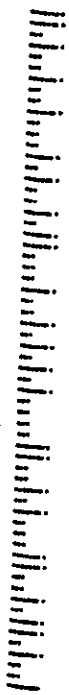
EXHIBIT A

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
400 SOUTH VIRGINIA ST., ROOM 301
RENO, NEVADA 89501
OFFICIAL BUSINESS

Duff, Linda
P.O. Box 2512
Bellingham, WA 98225
CV-N-99-0386 MAIL OPEN ACTIVE



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FILED

03 MAY -2 AM 11:00

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

LANCE S. WILSON
CLERK

DEPUTY

RICHARD W. LEWIS, PhD.,)
)
vs.)
)
LINDA DUFF and TYRONE DUFF.)
_____)

CV-N-99-0386-ECR (RAM)

MINUTES OF THE COURT

DATE: MAY 1, 2003

PRESENT: _____ EDWARD C. REED, JR. _____ U. S. DISTRICT JUDGE

Deputy Clerk: _____ JERRY RIES _____ Reporter: _____ NONE APPEARING _____

Counsel for Plaintiff(s) _____ NONE APPEARING _____

Counsel for Defendant(s) _____ NONE APPEARING _____

MINUTE ORDER IN CHAMBERS

IT IS HEREBY ORDERED that the motion to strike (#280), filed by plaintiff on April 4, 2003, is GRANTED. The motion of Defendants Duffs to dismiss (#279) is stricken. The defendants' motion is not timely. The time period for filing such motions has long since passed and the defendants offer no reason why such motion should be considered at this late stage in the proceedings.

IT IS FURTHER ORDERED that the settlement of the pretrial order is referred to the Magistrate Judge pursuant to motion by plaintiff, filed on April 4, 2003 (#281).

The Defendants Duffs are cautioned that if they do not participate in the further proceedings, a default judgment may be entered against them. The Court suggests that they do reconsider their decision not to participate further in the case.

LANCE S. WILSON, CLERK

By

Deputy Clerk

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