IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO. CV2012-85-4

DAVID D. STEBBINS — DEFENDANT

FILED FOR RECORD
2012 APR 10 PM 2:14
JANNIE STEEN, CLERK
BY [illegible] DC

COMPLAINT

Comes now, *pro se* Plaintiff David A. Stebbins ("Plaintiff"), who hereby submits the following complaint against David D. Stebbins ("Defendant") for the torts of malicious prosecution, abuse of process, defamation, breach of contract, conversion, and battery.

In September of 2011, Plaintiff and Defendant entered into a written contract allowing Plaintiff to live at Defendant's residence on a week-by-week basis ("the contract"). In essence, Plaintiff and Defendant had a roommate-style lease agreement. This contract entitled Plaintiff to full access to all of the home's amenities, including, but not limited to, "full Internet access when [Defendant and his wife] were not using it" in the contract's exact words. The contract was to remain in effect until Plaintiff was able to purchase a motor vehicle that his Class D driver's license would allow him to operate, and also secure living arrangements. Defendant was supposed to furnish 100% of Plaintiff living expenses – including food – until Plaintiff could secure those items.

On the night of November 24, 2012, Plaintiff complained that the Internet was slower than normal, and thus, Plaintiff was not receiving "full Internet access" as the contract called for. After Defendant made a single, ineffective attempt to repair the Internet speed, Plaintiff continued to complain, and Defendant reacted by removing the Internet router altogether.

When Plaintiff went into Defendant's bedroom in an attempt to retrieve the router, Defendant jumped out of his bed and punched Plaintiff in the eye. When Plaintiff informed Defendant

that he would go to jail for what he did, Plaintiff went to find a phone book so as to look up the phone number for the Boone County Sheriff's Department. Defendant then proceeded to take a knife from the kitchen to and cut himself across the face.

At first, Plaintiff did not think anything of Defendant's actions; Plaintiff's mindset was that Defendant wished to cut himself, that was his business. Plaintiff put two and two together when he entered the dining room to retrieve the phone so that he could call the police, and saw Defendant in the kitchen wiping the blade off with water so as to remove his fingerprints. At that point, Plaintiff still called the police and reported the punch, but also told the police that Defendant had cut himself to make it look as if the punch was in self-defense.

Approximately fifteen minutes later, two deputies arrived in response to Plaintiff's call. The first one dispatched was David Upton. The second one dispatched was Jason Bearthky, who was not even the first one dispatched, yet responded anyway, even though Upton was perfectly capable of handling the call himself, because Bearthky is good friends with Defendant. In an act of nepotism, Bearthky arrested Plaintiff, but not Defendant, simply because Bearthky "believed" his buddy that Plaintiff attacked Defendant with a knife. Plaintiff was subsequently charged with domestic battery in the second degree in this very Court. Judge Gordon Webb currently presides over the felony charge, the case number of which is CR2011-324.

Plaintiff also spent one hundred thirteen days in the Boone County Detention Center before saving up enough SSI benefits to be able to bond out of jail.

After bonding out of jail, Plaintiff was able to secure living arrangements providing every utility except telephone for $400 per month. Telephone and Internet access were provided by Cox Communications for $40.02 per month, including sales taxes. Plaintiff was also able to secure food stamp benefits of $200 per month, making the deprivation of food a matter of no-

harm-no-foul.

Defendant's taking of the Internet router constitutes a breach of contract because the contract entered into in September 2011 specifically entitled Plaintiff to "full Internet access," which Defendant deprived Plaintiff of. It also constitutes conversion, as Plaintiff may not "own" the router, but the contract gave him an ownership interest which Defendant acted adversely to.

Defendant committed battery when he punched Plaintiff in the eye.

Defendant's actions constitute malicious prosecution because he knew I was innocent and pressed charges anyway. First of all, Plaintiff did not use a knife; second, even if he did, Defendant's taking of the router constitutes the tort of conversion, and thus the crime of theft. Therefore, even if Plaintiff used a knife in attempting to recover the router, Plaintiff still would have been justified in his use of non-lethal physical force (which is all Plaintiff is being accused of using, because he is only being charged with domestic battery of the *second* degree, not first) by way of A.C.A. § 5-2-609. Note that, under that statute, I only have to *reasonably* believe that the alleged victim's actions constitute stealing.

Defendant's actions constitute defamation because he lied about my status of attacking him with a knife. This not only led to Plaintiff's undeserved arrest, but also caused Plaintiff to fall out of favor with his own mother.

Finally, The pressing of criminal charges also constitute an abuse of process. Defendant wanted me to move out of his house, but because of the written contract, he could not simply throw me out of the house at a moment's notice. The contract would force Defendant to evict me by way of an unlawful detainer lawsuit. Such an action would have cost a lot of money, it would have taken a long time, and Plaintiff would still be allowed to live at the house in the meantime. Defendant knew this, even if he would not have admitted it, and so he used these criminal

proceedings to force Plaintiff to move out without due process to the Plaintiff. His self-inflicted lacerations caused him to not be arrested; he could have declined to press charges against Plaintiff, and that goal would still have been accomplished. Plaintiff hereby accuses Defendant of actually pressing the charges in an attempt to expedite the eviction process.

Plaintiff respectfully requests that the Court grant him the following relief:

1. An injunction ordering Defendant to cease and desist his defamatory actions.
2. Actual damages totaling $1,000,000, composed of the following:
   A) $2,500 for the cost of purchasing a motor vehicle, which Defendant's actions prevented Plaintiff from being able to save up and afford.
   B) $2,640.12 for the cost of Plaintiff's living arrangements which Plaintiff suffered as a result of Defendant's breach of contract and abuse of process. Plaintiff secured living arrangements with all utilities except phone covered by the landlord, for $400 per month, and telephone and Internet for $40.02 per month. Plaintiff makes the reasonable estimate of six (6) months that it would have otherwise taken him to save up the money to secure these things, had Defendant not breached the contract. Therefore, the math equation yielding these damages is $440.02 x 6 = $2,640.12.
   C) $1,190, because that is the amount it cost me to be able to bond out of jail.
   D) $1,000 for every day Plaintiff was incarcerated because of Defendant's defamation and malicious prosecution, for the injury of loss of enjoyment of life. Since Plaintiff was incarcerated for 113 days, he seeks damages for this injury totaling $113,000.
   E) $4,859.88 in pain damages for punching Plaintiff.
   F) $25,810 for the emotional distress which Defendant caused Plaintiff.
   G) $50,000 in damages for the loss of reputation within the community, and

H) $800,000 in damages for the loss of Plaintiff's reputation with his mother.

3. Ten times the compensatory damages, or $10,000,000, in punitive damages, because Defendant acted with malicious indifference to my legal rights. The breach of contract action does not allow for the recovery of punitive damages as a matter of public policy, but everything else does. This makes for a grand total of $11,000,000 in damages.

Wherefore, premises considered, Plaintiff respectfully request that this relief be granted.

David Stebbins

David Stebbins
123 W. Ridge,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2012 JUN 11 PM 2:47
JEANNE STEELMAN, CLERK
BY _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS. — NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO COMPLAINT AND MOTION FOR MENTAL EXAMINATION

Comes now the Defendant, David D. Stebbins, *pro se,* and for his Answer and Motion states:

1. Defendant denies each and every allegation as set forth in the Complaint and specifically states that the Complaint violates Rule 10 of the Arkansas Rules of Civil Procedure that states all averments of a claim shall be made in numbered paragraphs with contents limited to a single set of circumstances. The Complaint of the Defendant has no numbered paragraphs and therefore, is improper and should be dismissed.

2. Because the Plaintiff has failed to number the paragraphs, Defendant can only answer in a similar rambling and disjointed manner in which the complaint was written. Defendant did enter into a written contract with Plaintiff. However, Rule 10 of the Arkansas Rules of Civil Procedure states that when a claim is based upon a written instrument a copy of the written instrument shall be attached as an Exhibit to the pleading. Because the Plaintiff did not do so, the Complaint is deficient and should be dismissed.

3. Any contract referred to by the Plaintiff that is not attached did not permit the Plaintiff to live at the residence on a week to week basis and said contract could be terminated at any time and the Plaintiff evicted at any time. There was no roommate lease agreement. The

contract did not provide full access to home amenities but had restrictions. However, internet access was allowed. The contract was not to remain in effect until certain events occurred but the contract could be terminated immediately and the Plaintiff evicted. Further, Defendant was never to furnish living expenses for the Plaintiff and Plaintiff was required to work in and around the house which the Plaintiff never did. At all times, Plaintiff was in violation of the contract.

4. On November 24, 2012 Plaintiff did complain that the internet was slower than normal. However, that was the full internet access available at the time and therefore, Plaintiff was receiving full internet access. Defendant did make an effort to determine if the slow internet access was a result of any home computer problem or as the result of heavy internet traffic due to the holiday. Defendant determined that there was no problems with the home computer and that slow internet speed was a result of the heavy internet access on the holiday. After Plaintiff refused to accept the explanation and Plaintiff began to curse and yell and flipp the Defendant off, the Defendant did remove the router and put it in his bedroom, a location where the Plaintiff was forbidden.

5. Plaintiff grabbed a knife and Plaintiff did go into Defendant's bedroom. Defendant did jump out of bed but never punched the Plaintiff, the Plaintiff attached the Defendant with the knife and the Defendant was only protecting himself.

6. The rest of the matters set forth in the second page of the Complaint in the unnumbered paragraphs are false in terms of any description of acts by the Defendant and to any relationship of the Defendant with any Boone County Sheriff Deputy. Plaintiff was arrested for a felony and should be convicted of a felony.

7. If the Plaintiff spent any time in the Boone County jail that is where the Plaintiff belonged.

8. Defendant has no knowledge of any living arrangement of the Plaintiff and therefore, denies the same.

9. Defendant never breached the contract but it was Plaintiff that did so. Defendant never committed a battery on the Plaintiff. Any actions of the Defendant were for self-defense. Defendant never committed an act of malicious prosecution in that said tort is not properly pled by the Plaintiff and this cause of action should be dismissed. Plaintiff's description of the events at the home of the Defendant are false and not true.

10. Defendant denies defaming Plaintiff and truth is a defense to defamation. The relationship of Plaintiff to his mother has nothing to do with this lawsuit and is not relevant.

11. Defendant denies abuse of process in that Defendant never caused the Plaintiff to be arrested but Plaintiff caused Plaintiff to be arrested. Defendant could easily have had Plaintiff removed from the house under the terms of the contract which permitted immediate termination of the contract and eviction. Defendant would never be required to filed a lawsuit against Plaintiff for unlawful detainer and if so, it would not have taken a long time. Plaintiff is living in a fantasy world of lies and a fantasy world misinformation and is a fantasy world full of anger.

12. Plaintiff should be denied all relief requested and an Order should be entered for Plaintiff not to be allowed to abuse the court system as Plaintiff has done with this lawsuit against the Defendant.

13. Pursuant to Rule 35 of the Arkansas Rules of Civil Procedure the Court should order a mental examination for the Plaintiff. The Plaintiff has admitted in a pleading filed June 2, 2011 in Boone County case CV 2011-65-4 that Plaintiff has Asperger Syndrome and Plaintiff is receiving social security disability due to his mental state and that a mental examine is necessary for the Court to determine the ability of Plaintiff to tell the truth and for the Court to determine

that the Plaintiff has anger and aggressive conduct when the infantile wishes of the Plaintiff are not immediately satisfied. – Pleading of 6-2-11 - CV2011-65-4 attached.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Complaint be dismissed for failure to obey the rules of pleading as stated above, the failure of Plaintiff to state true facts, the failure of the Plaintiff to attach necessary documents to pleadings, the failure of the Plaintiff to state a sufficient factual basis for alleged cause of action and that a mental examination of the Plaintiff be promptly ordered and that Defendant have Court costs and fees and all other proper relief to which the Defendant is entitled.

DAVID D. STEBBINS

BY: _____

David D. Stebbins, *pro se*
8527 Hopewell Road
Harrison, AR 72601
870-743-4386

CERTIFICATE OF SERVICE

I, David D. Stebbins, *pro se* Defendant herein, hereby state that the above and foregoing pleading has been served upon the *pro se* Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, 123 W. Ridge, Apt. D, Harrison, AR 72601 on this _____ day of June, 2012.

_____
David D. Stebbins, *pro se*

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

FILED FOR RECORD
2012 JUN 19 PM 2:39
JEANNE STEELE, CLERK
BY _____ DC

ANSWERS TO REQUESTS FOR ADMISSIONS BY DEFENDANT

Comes now the Defendant, David D. Stebbins, *pro se,* and for his Answers to Requests for Admissions states:

1. In the month of September 2012, Defendant and Plaintiff entered into a written contract ("the contract") allowing Plaintiff to reside at Defendant's residence until Plaintiff could secure a motor vehicle and more favorable living arrangements, in exchange for non-suiting all pending legal actions against Defendant and his wife.

ANSWER TO REQUEST FOR ADMISSION NO. 1: Deny, not part of written contract.

2. Defendant had all the bargaining power in the contract, and Plaintiff had none.

ANSWER TO REQUEST FOR ADMISSION NO. 2: Deny, each party has own bargaining power.

3. Defendant knew of said disparity in bargaining power, and deliberately exploited it in order to force Plaintiff to agree to contractual obligations that he would never have agreed to otherwise.

ANSWER TO REQUEST FOR ADMISSION NO. 3: Deny, each party has own bargaining power.

4. The contract states that Plaintiff may not sue Defendant except for justifiable cause and without first consulting an attorney in person.

ANSWER TO REQUEST FOR ADMISSION NO. 4: Agree.

65

5. The contract does not define "justifiable cause."

ANSWER TO REQUEST FOR ADMISSION NO. 5: Agree but the term is defined by ordinary course of usage.

6. The contract does not require Plaintiff to first consult an attorney in person specifically about the litigation he wishes to bring against Defendant.

ANSWER TO REQUEST FOR ADMISSION NO. 6: Deny, contract terms are self-explanatory.

7. The contract entitles Plaintiff to free shelter and food.

ANSWER TO REQUEST FOR ADMISSION NO. 7: Deny.

8. The contract entitles Plaintiff to "full Internet access whenever [Defendant and his wife] are not using them."

ANSWER TO REQUEST FOR ADMISSION NO. 8: Admit.

9. The contract does not expressly give Defendant the right to revoke any access to amenities at any time, at his sole discretion.

ANSWER TO REQUEST FOR ADMISSION NO. 9: Deny, contract can be terminated by Defendant.

10. The contract does not give Defendant jurisdiction to decide whether or not Plaintiff has breached the contract.

ANSWER TO REQUEST FOR ADMISSION NO. 10: Deny, the word jurisdiction is not properly used in this sentence.

11. In a previous contract that Defendant initially wanted Plaintiff to sign, Plaintiff, if said contract were signed, would have entitled Plaintiff to Internet access and other amenities only "when [Defendant) says [plaintiff] can use them."

ANSWER TO REQUEST FOR ADMISSION NO. 11: Deny, no previous contract.

12. The previous contract spoken of in Admission #11 was part of the negotiation history of the contract spoken of in Admission # 1.

66

ANSWER TO REQUEST FOR ADMISSION NO. 12: Deny, no previous contract.

13. On the night of November 24, 2011, the Internet at Defendant's residence was unusually slow.

ANSWER TO REQUEST FOR ADMISSION NO. 13: Admit.

14. Plaintiff complained to Defendant about the poor Internet speed.

ANSWER TO REQUEST FOR ADMISSION NO. 14: Admit after Plaintiff went into Defendant's study/bedroom.

15. Defendant made only one attempt to repair the Internet speed, and when that did not work, he made no further attempts to comply with the contractual obligation entitling Plaintiff to "full" Internet access.

ANSWER TO REQUEST FOR ADMISSION NO. 15: Deny, Defendant did what could be done, however internet speed is not in control of the Defendant

16. When Plaintiff further complained about the Internet speed, Defendant retaliated by removing the Internet router altogether.

ANSWER TO REQUEST FOR ADMISSION NO. 16: When Plaintiff yelled, cursed, swore at and made obscene gestures to Defendant the Defendant removed the router.

17. When Plaintiff entered Defendant's quarters in an attempt to retrieve the Internet router, Defendant punched Plaintiff in the left eye.

ANSWER TO REQUEST FOR ADMISSION NO. 17: Plaintiff did forcibly without permission enter Defendant's bedroom with a knife. Defendant tried to take the knife away after Plaintiff cut the Defendant with the knife, so the answer is deny.

18. When Plaintiff informed Defendant of his inevitable arrest, he retired to retrieve the phone book so that he could call the Boone County Sheriffs Department.

ANSWER TO REQUEST FOR ADMISSION NO. 18: Deny, not happened.

19. After Plaintiff retrieved said phone book, Defendant took a knife from his kitchen and proceeded to cut himself across the face and neck.

67

ANSWER TO REQUEST FOR ADMISSION NO. 19: Deny, not happened.

20. Defendant then wiped the knife clean in the sink so as to remove his fingerprints.

ANSWER TO REQUEST FOR ADMISSION NO. 20: Deny, not happened.

21. Defendant suffered no serious injuries from his lacerations.

ANSWER TO REQUEST FOR ADMISSION NO. 21: Deny, any knife cut is a serious injury.

22. Defendant sought no medical attention for his lacerations beyond first aid supplies found in his house.

ANSWER TO REQUEST FOR ADMISSION NO. 22: Admit, but should have gone to emergency room.

23. When Plaintiff called the police ("the call"), Deputy David Upton was the one originally dispatched to Defendant's residence ("the scene").

ANSWER TO REQUEST FOR ADMISSION NO. 23: Deny, Defendant has no knowledge of who the police dispatched.

24. Deputy Jason Bearthky later joined David Upton.

ANSWER TO REQUEST FOR ADMISSION NO. 24: Deny, Defendant not know the names of the deputies who showed up.

25. Despite being dispatched second, Bearthky arrived at the scene first.

ANSWER TO REQUEST FOR ADMISSION NO. 25: Deny due to lack of knowledge of who was dispatched first.

26. Deputy Upton was sufficiently capable of handling the call on his own.

ANSWER TO REQUEST FOR ADMISSION NO. 26: Deny, because the knowledge of Defendant of the Deputy's ability or lack thereof. However, a felony assault by Plaintiff on Defendant usually brings in more than one police officer.

27. Bearthky is friends with Defendant.

ANSWER TO REQUEST FOR ADMISSION NO. 27: Deny, Defendant did not know him personally.

68

28. Although Deputy Upton responded to the scene, he provided no affidavit in Plaintiff's felony charge.

ANSWER TO REQUEST FOR ADMISSION NO. 28: Deny due to lack of knowledge.

29. Jason Bearthky, when responding to the call, investigated the claim for only a few minutes.

ANSWER TO REQUEST FOR ADMISSION NO. 29: Deny all officers present up from up to one-half (½) hour.

30. Bearthky arrested Plaintiff in response to the call, but not Defendant, simply because Bearthky "believed" Defendant that Plaintiff had attacked Defendant with a knife.

ANSWER TO REQUEST FOR ADMISSION NO. 30: Deny, Defendant has no knowledge of what the officers thought except they knew Plaintiff is guilty.

31. After being arrested on the night of November 24, 2011, Plaintiff spent one hundred thirteen days incarcerated at the Boone County Detention Center.

ANSWER TO REQUEST FOR ADMISSION NO. 31: Deny due to lack of knowledge and don't care.

32. When Plaintiff was still a baby, Defendant once attacked a co-worker with a baseball bat simply because that co-worker had accused Defendant's wife of being sexually promiscuous and Plaintiff and Plaintiff's sister of being illegitimate.

ANSWER TO REQUEST FOR ADMISSION NO. 32: Deny.

33. When Plaintiff was twelve, he and Defendant's wife asked Defendant to repair Plaintiffs video game adapter. Because he was upset for being woken from his nap, Defendant proceeded to literally slap his wife's glasses clean off her face, while Plaintiff sat there hopeless and watched.

ANSWER TO REQUEST FOR ADMISSION NO. 33: Deny.

34. When Plaintiff was fifteen, Defendant literally threw Plaintiff's sister's head against the bathroom wall because she was wearing hair dye.

69

ANSWER TO REQUEST FOR ADMISSION NO. 34: Deny.

35. In the month of May 2008, Defendant literally strangled Plaintiff and threw him against a wall simply for yelling at Defendant in retaliation to Defendant yelling at Plaintiff.

ANSWER TO REQUEST FOR ADMISSION NO. 35: Deny, not happened.

36. When Plaintiff called the police in an attempt to have Defendant arrested for the actions spoken of in Admission #35, Defendant was not arrested simply because his battery did not leave a visible mark on Plaintiff's body.

ANSWER TO REQUEST FOR ADMISSION NO. 36: Deny, not true.

37. In a previous lawsuit between Plaintiff and Defendant, Defendant flatly refused to provide any sort of cooperation with Plaintiff's discovery attempts, simply in an attempt to delay and increase the costs of the litigation.

ANSWER TO REQUEST FOR ADMISSION NO. 37: Deny, not true.

38. Along with avoiding jail time, Defendant also initiated the criminal proceedings in the Related Case (as defined by the Complaint in this action) in an attempt to force Plaintiff to leave Defendant's residence without the otherwise-required unlawful detainer action.

ANSWER TO REQUEST FOR ADMISSION NO. 38: Deny, Defendant has no authority to initiate criminal proceedings.

39. In the previous litigation between Plaintiff and Defendant, Defendant made the comment to Plaintiff that there is a chance that Plaintiff's case "will never even be heard."

ANSWER TO REQUEST FOR ADMISSION NO. 39: Deny.

40. The previous litigation, despite being non-suited, still sits on this Court's docket without any rulings on any motions in the case, despite the fact that it is over a year old.

ANSWER TO REQUEST FOR ADMISSION NO. 40: Deny due to lack of knowledge.

41. Defendant knows that Plaintiff has filed precisely thirteen lawsuits in federal court.

ANSWER TO REQUEST FOR ADMISSION NO. 41: Deny due to lack of knowledge and don't care.

70

42. Defendant does not have a Pacer account.

ANSWER TO REQUEST FOR ADMISSION NO. 42: Admit.

43. Defendant will always vote Republican, no matter what the individual candidate supports or opposes, simply because it is the Republican party.

ANSWER TO REQUEST FOR ADMISSION NO. 43: Deny.

44. Defendant is not wealthy and is not religious.

ANSWER TO REQUEST FOR ADMISSION NO. 44: Deny, Defendant is religious.

45. The crux of the statements Defendant published about Plaintiff is not so much that Plaintiff attacked Defendant with a knife, but rather, that Plaintiff did so specifically without legal justification, ultimately resulting in criminal activity.

ANSWER TO REQUEST FOR ADMISSION NO. 45: Deny, Defendant can speak for himself.

46. Defendant's accusation of Plaintiff's criminal activity caused Plaintiff to fall out of favor with his own mother.

ANSWER TO REQUEST FOR ADMISSION NO. 46: Deny and is not relevant.

47. The criminal charges Defendant pressed against Plaintiff subjected Plaintiff to grave emotional distress.

ANSWER TO REQUEST FOR ADMISSION NO. 47: Deny.

48. Plaintiff ate little to nothing in the first few days during his incarceration.

ANSWER TO REQUEST FOR ADMISSION NO. 48: Deny due to lack of knowledge.

49. Prior to his arrest, Plaintiff weighed 240lbs.

ANSWER TO REQUEST FOR ADMISSION NO. 49: Deny due to lack of knowledge.

50. Near the end of Plaintiff's arrest, he weighed only 185 lbs.

71

ANSWER TO REQUEST FOR ADMISSION NO. 50: Deny due to lack of knowledge.

51. Plaintiff's calculation of damages is accurate.

ANSWER TO REQUEST FOR ADMISSION NO. 51: Deny in that it is Defendant who suffered damages as the result of the felony assault by Plaintiff on his own father and if Plaintiff suffered any damages Plaintiff deserved to suffer the damages that were caused by Plaintiff's own actions.

DAVID D. STEBBINS

BY: _____

David D. Stebbins, *pro se*
8527 Hopewell Road
Harrison, AR 72601
870-743-4386

VERIFICATION

STATE OF ARKANSAS
COUNTY OF BOONE

I, David D. Stebbins, being first and duly sworn, states under oath that the above and foregoing allegations are true and correct to the best of my personal knowledge and belief.

_____
David D. Stebbins

Subscribed and sworn to before me, a Notary Public, on this 13th day of June, 2012.

_____
Notary Public

My Commission Expires:

NICOLE M. CAMPBELL
Notary Public-Arkansas
Marion County
My Commission Expires
December 09, 2012

72

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2012 JUN 20 PM 2:39
JEANNIE STEELE CLERK
BY: [signature] DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO. 2012-85-4

DAVID D. STEBBINS — DEFENDANT

MOTION TO COMPEL DISCOVERY

Comes now, *pro se* Plaintiff David Stebbins, who, in the event that Defendant survives the motion for default (being filed simultaneously with this motion), hereby submits the following motion to compel discovery.

1. On June 20, 2012, Defendant's responses to my first discovery requests were received by me. However, these responses are evasive, incomplete, and simply fail to answer the questions presented in the detail requested.

2. Please find attached Exhibit A, Defendant's response to my request for admissions, as well as Exhibit B, his Answer to my Interrogatories and Requests for Production.

3. As this Court can see, my first interrogatory requested that Defendant provide "an exhaustive and thorough set of explanations" as to why he denied everything he denied in both the Answer and the Requests for Admissions. His scant response "See Answers to Requests for Admissions" is incomplete on so many levels that it makes my head spin.

4. First of all, his response does not even attempt to address the denials he made in his Answer (e.g. his responsive pleading).

5. His answers are neither exhaustive nor thorough. He provides no details when he should have provided every single solitary detail that he knows of (and I mean ***every single last one of them***). For example,

A) When denying my first request for admissions, all he says is that it is "not part of

74

[the] written contract." If he disagrees with me about the nature of the contract, then what *was* the nature of contract? Notice, one of the details I specifically requested was what the Defendant thinks the truth is. He also gives no explanation as to what information he uses to come to this conclusion, another detail expressly requested.

B) In response to Defendant's response to my Second and Third Requested Admission, he claims that "each party has [his] own bargaining power." Again, where are the details I requested? What kind of bargaining power did I have? How does he come to the conclusion that I had this bargaining power? What were my other options, besides to literally live on the streets?

C) Every single response to my requests for admissions that he was supposed to account for is similarly littered with want of details.

6. His response to my second interrogatory is equally incomplete. He denies doing what I accuse him of doing, and thus refuses to provide any explanation (apparently, because he claims that no explanation exists). However, there are a few things Defendant admits to doing. Taking the router away, jumping out of bed when I attempted to retrieve it, and pressing charges against me come immediately to mind. In his response to my requests for admissions, he also admits a variety of things, including, but not limited to, He makes no attempt whatsoever to explain why he did these things.

7. His response to Admission #3 is equally evasive and incomplete. Notice all of the details I requested; he provided none of them. He did not even try.

8. Defendant's response to my Fourth Interrogatory is the closest he comes to giving a complete answer. However, his response still leaves a lot to be desired. For starters, he never mentions what he will testify about; he implies that the deputy he intends to call will testify about the things he mentions in his probable cause affidavit, which Defendant encloses.

However, he does not specify what he, himself, will testify about.

9. Defendant's response to my fifth interrogatory is just as evasive and incomplete as the rest of them. His two word answer is "oral testimony." What does that mean? What kind of oral testimony? What subject-matters will be testified about? What, *specifically*, will be said?

10. Defendant's responses to my requests for production of documents are not merely evasive and incomplete; they are straight-up nonexistent. He provides neither documentation, nor even so much as affidavits, even though affidavits are easy to create. Apparently, Defendant does not know this, so here is a bit of advice for Defendant: If he does not provide affidavits, his testimony is inadmissible, because I would have received no discovery regarding the materials testified about.

11. Please find enclosed Exhibits C and D, responses from the University of Arkansas in a federal case I have against them. I include these because Defendant apparently needs some help in knowing how to provide "exhaustive and thorough" explanations. These responses are a model of how to draft exhaustive and thorough explanations! Notice how they not only go into vast amounts of detail, but even volunteer information when they know that their answers will create follow-up questions for the reader(s).

Wherefore, premises considered, I respectfully request that Defendant be ordered to fully comply with discovery.

David S Stebbins

David Stebbins
123 W. Ridge St.
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

76

Exhibit A is a verbatim copy of Add 10-18 and therefore will not be attached here, to conserve stationary.

Exh. B

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS BY DEFENDANT

Comes now the Defendant, David D. Stebbins, *pro se*, and for his Answers to Interrogatories and Requests for Production of Documents states:

1. Provide an exhaustive and thorough set of explanations for why Defendant denied everything he denied in his Answer and response to all Plaintiffs Requests for Admissions. Include such details 1) why Defendant thinks the matters he denied are false, 2) what he thinks the truth is, and 3) what evidence he has to support his claim.

ANSWER TO INTERROGATORY NO. 1: See Answers to Requests for Admissions.

2. Provide an exhaustive and thorough set of explanations for why Defendant did everything Plaintiff accuses him of doing in the Complaint and all Requests for Admissions (remember, responses to Interrogatories are made under oath, so stand by your denials at your own risk).

ANSWER TO INTERROGATORY NO. 2: Defendant did not do what Plaintiff accused Defendant of doing.

3. In the event that Defendant either denies, or pleads inability to admit or deny, any requested admission for lack of knowledge, provide an exhaustive and thorough set of

91

explanations for what reasonable inquiries the Defense engaged in in a reasonable attempt to obtain sufficient information to admit or deny the requested admission. Include such details as ... who did you consult? What information did you seek? How successful were you in getting said information? How long did it take? What was the medium of communication?

ANSWER TO INTERROGATORY NO. 3: Defendant made reasonable inquiries as to the knowledge Defendant had.

4. Provide an exhaustive and thorough list of people Defendant intends to call as a witness in this action, as well as their address, phone number, and an exhaustive and thorough set of things they intend to testify about.

ANSWER TO INTERROGATORY NO. 4: Defendant and the deputies at the Boone County Sheriff's Office—See Report.

5. Provide an exhaustive and thorough compilation of evidence Defendant intends to introduce at trial.

ANSWER TO INTERROGATORY NO. 5: Oral testimony.

1. Provide all documents which verify the factual accuracy of Defendant's responses to all Plaintiffs interrogatories.

ANSWER TO REQUEST FOR PRODUCTION NO. 1: None.

2. Produce affidavits of all witnesses spoken of in Defendant's response to Interrogatory #4.

ANSWER TO REQUEST FOR PRODUCTION NO. 2: None.

3. Produce copies of all evidence spoken of in Defendant's response to Interrogatory #5.

ANSWER TO REQUEST FOR PRODUCTION NO. 3: None.

4. Produce the entire email conversation that Defendant had - both over regular email and on facebook - with Dale Beavers.

ANSWER TO REQUEST FOR PRODUCTION NO. 4: None about Plaintiff or events surrounding Plaintiff and Defendant.

DAVID D. STEBBINS

BY: _____
David D. Stebbins, *pro se*
8527 Hopewell Road
Harrison, AR 72601
870-743-4386

VERIFICATION

STATE OF ARKANSAS
COUNTY OF BOONE

I, David D. Stebbins, being first and duly sworn, states under oath that the above and foregoing allegations are true and correct to the best of my personal knowledge and belief.

_____
David D. Stebbins

Subscribed and sworn to before me, a Notary Public, on this 13 day of June, 2012.

_____
Notary Public

My Commission Expires:

NICOLE M. CAMPBELL
Notary Public-Arkansas
Marion County
My Commission Expires
December 09, 2012

93

FILED FOR RECORD
2012 JUL 10 PM 4:09
JEANNIE STEEN, CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

ANSWER TO MOTION TO COMPEL DISCOVERY AND ANSWER TO SECOND MOTION TO COMPEL DISCOVERY

Comes now the Defendant, David D. Stebbins, *pro se,* and for his Answer to Motion to Compel Discovery and Answer to Second Motion to Compel Discovery states:

1. Plaintiff complains throughout his Motion that the answer by Defendant to the Interrogatories and Request for Admissions were incomplete, evasive and do not answer the question to such a degree that "it makes my head spin".

2. Plaintiff's Motion is not well taken since Plaintiff did not follow Rule 37 of the Arkansas Rules of Civil Procedure regarding discovery and therefore, the Motion should be dismissed.

3. Plaintiff from ignorance of the law states in paragraph 10 of his Motion that Plaintiff will provide legal advice to Defendant. Plaintiff states the false conclusion that if Defendant does not provide Affidavits, the Defendant's testimony is inadmissible because Plaintiff would have received no discovery regarding the materials testified about. This is utter nonsense and is not the law and does not exist in the law.

4. Plaintiff attempts to "educate" the Defendant in the method to answer discovery requests by attaching as Exhibits C and D to his Motion certain discovery responses that are "acceptable" to the Plaintiff. The Exhibits C and D are from a frivolous lawsuit filed by the

140

Plaintiff against the University of Arkansas, Fayetteville. Of upmost interest and importance are the following discovery responses approved by the Plaintiff. "Defendant (the University) states the Plaintiff has other diagnosis [besides Asperger's Syndrome] such as Intermittent Explosive Disorder, and that Plaintiff actually means what he says and intends to carry out his threatened actions." Plaintiff made threats and carried out conduct, "including Plaintiff's December 3, 2007, threat to cut his father's forehead; to use his father's blood to write a "letter of forgiveness"; to videotape the attack and post it on YouTube; Plaintiff's repeated threats to commit another "Virginia Tech incident" at UAF if he didn't get an immediate doctor's appointment and if he was suspended on an interim basis; Plaintiffs repeated threats of suicide if he was suspended on an interim basis; and Plaintiffs threats to physically attack UAPD's Lt. Vance Rice in hopes that Lt. Rice to shoot and kill Plaintiff); on January 10, 2008 (when Plaintiffs interim suspension was reviewed and the All-University Judicial Board found Plaintiff responsible for violating Rules 1, 8 and 35 of the Code of Student Life based upon Plaintiff's multiple threats to commit another "Virginia Tech incident" on campus, Plaintiff's threats to commit suicide, and Plaintiff's verbalized plan to cut up his father); and on June 13, 2010 (when Plaintiff sent a threatening and profanity-filled email to Chancellor G. David Gearhart as an "individual" and demanded, within a matter of 16 hours, that the Chancellor remove Plaintiff's suspension, override of any of Plaintiff's debts to the University, and readmit Plaintiff to the University, in Plaintiffs words "on the spot, no applications, no fucking interviews, no jack shit")." Defendant thanks Plaintiff for the openness of Plaintiff who applauds and compliments the discovery of the University of Arkansas, Fayetteville which provide additional factual basis for a complete mental exam of the Plaintiff and a dismissal of Plaintiff's frivolous lawsuit against the Defendant.

5. Defendant answers the Second Motion to Compel Discovery with the fact that Plaintiff again failed to comply with Rule 37 of the Arkansas Rules of Civil Procedure and the

Motion should be dismissed therefor. Of great interest is the imaginary conversation the Plaintiff is having with himself, the Defendant and the Court throughout the Second Motion. Also, paragraph 12 shows the Plaintiff has paranoid delusions and a false sense of grandeur that "corrupt forces" are after him. Again the Plaintiff provides out of his own pleadings the strongest evidence that a mental exam of the Plaintiff is appropriate and dismissal of his frivolous lawsuit is necessary.

6. Defendant denies each and every paragraph in the Second Motion to Compel Discovery.

WHEREFORE, PREMISES CONSIDERED, Defendant prays the Motion and Second Motion be dismissed, the Court Order a Mental exam for the Plaintiff and the frivolous lawsuit of the Plaintiff be dismissed and for all other proper relief.

DAVID D. STEBBINS

BY: _____

David D. Stebbins, *pro se*
8527 Hopewell Road
Harrison, AR 72601
870-743-4386

CERTIFICATE OF SERVICE

I, David D. Stebbins, *pro se* Defendant herein, hereby state that the above and foregoing pleading has been served upon the *pro se* Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, 123 W. Ridge, Apt. D, Harrison, AR 72601 on this 10th day of July, 2012.

_____
David D. Stebbins, *pro se*

FILED FOR RECORD
2013 FEB 25 PM 4:01
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

MOTION FOR SUMMARY JUDGMENT
TO DISMISS COMPLAINT

Comes now David D. Stebbins, *pro se* Defendant and pursuant to Rule 56 of the Arkansas Rules of Civil Procedure states:

1. On April 10, 2012 the Plaintiff filed a Complaint against the Defendant wherein Plaintiff claims certain causes of action against the Defendant as a result of the events of November 24, 2012 (sic-2011).

2. Plaintiff claimed the Defendant cut himself and then Defendant reported to the Boone County Sheriff that the Plaintiff was the person who cut the Defendant. As a result the Defendant caused the Plaintiff to be arrested. Plaintiff alleged the Defendant's actions were

   a) malicious prosecution

   b) defamation

   c) abuse of process

   d) denial of due process

3. As a result of the alleged actions by the Defendant to the Plaintiff the Plaintiff claimed eleven million dollars ($11,000,000.00) in civil damages.

147

4. On December 2, 2011 an Information was filed against the Plaintiff in Boone County Circuit Court, Criminal Division, CR 2011-324 charging the Plaintiff with Domestic Battery as set forth in the attached Exhibit "A" which is incorporated herein as if set out word for word.

5. Said Information was supported by an Affidavit of Deputy Jason C. Baethke setting forth the facts of probable cause for the arrest and criminal prosecution of the Plaintiff. Said Affidavit set forth facts that on November 24, 2011 it was the Plaintiff that cut the Defendant and not as Plaintiff falsely claimed in his civil complaint. The Affidavit is attached hereto and incorporated herein as if set out word for word as Exhibit "B".

6. On February 8, 2013 the Plaintiff entered into a plea statement in the Boone County Circuit Court Criminal Division CR 2011-334-4 wherein Plaintiff pled no contest and based upon that plea the Court in its Condition of Suspended Sentence found the Defendant guilty. The Plea Statement is attached hereto and incorporated herein as if set out word for word as Exhibit "C" and the Conditions of Suspended Sentence is attached hereto and incorporated herein as if set out word for word as Exhibit "D".

7. Plaintiff has admitted in the criminal case CR 2011-324 that the facts alleged in Plaintiff's civil lawsuit CV 2012-85-4 are false and any damages suffered by the Plaintiff were the sole fault of the Plaintiff.

8. Because there is no material facts in dispute in this civil lawsuit as a result of the Plaintiff's finding of guilty in the criminal case, the Court should grant this Motion for Summary Judgment and dismiss the Complaint of the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court grant the Motion for Summary Judgment in that there is no genuine issue of any material fact and the Defendant is entitled to a Judgment as a matter of law on the claims of damages by the Plaintiff

148

and Defendant have his Court costs, and any fees and all other proper relief to which the Defendant is entitled.

DAVID D. STEBBINS

BY: _____
David D. Stebbins, *pro se*
8527 Hopewell Road
Harrison, AR 72601
870-743-4386

VERIFICATION

STATE OF ARKANSAS
COUNTY OF BOONE

I, David D. Stebbins, being first and duly sworn, states under oath that the above and foregoing allegations are true and correct to the best of my personal knowledge and belief.

_____
David D. Stebbins

Subscribed and sworn to before me, a Notary Public, on this 25th day of February, 2013.

_____
Notary Public

My Commission Expires:

NICOLE M. CAMPBELL
MARION COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires December 09, 2022
Commission No. 12390746

149

Ex. "C"

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
14TH JUDICIAL DISTRICT-CRIMINAL DIVISION

FILED FOR RECORD
2013 FEB -8 PM 12:55
BRENDA WATKINS
BOONE CO. CIRCUIT CLERK
BY CHH DC

STATE OF ARKANSAS PLAINTIFF

VS. NO. CR 2011-334-4

DAVID ANTHONY STEBBINS DEFENDANT

PLEA STATEMENT

There are presently criminal charges against you in BOONE County Circuit Court. Before you make a plea to the charges against you in front of the judge, you must be sure that you understand your rights, the charges against you and their penalties. The Judge must be sure that you understand the following:

1. That you are charged with the following offenses: **DOMESTIC BATTERY IN THE THIRD DEGREE, 5-26-305, CLASS A MISDEMEANOR (AMENDED FROM DOMESTIC BATTERY IN THE SECOND DEGREE, 5-26-304, CLASS C FELONY)** if you are convicted, you may be imprisoned in the Arkansas Department of Corrections or the BOONE County Jail; and,

2. That you have the right to plead not guilty, to be tried by a jury, to confront your accusers and to testify or not. If you so plead, the State would have the burden of proving your guilt beyond a reasonable doubt. If you are found guilty by the jury, they will set your sentence and you will have the right to appeal to a higher court.

However, if you are guilty and desire to plead guilty or no contest, the Judge, upon accepting your plea of guilty or no contest, will decide what your sentence should be. If you decide to plead guilty or no contest, the Judge can only accept your plea if you understand and convince him that you understand the following:

1. Do you understand that you are charged with the following offenses of: **DOMESTIC BATTERY IN THE THIRD DEGREE, 5-26-305, CLASS A MISDEMEANOR (AMENDED FROM DOMESTIC BATTERY IN THE SECOND DEGREE, 5-26-304, CLASS C FELONY)** ? yes

2. Do you understand that the possible penalties provided by law on the charges against you shall be up to forty (40) years or LIFE for a Class Y Felony; not less than six (6) years nor more than thirty (30) years and / or a Fine of $15,000.00 for a Class A Felony; not less than five (5) years nor more than twenty (20) years and / or a Fine of $15,000.00 for a Class B Felony; not less than three (3) years nor more than ten (10) years and / or a fine of $10,000.00, for a Class C Felony; up to six (6) years and / or a Fine of $10,000.00 for a Class D Felony; and up to one (1) year and / or a Fine of $2,500.00 for a Class A Misdemeanor ? yes

3. Do you understand that by pleading no contest you give up your right to be tried by a jury and to confront your accusers in court? yes

4. Do you understand that by pleading no contest you give up your right to an appeal? yes

154

5. Are you pleading no contest freely and voluntarily and not because you have been threatened or promised anything in return for the plea? yes

6. Do you understand that the Prosecuting Attorney and your attorney have agreed to recommend a particular sentence if you plead? yes

Domestic **The agreement is the defendant shall plead no contest to the amended charge of BATTERY IN THE THIRD DEGREE, CLASS A MISDEMEANOR and receive a sentence of ONE YEAR PROBATION UNDER ACT 346 OF 1975. The defendant shall pay court costs of $150.00; a warrant service fee of $50.00; a booking and administration fee of $20.00; and pay for stay of $200.00. As a condition of probation: 1) All monies shall be paid to the Boone County Sheriff's Office at the rate of $35.00 per month beginning within 30 days; 2) the defendant shall comply with the Order of Protection (which is already in effect); 3) the defendant shall take all medications as prescribed; 4) the defendant shall not own or possess any weapon; 5) the defendant shall forfeit all items seized in this matter. Upon successful completion of the terms and conditions of probation the defendant shall be eligible for expungement if he so qualifies.**

7. Do you accept this agreement? yes

8. Have you discussed your case fully with your attorney and are you satisfied with her services and advise? yes

I have personally read everything on this plea statement and have answered each question. I fully understand my rights and I am voluntarily pleading no contest because I am guilty of the charges against me.

David A. Stidham

DEFENDANT

I have fully gone over the charges, penalties and the rights of my client in this particular matter. In my judgment, the defendant understands each and every element and is freely and voluntarily entering his plea of no contest.

2/8/13
DATE

Rebekah Keene
ATTORNEY FOR THE DEFENDANT

Carol Wilson
CIRCUIT JUDGE

155

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 MAR -7 AM 8:03
RHONDA WILKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Comes now, *pro se* Plaintiff David A. Stebbins, who hereby submits the following response in opposition to Defendant's Motion for Summary Judgment.

1. Plaintiff did indeed enter into a plea of **no contest** – not guilty, but no contest – on the date of February 6, 2013. Pursuant to this plea, the Court imposed a **suspended sentence** on the misdemeanor of Domestic Battering in the Third Degree, A.C.A. § 5-26-305.

2. Defendant appears to be suggesting that this plea creates *res judicata* in the instant case. Indeed, Paragraph #7 of Defendant's motion makes this allegation outright.

3. Despite Defendant's ambitions, his allegations of the law are plainly wrong. For starters, Defendant is plainly wrong in stating that, by entering into the no contest plea, Plaintiff has admitted that the allegations in the Complaint in this case are false. Indeed, the very purpose of a "no contest" plea, as opposed to a guilty plea, is that the accused person does not admit to his guilt.

4. Furthermore, because it is a no contest plea, rather than a guilty plea, the plea is inadmissible in any proceeding other than the one in which it was entered. See Arkansas Rule of Evidence 410 ("Evidence of a plea of *nolo contendere*, whether or not later withdrawn... is not admissible in any civil or criminal action, case, or proceeding"). Indeed, when the Court advised Plaintiff that this plea of "no contest" was the same as a plea of guilty, Plaintiff distinctly

159

remembers correcting the Court, pointing out that a *no contest* plea would not create *res judicata* in any civil action.

5. Thirdly, even if Plaintiff pleaded guilty in his criminal action, it would still not create *res judicata* in this action unless Plaintiff were to botch his sentence of probation. This is because the plea was entered pursuant to "Act 346 of 1975." In other words, Plaintiff has not yet actually been convicted! This defeats Defendant's *res judicata* ambitions at the outset, since an essential element of *res judicata* is that the previous case "resulted in a final judgment on the merits." See *Johnson v. U.S. Food Services, Inc.*, 2013 Ark. App. 86 (2013). See also *Winrock Grass Farm, Inc. v. Affiliated Real Estate Appraisers of Ark., Inc.*, 2010 Ark. App. 279, 373 S.W.3d 907 (2010). It does not get any simpler than that: No final adjudication, no *res judicata*. End of story.

6. Thus, not only should Defendant's motion for summary judgment be denied, but Defendant should be sanctioned under Ark. R. Civ. P. 11 just for advancing it. A motion for sanctions will be filed within 21 days, pursuant to Ark. R. Civ. P. 11(b), if Defendant does not withdraw his frivolous motion.

Wherefore, premises considered, I respectfully request that the Defendant's Motion for Summary Judgment be denied. So requested this 7th day of March, 2013.

David S Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

160

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 MAR 26 AM 11:56
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

FAXED

MOTION FOR SANCTIONS

Comes now, pro se Plaintiff David Stebbins, who hereby submits the following motion for sanctions.

1. Defendant frivolously moves for summary judgment, claiming that, even though Plaintiff only pleaded "no contest" rather than "guilty," he still admitted to the falsity of the allegations in his complaint, and that, even though Plaintiff received a deferred sentence, he was still convicted.

2. The lack of merit of this motion is stated in Plaintiff's Response to the Motion for Summary Judgment, hereby incorporated by reference. However, Defendant also deserves a sanction against him just for raising the argument in the first place.

3. When an attorney or pro se party signs a pleading, that signature constitutes a certificate by him that, among other things, he or she made a reasonable inquiry into the law supporting that document to ensure that it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. See See *Crockett & Brown, PA v. Wilson*, 901 SW 2d 826, 828 (1995). Furthermore, once the Court determines that this certification has been breached, sanctions are mandatory, not discretionary. See id.

4. Here, the plain text of the Arkansas Rule of Evidence 410 – that is the ***plain text***, no case law necessary – very clearly states that no contest pleas are not admissible, yet he is trying to admit one into evidence. No person who even so much as glanced over the Rules of Evidence

161

could have missed such a plain and blatant rule; thus, the fact that he is breaching that rule necessarily means that is also violating the certification that his signature constituted; either he did not, contrary to his certification, make reasonable inquiries into the law, or he does not, contrary to his certification, believe that his arguments are warranted by existing law. Either way, Ark. R. Civ. P. 11 has been violated.

5. Although sanctions are mandatory upon a finding of a violation of Ark. R. Civ. P. 11, the Court is vested with discretion to determine whether or not the signed pleading violates it in the first place. See See *Crockett* at 828. At least, that is *technically* how it works. In the instance case, however, his violation is so blatant that the Court's discretion is reduced to the point of effective nonexistence. No honest, fair, impartial, disinterested, and competent judge can look at Defendant's motion, take two seconds glancing at the Rules of Evidence, and honestly think that they sync up.

6. If I may recommend a sanction, I request that he be ordered to pay me a sum of $500 to compensate me for wasting my time, on top of any sanctions the Court wishes to order paid into Court to compensate it for its time being wasted.

Wherefore, premises considered, I request that the Court issue Defendant an appropriate sanction to deter the filing of frivolous pleadings in the future.

It is so requested this 26th day of March, 2013.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

162

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 MAY 15 AM 8:03
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY

DAVID A. STEBBINS PLAINTIFF

CV

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

RENEWED MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following renewed motion to compel discovery and renewed motion for sanctions.

1. On May 13, 2013, this Court entered an order denying Plaintiff's First[1] Motion to Compel Discovery, and struck the Motion for Sanctions as moot, finding that Plaintiff had failed to comply with Rule 37 when moving to compel discovery because he did not make good faith attempts to obtain the discovery without court action.

2. Because the reasoning behind the denial was because of a correctable mistake on the part of Plaintiff, the denial was without prejudice, as the Judiciary has a public policy of only denial without prejudice items which are deficient merely on a technical level.

3. Plaintiff quickly corrected his mistake, and contacted Defense Counsel's law office by telephone shortly after being dismissed from Court on May 13. A woman identifying herself as the secretary for Defense Counsel took the following message from Plaintiff: That plaintiff wishes for Defense Counsel to return this phone call within 24 hours, and confirm that complete and unevasive responses to the discovery requests were going to be sent to Plaintiff. If said confirmation was not given within 24 hours, Plaintiff would assume that the deficiencies in Defendant's discovery response would not be corrected without a Court order to do so.

4. The 24 hour time limit is reasonable, because Plaintiff was not asking for the discovery

1 The second motion was voluntarily withdrawn.

183

responses themselves, but only for confirmation that they would be created and delivered with all due speed. A *decision* to do this can be made instantly, let alone in 24 hours. Therefore, the time limit is reasonable.

5. On May 14, 2013, at 12:29pm, Plaintiff contacted Defense Counsel's law office again. This time, however, Plaintiff was told that they would not entertain his requests for information unless he served these requests to their office by mail.

6. Counsel of record is not entitled to dictate the method of communication. Telephone is a perfectly legitimate, legally-recognized method of communication between parties and/or partisan counsel, and all counsel of record must accept communications from all methods, so long as the Court accepts the methods as legitimate. For this reason, Plaintiff has fulfilled his requirement of making good faith attempts to secure the discovery without court action.

7. Plaintiff, accordingly, hereby incorporates the previously-filed Motion to Compel Discovery and Motion for Sanctions by reference. However, Plaintiff wishes to add the following arguments in addition to the previous ones:

A) The Court feels as if Interrogatory #1 is "proper" discovery. However, Defendant never raised this objection when it had the chance. Even after the merit of this objection was brought to the Defense's attention by the *sua sponte* opinion of the Court, Defense Counsel nonetheless declined to make any changes to his client's discovery responses – including the raising of objections – upon prompting from Plaintiff. For this reason, the objection, even if it would have had merit, is waived. See Ark. R. Civ. P. 33(b)(4) ("Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown"). For this reason, Defendant simply must provide the explanations requested, without regard to any objections.

B) The same goes for Request for Production No. 4.

C) Of course, even if Defendant made a timely objection on the grounds of attorney-client privilege, Plaintiff asserts that this objection is without merit. AR Rule of Evidence 502 does indeed state that the privilege applies to any attorney-client communications for any attorney "in any state or nation," and Plaintiff feels embarassed for not noticing it before. However, that same Rule of Evidence also states another criterion for privilege that Plaintiff emphatically states is not met in this case: The "client" (who, in this case, would be the Defendant) must consult with the attorney "with a view to obtaining professional legal services from him." In other words, you cannot claim that a friendly chat with a friend of yours is privileged from discovery simply because this friend *happens* to be a lawyer by trade.

D) Plaintiff, accordingly, emphatically asserts that the email conversations were not made in an attempt to obtain advice about the laws of the State of Mississippi, and to the extent that the lawyer is, in fact, giving legal advice, Plaintiff was correct in asserting that the lawyer must be liscenced to practice law in the state, the laws of which he is advising (or, in layman's terms, if you advise someone of Arkansas law, you must be admitted to the Arkansas bar, or else your advice is unprivileged). Rather, the closest I believe that these communications will come to constituting "legal advice" would show him and Defendant conspiring to have Plaintiff arrested!

E) If Defendant wishes to assert the privilege despite these claims, Plaintiff asks that the Court receive the requested communications under seal and review them to see if they are privileged or not.

F) Lastly, Defense Counsel claims that Plaintiff should "take their depositions" if he

wants to know what the witnesses will testify about. However, this is not a proper objection. Just as the Defense Counsel is not entitled to dictate a particular method of communication between parties, they are equally unentitled to dictate a particular means of discovery – especially the most expensive one – through which a particular type of information is extracted. This objection is simply designed to delay and increase the costs of the litigation.

8. Because the Defendant has exercised bad faith, both in this case and in previous ones, in giving straight answers, and complete and nonevasive responses to discovery, to the Plaintiff, Plaintiff renews his motion for sanctions.

9. Plaintiff also asserts that there are new grounds for sanctions, this time against Defense Counsel. The events spoken of in Paragraphs #5 – #6 manifest a bad faith attempt on the part of Defense Counsel to unfairly impede Plaintiff's ability to prosecute this claim in a cost-effective manner, and instead attempts to force Plaintiff to use the most costly means available (postal mail would require Plaintiff to pay for the costs of printing and postage) to prosecute, something that Defense Counsel is plainly not entitled to do.

Wherefore, premises considered, Plaintiff respectfully prays that the Court order that full and complete discovery be provided, and that the Court impose upon both Defendant and Defense Counsel an appropriate sanction. So requested this 15th day of May, 2013.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

186

FILED FOR RECORD
2013 MAY 28 AM 11:41
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

ANSWER TO RENEWED MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer to Renewed Motion states:

1. Defendant admits that the Court denied Plaintiff's first Motion to Compel Discovery but states that the reason by the Plaintiff is incomplete. Plaintiff not only failed to comply with Rule 37 by not making a good faith attempt prior to seeking Court action but the Court found that the Motion did not have merit and was therefore, denied. Therefore, the matters set forth by the Plaintiff in paragraph one (1) are denied.

2. Defendant denies paragraph two (2) in that the mistake made by the Plaintiff is alleging that the discovery responses by the Defendant were incomplete and therefore, the Plaintiff has no prejudice and any Motion was not denied for technical reasons.

3. Defendant denies paragraph three (3) in that Plaintiff seeks to use hearsay evidence of communication between Plaintiff and a non-attorney or a non-party as a basis for a Motion. Plaintiff lacks professionalism, lacks any courtesy, lacks social skills and lacks the concept of truth when giving a person twenty four (24) hours to do a task demanded by the Plaintiff is deemed to be in good faith. The actions of Plaintiff are not in good faith and have not been in good faith throughout this lawsuit.

198

4. Defendant denies paragraph four (4).

5. Defendant denies paragraph five (5) wherein again Plaintiff is using hearsay evidence from a non-party or the attorney to prove a point that is meaningless and has no merit.

6. Defendant denies paragraph six (6), seven (7), eight (8) and nine (9). In paragraph 7(a) Plaintiff fails to realize that if Plaintiff did not make an objection at the time of the hearing, the objection is waived and cannot be raised in renewed motion. The same failure of the Plaintiff to make any objection at the motion hearing applies to paragraph 7(b). In paragraph 7(c) Plaintiff is arguing a hypothetical in making the assertion if the Defendant did something and it is apparent Plaintiff is arguing with Plaintiff's imagination. Defendant does admit that the Plaintiff should feel embarrassed for what Plaintiff is doing in this frivolous lawsuit. Defendant specifically denies exercising bad faith and Plaintiff has no grounds for sanctions. In paragraph nine (9) Plaintiff is attacking counsel for the Defendant which shows the lack of professionalism, lack of legal knowledge and lack of civil courtesy. Any impediment to Plaintiff's ability to prosecute his claim is because he has no claim and Plaintiff has a limited knowledge of the law and legal proceedings.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Motion be denied and Defendant be awarded all his attorney's fees and costs and all other proper relief to which the Defendant is entitled.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

199

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 MAY 30 AM 8:04
BOONE CO. CIRCUIT CLERK
BY [illegible] DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

FAXED

REPLY TO ANSWER TO RENEWED MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to Defendant's Answer to Renewed Motion to Compel Discovery.

1. Defendant alleges that the first Motion to Compel Discovery was not only stricken for incomplete service, but also simply outright denied. Plaintiff asserts the following counter-arguments in response:

A) Plaintiff does not remember the Court stating that the motion to compel discovery lacked merit, and Plaintiff was listening acutely to the Court when it struck the motion for incomplete service.

B) In the event that the Court did say this (Plaintiff is currently ordering a transcript of the hearing, and will be able to know for sure by the time the hearing on this renewed motion is had), Plaintiff asserts that, since the Court determined that the original motion was not properly before it, any decision on the merits thereof was outside of the Court's jurisdiction.

C) Barring the argument made in Sub-Paragraph B, the Renewed Motion to Compel should be construed[1] as a Motion for Reconsideration. Additional details will be provided in the oral argument as to why the discovery has merit behind it.

2. Plaintiff is not using hearsay evidence in Paragraph #3 of the Renewed Motion. Plaintiff

1 Under the precedent of *Haines v. Kerner*, 404 U.S. 519 (1972), Plaintiff, being a *pro se* litigant, is entitled to have his motions construed liberally and held to a less stringent standard than those drafted by attorneys.

communicated with Defense Counsel; he merely did so by going through Defense Counsel's own personal employee. Under the laws of employment – namely, the law of *respondiat superior* – the Defense Counsel is vicariously responsible for the actions of his employees. Even if the woman Plaintiff spoke to completely fabricated her status as Defense Counsel's secretary, Defense Counsel is *still* vicariously responsible under the laws of *apparent authority*, and his cause of action shall lie against the woman who fraudulently claimed to be his secretary.

3. Defendant claims that "Plaintiff lacks professionalism, lacks any courtesy, lacks social skills and lacks the concept of truth." He seems to imply that he is justified in not entertaining Plaintiff's communications for these reasons. Such an argument is completely frivolous and sanctionable under ARCP 11.

4. Twenty-four hours is not an unreasonable amount of time, because Plaintiff did not demand that the discovery requests be complied with in twenty-four hours; he only requested confirmation that the compliance with the discovery requests were on their way; a simple verbal confirmation over the phone that they intend to do that can be accomplished in only thirty seconds (once the Defense Counsel has been made aware of the call), let alone twenty-four hours.

5. Defense Counsel frivolously argues that Plaintiff's failure to assert an objection in a hearing waives said objection. He provides no legal citation for this argument, and even if he did, as stated before, the original motion was denied *without prejudice* because of technical reasons; therefore, even if it were also denied on the merits, said denial was without jurisdiction, meaning that these arguments can still be raised.

WHEREFORE, PREMISES CONSIDERED, Plaintiff hereby respectfully requests that the Renewed Motion to Compel Discovery (or Motion for Reconsideration, whichever the Court

202

wants to call it) be granted, that all costs incurred be awarded to the Plaintiff, and to whatever other relief he may be entitled.

So requested this 30th day of May, 2013.

David Stebbins
123 W. Ridge St.
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

CERTIFICATE OF SERVICE

I, *pro se* Plaintiff David Stebbins, do hereby certify under penalty of perjury that a true and correct copy of Plaintiff's Reply to Answer to Renewed Motion to Compel Discovery and for Sanctions was served on Defense Counsel by emailing a copy thereof (though maybe not a filemarked copy, but a copy nonetheless) to goldie@goldielawfirm.arcoxmail.com on the 30th day of May, 2013.

David Stebbins
123 W. Ridge St.
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 JUL 15 PM 1:33
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

MOTION FOR SANCTIONS

Comes now, pro se Plaintiff David Stebbins, who hereby submits the following motion for sanctions against the Defendant.

1. The Defense has, both during and after the hearing on May 13, 2013, made various frivolous legal arguments, assertions of fact that they knew to be untrue, and also, arguments that were designed primarily to needlessly increase the costs of this litigation.

2. Specific examples of these actions include...

A) Advocating a motion for summary judgment even though, by the Defense's own admission, there exists a genuine dispute of material fact to be tried.

B) Claiming that Plaintiff's initial motion to compel discovery was not only denied for technical reasons (namely, the failure to take reasonable steps to procure the discovery without court action), but that the Court also found the motion to lack merit, even though the transcript of that hearing clearly shows that the motion was only denied on technical grounds.

C) Opposing a motion for appointment of court reporter, but doing so specifically so as to keep the litigation as expensive as possible for Plaintiff.

D) Suggesting that Defense Counsel has the right to ignore Plaintiff because Plaintiff meets their personal definition of discourteous and abrasive.

E) Defendant frivolously alleges that Plaintiff's communication with the Defense Counsel's secretary does not amount to communication with the Defense Counsel.

478

F) Defendant moves the Court to block the *entire* case because it is being done *in forma pauepris*. This is both uncalled for and another exercise of the Defendant's "war of attrition" strategy

3. Therefore, the Court should impose upon the Defendant an appropriate sanction. Specific recommendations for sanctions will be given in the Brief accompanying this motion.

4. Please find, attached to this motion, the following exhibits:

A) **Exhibit A**: The transcript of the hearing on May 13, 2013.

B) **Exhibit B**: Emails from Defendant, addressed to Plaintiff, concerning a previous lawsuit the two were involved in (its significance will be made clear in the Brief. Have faith, because there ***is*** a point to attaching this exhibit).

5. Wherefore, premises considered, Plaintiff respectfully requests that the Defendant be issued appropriate sanctions for their conduct. It is so requested this 15th day of July, 2013.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

479

Exhibit A to this Motion is redundant of the transcript. Thus, it will not be included here, to save on stationary.

Subject: RE: Mom, I have a genuine question.

From: Rita Stebbins (rita_stebbins@hotmail.com)

To: stebbinsd@yahoo.com;

Date: Saturday, March 26, 2011 6:10 PM

No brief was needed, the case should be dismissed on "the Merits" of the case. You Have no contract to enforce, Just because you sent it to the wrong address doesn't mean that it's valid. as far as the "respect" you want, Respect is earned!!!!!!!!!!!!!!!!!!! Not awarded! You have done Nothing to earn my respect. She will no longer be the "De Facto" Liaison. Until we hear from the court, Don't try to make any contact at all, Don't call, don't Text, Don't e-mail. By the way. This is your Father if your to Dumb to figure it out.

Date: Sat, 26 Mar 2011 06:10:31 -0700
From: stebbinsd@yahoo.com
Subject: Mom, I have a genuine question.
To: rita_stebbins@hotmail.com

Mom,

I just got your husband's motion to dismiss my case. However, I did not get a brief to go with it; I only got the motion. Why not? Why didn't you include a brief with your motion?

Or, maybe you filed a brief, but didn't send me a copy?

Which one was it? Was it just me, or both me and the court, who didn't get a brief to go with the motion?

As the de facto liaison for your husband, your silence on this issue will constitute your agreement that it was either of the two.

Sincerely,
David Stebbins

Exh. B

532

Subject: RE: Actually, scratch that.

From: Rita Stebbins (rita_stebbins@hotmail.com)

To: stebbinsd@yahoo.com;

Date: Saturday, April 2, 2011 3:29 AM

Just how Stupid are you? Your Supposed to be SOOOOOOOOO Computer "Literate" but don't even know that OutLook Express isn't an acct but a Email Reader, no wait you do know, that's how you did it.

Date: Fri, 1 Apr 2011 09:56:19 -0700
From: stebbinsd@yahoo.com
Subject: Re: Actually, scratch that.
To: rita_stebbins@hotmail.com

I didn't send it to your Outlook Express email account. I sent it to your Windstream email account.

Besides, even my yahoo account has a trash folder. That doesn't mean much. The trash/deleted folder is like the recycle bin.

You are not as computer literate as I am, but I am sure you *at least* know about how the recycle bin/trash folder/deleted folder works. You delete something, it goes to that folder. You go to that folder and delete it again, it's deleted for good.

How do I know you didn't delete it twice?

From: Rita Stebbins <rita_stebbins@hotmail.com>
To: David Stebbins <stebbinsd@yahoo.com>
Sent: Fri, April 1, 2011 4:20:12 AM
Subject: RE: Actually, scratch that.

I guess that's why OutLook Express has a Deleted Folder you idiot!!!!!!!!!!!!!!!!!

Date: Thu, 31 Mar 2011 06:44:21 -0700
From: stebbinsd@yahoo.com
Subject: Re: Actually, scratch that.
To: rita_stebbins@hotmail.com

"BTW, I figured out what you did, and as soon as I the email undeleted, I will have it proved by the date & timestamp."

Ok, first of all, what is it you figured out I did?

Second, that second part of the sentence doesn't even make sense? "As soon as I the email undeleted?" What the hell does that mean?

Exh. B

533

Subject: RE: Actually, scratch that.

From: Rita Stebbins (rita_stebbins@hotmail.com)

To: stebbinsd@yahoo.com;

Date: Saturday, April 2, 2011 3:29 AM

Just how Stupid are you? Your Supposed to be SOOOOOOOOO Computer "Literate" but don't even know that OutLook Express isn't an acct but a Email Reader, no wait you do know, that's how you did it.

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Second, that second part of the sentence doesn't even make sense? "As soon as I the email undeleted?" What the hell does that mean?

Exh. B

533

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

FILED FOR RECORD
2013 JUL 15 PM 1:34
BOONE CO. CIRCUIT CLERK
BY: DC

BRIEF IN SUPPORT OF MOTION FOR SANCTIONS

1. Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Brief in Support of Motion for Sanctions.

APPLICABLE LAW AND STANDARDS

2. According to Ark. R. Civ. P. 11, when a counselor or pro se party signs a pleading to be presented to the court, that signature constitutes a certificate by him that the pleading ***SIMULTANEOUSLY*** meets ***ALL*** of the following criteria:

A) "it is well-grounded in fact, and

B) is warranted by

i. existing law or

ii. a good faith argument for the extension, modification, or reversal of existing law, and

C) it is not interposed for any improper purpose, such as

i. to harass or

ii. to cause

(a) unnecessary delay or

(b) needless increase in the cost of litigation, and

D) that it complies with the requirements of Rule of Civil Procedure 5(c)(2) regarding redaction of confidential information from case records submitted to the court."

534

3. Those criteria are, word for word, precisely that which appears in the Rule itself. Although Plaintiff separated it into discreet subparts, he made no changes to the actual wording of the criteria whatsoever.

4. Plaintiff's purpose for separating the criteria into discreet subparts is to emphasize that each criterion must be independently complied with. For example, if criterion C(ii)(b) is violated, it is irrelevant if every other criteria are complied with. Remember that point; it will be important later.

5. "When a violation of Rule 11 occurs, the Rule makes sanctions mandatory." See *Lancaster v. Red Robin, Inc.*, 386 SW 3d 662, 669 (2011).

ARGUMENT

6. The Defense should be sanctioned for each action spoken of in Paragraph #2 of the motion that this Brief supports, for the following reasons:

Advocating a motion for summary judgment even though, by the Defense's own admission, there exists a genuine dispute of material fact to be tried.

7. Notice, in the transcript attached as Exhibit A – starting on Page #38, line #19 and ending on Page #40, Line #05 of this transcript – the Defense Counsel is recorded as saying that Plaintiff asserts that he never convicted, and confessed that part of the exhibit which the Defense introduced lends credence to that claim (see specifically Page 39, Lines #1 - #20). Their exact words were...

> "that is only one of an alternative argument. Our first argument was and I have copies here and I'm happy to supply, this is from the court record downstairs, it is state of Arkansas versus David Anthony Stebbins, David A. Stebbins, Boone County CR 2011-334-four, February 8, 2013, says entered a plea of guilty or having been found guilty. And we look here, and on the acknowledgment it says I hereby certify that this is correct and signed David Stebbins, 2/8/13, Judge Webb 2/8/13. So, the first part of our motion for summary judgment is deemed to be a plea of guilty. Guilty is it. You are guilty, you allowed yourself to be found guilty

> of assaulting your father on Thanksgiving day 2011, which is exactly 180 from what your lawsuit claims the father assaulted you.
>
> Now, alternatively you want to say well, really it's a nolo contendere plea that is where the alternate argument that we discussed came in that that's the point."

8. However, despite this admission, the Defense nonetheless persisted in their motion for summary judgment. They were, essentially, asking the Court to determine that their version of events is more probative than Plaintiff's.

9. The problem with that, however, is that... this is the *exact opposite* of how summary judgment works. Summary judgment does not exist in order to try the facts; it exists to determine whether or not there even exists a genuine issue of fact to be tried in the first place. "All proof submitted must be viewed in a light most favorable to the party *resisting* the motion, and any doubts and inferences must be resolved *against the moving party.*" See *Inge v. Walker*, 15 SW 3d 348, 351 (2000). "The law is well settled that summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated." see *id* at 352.

10. By the Defense's own free and voluntary[1] admission, there existed a genuine dispute of fact, which means they had no business moving for summary judgment, yet they did it anyway.

11. Because they admitted to the existence of a genuine dispute of material fact, the oral arguments in favor of the motion for summary judgment violate Criterion B(i) as established in Paragraph #2 of this Brief. Since they never even *attempted* to offer any reason why the Court should grant summary judgment, despite their free and voluntary admission as to the existence of a genuine issue of material fact, that means that their argument violated Criterion B(ii) as well. Therefore, sanctions are appropriate (and therefore necessary; See Paragraph #5 of this brief) for

[1] Not to mention sua sponte, as the Defense were never prompted to admit to this; they made this admission of their own accord.

their decision to advance the motion.

12. If Plaintiff may make a recommendation, he would request that the Defense be ordered to not offer the plea agreement or suspended sentence as evidence in any way shape or form. At the oral argument, the Defense mentioned various ways that no contest pleas and deferred sentences can be used, such as to impeach the witness, discredit the witness, or show elements of bad faith or malice. It is Plaintiff's humble opinion that an "appropriate" sanction should be one reasonably related to the action that gave rise to the sanction. Therefore, forbiding the Defense from offering these pieces of evidence, even for things that are otherwise admissible under the Rules of Evidence, would meet that standard of "reasonable relation."

Claiming that Plaintiff's initial motion to compel discovery was not only denied for technical reasons, but that the Court also found the motion to lack merit, even though the transcript of that hearing clearly shows that the motion was only denied on technical grounds.

13. In Plaintiff's Renewed Motion to Compel Discovery, Plaintiff pointed out that the original motion to compel was denied for technical reasons, namely the Plaintiff's failure to make reasonable attempts to obtain the discovery without court action. Because it was denied for technical reasons only, argued Plaintiff, it was denied without prejudice.

14. Defendant, however, in his Answer to Renewed Motion to Compel Discovery, claimed that the motion was denied on its merits as well as on technical grounds, and thus was denied *with* prejudice.

15. This declaration, however, is clearly 100% false. See Exhibit A, Page 28, Lines #13 - #24, the Court very clearly denied the motion to compel *only on technical grounds*. Therefore, the Defendant's declaration otherwise is in violation of the first criterion of Rule 11: That all statements of fact must be factually accurate. For this reason, the Court must impose upon the Defense an appropriate sanction to deter them from making bold statements about what the Court

did or did not do without first checking their facts.

Opposing a motion for appointment of court reporter, but doing so specifically so as to keep the litigation as expensive as possible for Plaintiff.

16. Defendant opposes the appointment of a Court Reporter to assist Plaintiff in prosecuting this action, claiming that Plaintiff is not "qualified" for it. Plaintiff has already established otherwise in the Motion itself. However, the Defense's reason for opposing the motion at all is also in violation of Rule 11.

17. Plaintiff did not move the Court to pin the costs of the court reporter on the Defense, at least not initially. Plaintiff asked for the costs thereof to be taxed against the loosing party. Therefore, there are only two reasons the Defense should even *care* about this motion:

A) They anticipate that they will be said "loosing party," or

B) Their strategy is to jack up the costs of this litigation so high that Plaintiff cannot *afford* to prosecute the claim.

18. It is most likely a combination of those two. They employ the "war of attrition" strategy *because* they are fearful of what will be proven if Plaintiff has no financial barrier to court access.

19. Therefore, the Defendant's Answer to Motion for Appointment of Court Reporter is in violation of Criterion C(ii)(b): Causing unnecessary increase in costs to the litigation. For this reason, it is legally irrelevant if the motion is consistent with Criterion A, Criterion B, Criterion D, Criterion C(i), or Criterion C(ii)(a). Because it violates just *one* criterion set forth by Rule 11 and restated in Paragraph #2 of this Brief, the Defendant's Answer to Motion for Appointment of Court Reporter is sanctionable, consistent with Paragraph #5 of this Brief.

20. Specifically, Plaintiff requests that the Defense be ordered to furnish, in the first instance,

the costs of the court reporter, even if the Motion thereof is denied. This is another instance of Plaintiff's personal philosophy of employing "ironic justice" in the imposition of sanctions. The costs of the court reporter can be taxed against Plaintiff in the event that he is the loosing party, but as part of this sanction, the Defense should be taxed with providing Plaintiff's deposition expenses in the first instance. That will teach the Defense to employ a "war of attrition" strategy. After all, does it not make sense that a person who seeks relief with an improper motive should rightfully get the exact opposite of what he wants?!

21. Of course, maybe Plaintiff is entirely wrong about the Defense's motive for opposing the Motion. If the Defense can come up with some sort of legitimate motive, and show some proof that this motive is not pretextual, then perhaps this portion of the motion for sanctions should be denied. However, if the Defendant cannot offer a legitimate motive in his Answer to this motion, Plaintiff asks the Court to accept that his motive is "war of attrition," and grant this portion of the Motion for Sanctions.

Suggesting that Defense Counsel has the right to ignore Plaintiff because Plaintiff meets their personal definition of discourteous and abrasive.

22. In the Defense's response to Plaintiff's Renewed Motion for Judgment on the Pleadings, the Defense Counsel wrote "Plaintiff lacks professionalism, lacks any courtesy, lacks social skills and lacks any concept of truth."

23. First of all, this assertion is in violation of Criterion B of Rule 11: A frivolous argument of law, because the Defense Counsel attempts to use this as an excuse for why he refused to entertain Plaintiff's communication attempts, and in doing so, implicitly argues that Plaintiff's supposed lack of courtesy or professionalism gives him the right to ignore Plaintiff's legitimate communication attempts. To assert that this gives him such a right is in blatant violation of

the costs of the court reporter, even if the Motion thereof is denied. This is another instance of Plaintiff's personal philosophy of employing "ironic justice" in the imposition of sanctions. The costs of the court reporter can be taxed against Plaintiff in the event that he is the loosing party, but as part of this sanction, the Defense should be taxed with providing Plaintiff's deposition expenses in the first instance. That will teach the Defense to employ a "war of attrition" strategy. After all, does it not make sense that a person who seeks relief with an improper motive should rightfully get the exact opposite of what he wants?!

21. Of course, maybe Plaintiff is entirely wrong about the Defense's motive for opposing the Motion. If the Defense can come up with some sort of legitimate motive, and show some proof that this motive is not pretextual, then perhaps this portion of the motion for sanctions should be denied. However, if the Defendant cannot offer a legitimate motive in his Answer to this motion, Plaintiff asks the Court to accept that his motive is "war of attrition," and grant this portion of the Motion for Sanctions.

Suggesting that Defense Counsel has the right to ignore Plaintiff because Plaintiff meets their personal definition of discourteous and abrasive.

22. In the Defense's response to Plaintiff's Renewed Motion for Judgment on the Pleadings, the Defense Counsel wrote "Plaintiff lacks professionalism, lacks any courtesy, lacks social skills and lacks any concept of truth."

23. First of all, this assertion is in violation of Criterion B of Rule 11: A frivolous argument of law, because the Defense Counsel attempts to use this as an excuse for why he refused to entertain Plaintiff's communication attempts, and in doing so, implicitly argues that Plaintiff's supposed lack of courtesy or professionalism gives him the right to ignore Plaintiff's legitimate communication attempts. To assert that this gives him such a right is in blatant violation of

as if the only thing the Plaintiff has done that the Defendant considers discourteous or abrasive is... stand up to the Defendant and not put with the Defendant's crap. To the Defendant, standing up to him is the equivalent of holding is seven-year-old grandson ransom (which is probably why he equates Plaintiff's decision to stand up to him to a knife attack). Of course, the Defendant probably knows that this would never support a motion for protective order, which is probably why he and his counsel left it out of their written pleading.

28. Therefore, because the Defendant's conclusive and speculative allegation that Plaintiff is unprofessional and discourteous, and their frivolous argument that this entitles them to ignore Plaintiff's legitimate communication attempts without leave of court, then this allegation violates Criteria A and B as set forth in Paragraph #2 of this motion, which brings us, yet again, to Paragraph #5.

Defendant frivolously alleges that Plaintiff's communication with the Defense Counsel's secretary does not amount to communication with the Defense Counsel.

29. In Defendant's Answer to Renewed Motion to Compel Discovery, in the first sentence of Paragraph #3, and then the entirety of Paragraph #5 thereof, the Defense Counsel argues that Plaintiff's allegations are inadmissible as hearsay because he never communicated with the attorney himself. This is as frivolous as they come, as it disregards one of the most basic and fundamental legal principles ever to grace a law book. The Defense Counsel is simply attempting to avoid responsibility (consistent with the behavior of his client, so perhaps that is to be expected).

30. Here is the bottom line: Plaintiff spoke with the Defense Counsel's secretary. The secretary is the *employee* for counsel of record, James E. Goldie. The conversation between Plaintiff and the secretary was directly related to the case of which Goldie was counsel of record. Therefore, she is the eyes, ears, and voice of Goldie Law Firm unless Goldie himself is

immediately present. Why? Because... that is simply how employment relationships works; it is called "*respondeat superior*," and it is one of the easiest and simplest legal concepts to learn and understand, even if you are not a lawyer.

31. Therefore, whether Plaintiff was wronged by Goldie himself, or his secretary, it does not matter in the slightest; Plaintiff was wronged by ***Goldie Law Firm***, and that is all Plaintiff needs in order to be entitled to affirmative relief from the Court.

32. Because the Defense Counsel (especially *Counsel*, who is expected to know the law) completely ignored one of the most basic and time-honored13 legal principles in world history, then the allegations spoken of in Paragraph #27 is in violation of Ark. R. Civ. P. 11. Specifically, it is in violation of Criterion B(i) as set forth in Paragraph #2 of this Brief.

33. For both this frivolous argument, as well as the frivolous argument spoken of in Paragraphs #19 - #26, Plaintiff recommends the following sanction:

Defendant moves the Court to block the *entire* case because it is being done *in forma pauepris*. This is both uncalled for and another exercise of the Defendant's "war of attrition" strategy.

34. In Paragraph #1 of the Defendant's Answer to Plaintiff's Motion for Mental Evaluation, Defendant moves the Court to either dismiss the action or revoke the *in forma pauperis* privilege. His reasoning for this is... one of the things Plaintiff is suing the Defendant for is malicious prosecution, and since malicious prosecution claims are, supposedly, not supposed to be prosecutable *in forma pauperis*, that Plaintiff should not be allowed to prosecute the case at all *in forma pauperis*, even though there are about a dozen other causes of action which *can* be prosecuted *in forma pauperis*.

35. In Paragraph #1 of the Defendant's Answer to Plaintiff's Motion for Mental Evaluation, Defendant moves the Court to either dismiss the action or revoke the *in forma pauperis* privilege.

His reasoning for this is... one of the things Plaintiff is suing the Defendant for is malicious prosecution, and since malicious prosecution claims are, supposedly, not supposed to be prosecutable *in forma pauperis*, that Plaintiff should not be allowed to prosecute the case at all *in forma pauperis*, even though there are about a dozen other causes of action which *can* be prosecuted *in forma pauperis*.

36. First of all, the Defendant simply has no right to assert, here. Arkansas Rule of Civil Procedure 72 is entirely administrative in its function. Laws that are purely administrative in their focus do not create individually-enforceable rights for persons who enjoy only an indirect benefit from its enforcement or nonenforcement. See *Gonzaga University v. Doe*, 536 U.S. 273 (2002) (this case law was primarily concerned with public funding, which is especially probative here, as that is what *in forma pauperis* is in essence: A court's decision to use taxpayer money to fund an individual's private litigation endeavors).

37. In fact, the only reason that the Defendant even seems to care about this supposed violation is the same reason he opposes the appointment of a Court Reporter: His goal is to make the case as expensive as possible for the Plaintiff to the point where the Plaintiff can no longer afford to prosecute it. Therefore, Criterion C(ii)(b) (as set forth in Paragraph #2 of this Brief) is violated, which means that, even if the rest of the criteria are complied with, the argument is still sanctionable under ARCP 11(b) (at which point, the Court is respectfully deferred, once again, to Paragraph #5 of this Brief).

38. Secondly, the actual remedy that the Defendant requests is independently sanctionable (again, Paragraph #5), because even if the Defendant has a personally enforceable right, he is requesting sweeping relief which he is not entitled to. He is requesting that the *entire* case be dismissed in his favor, even those causes of action which he does not allege to be ineligible for

in forma pauperis coverage. Because the Defendant never even *attempts* to explain why he is entitled to such sweeping relief, his request is in violation of Criterion B (both sub-criteria i and ii).

39. Plaintiff recommends one of two sanctions:

A) That the *in forma pauperis* privilege not be revoked at all, because it would not have been had the Defendant not made this improperly-motivated argument, or

B) In the event that the Court sees fit to revoke the privilege, that the Defendant be ordered to furnish the costs of this action that Plaintiff looses (including the $165 filing fee and $50 service of process fee). It can be reimbursed to the Defendant in the event that they are victorious, but the sanction is that it should be their burden in the first instance.

CONCLUSION

40. So, in conclusion, the Court should issue these sanctions because...

A) The sanctions which are recommended are not excessive. Rather, they are consistent with the public policy that sanctions be limited only to what suffices to discourage future conduct to which the sanctions attached. If any of the sanctions (such as the one recommended in Paragraph #17) result in the Defendant being unable to afford to defend the case, then that is just poetic justice. After all, that is clearly what the Defendant wishes to instill upon the Plaintiff; it only makes sense that the strategy should backfire.

B) The recommended sanctions are reasonably related to the actions to which they are designed to attach.

C) The Defendant clearly has a "war of attrition" strategy, which is explicitly prohibited by Criterion C(ii)(b).

41. Wherefore, premises considered, Plaintiff respectfully requests that the Defendant be

issued appropriate sanctions for their conduct. It is so requested this 15th day of July, 2013.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 JUL 25 PM 3:37
BRENDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: SW DC

DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO MOTION FOR SANCTIONS

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for the Answer to Motion for Sanctions states:

1. Defendant denies paragraph one (1)
2. Defendant denies paragraph 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) of the Motion.
3. Defendant denies paragraph three (3) in that sanctions are not appropriate.
4. Defendant admits that in 4(a) the transcript is attached. Defendant states that the e-mail as Exhibit "B" was also attached but they are not e-mails from the Defendant in this case. The e-mails attached by the Plaintiff were e-mails prior to the filing of this case on April 10, 2012 and are also purport on its face to be from a person who is not the Defendant.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Motion for Sanctions be denied and dismissed and Plaintiff take nothing thereby and Defendant should have his Court costs, attorney's fees and all other proper relief to which Defendant is entitled.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

553

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 JUN 17 PM 1:23
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

REVISED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

1. Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following revised motion for partial judgment on the pleadings.

2. Upon re-reading the originally-filed Motion for Partial Judgment on the Pleadings, Plaintiff realized that the arguments were a bit incoherent. Plaintiff was drafting the motion while still angered by the frivolousness of Defendant's Answer. To redeem himself, Plaintiff submits the following *revised* motion for the Court's consideration. With any luck, this motion can articulate Plaintiff's arguments and thoughts better than the previous one managed to.

3. In essence, the Defendant admitted in his *pro se* Answer to Complaint that he repudiated the contract in question. He claims that he had the right to repudiate it, but his reasons for believing that he had this right are not legally sound and are, in fact, completely frivolous. Attached, the Court will find a Brief in Support of this Motion, which will discuss each point in exquisite detail, leaving nothing to the imagination.

4. It should be emphasized that Plaintiff, by filing this motion, admits to nothing unless he specifically says he admits to it. When Plaintiff argues that he has the right to do something, that is not an admission that he did it; it is an argument that the truth or falsity of that event is legally irrelevant, giving the facts and applicable law. Plaintiff does not admit to violating the "Respect Clause" (the Court will know what that means upon reading the Brief); he does not admit to

231

attacking the Defendant with a knife, and he does not admit breaching anything. He only admits to that which he plainly states that he admits to.

5. Please find attached to this Motion the following exhibits:

A) **Exhibit A**: A copy of the contract that should have been included in the original Complaint.

B) **Exhibit B**: A webpage from an inflation calculator at the website of the United States Bureau of Labor Statistics, providing judicially-noticeable proof – which is admissible under Arkansas Rule of Evidence 803(8) – that $650,000 in the year 1992 is equivalent to $1,042,126.51 in the year 2011. What in the world does this have to do with anything? Well, read the brief in support of this motion, and you will find out.

C) **Exhibit C**: A webpage from that same inflation calculator providing equally reliable proof that $10 million in the year 1993 had the value of $15,566,712.80 in the year 2011. Again, the relevance of this exhibit will be provided in the brief.

6. Wherefore, premises considered, Plaintiff respectfully requests that the Court award damages to the Plaintiff in the amount of sixteen million, five hundred sixty-two thousand, forty-one dollars and thirty-two cents ($16,562,041.32), award costs incurred, and other relief that the Court finds appropriate. So requested this 17th day of June, 2013.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

232

Contractual Agreement Between David A. Stebbins and David D. Stebbins

I, David A. Stebbins, hereby agree to withdrawl all Lawsuits I have Pending against my parents, David D and Rita F. Stebbins within 48 Hours. I also hereby agree that I WILL NOT attempt to sue them again with out justifiable cause and with out first having consulted a licensed lawyer in person (i.e. lawyers over the internet or through a phone conversation are not acceptable unless a phone is used to schedule an initial consultation meeting.) I also agree to NOT raise my voice in a hurtful or degrading manner to my parents or any guests that they may have in the home (i.e. disagreements and misunderstanding are understood to be normal and are to be somewhat expected, but this phrase refers to name calling, threats, obsene words and body language, ect....). I also agree to conduct myself with above listed person (s) with a calm and respectul demeanor I will not call my father by his fisrt name, I also agree to make a formal appology, both verbal and written, to my parents for the hardships I have caused them in the past.

In return for agreeing to the above listed conditions I will receive Room and Board at my parents residence, 8527 Hopewell Rd., on a WEEK TO WEEK Basis Basised on 15 hours a week of work to be determined by my parents,. This will include a bedroom, and full access to both bath and kitchen facilities, and any other room in the house with the exception of my parents bedroom, private bathroom and my Fathers Study, unless given specific permission.

Other ammenities included will be a reasonalble amount of food (any specialty items will be purchased by and for myself unless specified otherwise by myself), reasonable transportation into and from town (that means if my parents are already going that way i can go and come back home with them when they are ready to return unless previously aggreed upon by my parents and myself), full access to the phone and/or internet when not being used by either of my parents (this includes computer, game usage, and cell phone connection).

I agree that fullfillment of the contract stated above will be based upon my accumulation of enough hours of above stated work in or around the home ,15hours a week, which in case i will be given a receipt on a weekly basis stating my fullfillment.

This contract may be ammended at any future time after a reasonable conference and Written agreement between all parties invovled.

Any Violation of this contract may result in IMMEDIATE termination of said contract and possible Eviction.

In conclusion, upon David A. Stebbins procuring other living arangement, David D. and Rita F. Stebbins agree that David A. Stebbins is releived of any contractual agreement stated in paragraphs 2 and 3 of this contract provided he fully and continualy abides with all conditions stated in paragraph 1 of this document, even after said living arangements have been terminated.

David A. Stebbins

Date 5.5.26.20

Q33

David D. Stebbins

_____ Date 9-26-11

Rita F. Stebbins

_____ Date _____

David D. Stebbins

_____ Date 9-26-11

Rita F. Stebbins

_____ Date _____

David D. Stebbins

_____ Date 9-26-11

Rita F. Stebbins

_____ Date _____

U.S. Bureau of Labor Statistics

Databases, Tables & Calculators by Subject

CPI Inflation Calculator

CPI Inflation Calculator

$ 10,000,000.00

in 1993

Has the same buying power as:

$15,566,712.80

in 2011

Calculate

About the CPI Inflation Calculator

The CPI inflation calculator uses the average for a given calendar year. This data represents changes in prices of all goods and services purchased for consumption by urban households. This index value has been calculated every year since 1913. For the current year, the latest monthly index value is used.

U.S. Bureau of Labor Statistics | Postal Square Building, 2 Massachusetts Avenue, NE Washington, DC 20212-0001

| Telephone: 1-202-691-5200 | TDD: 1-800-877-8339 |

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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

BRIEF IN SUPPORT OF
REVISED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS
OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Brief in Support of his Revised Motion for Partial Judgment on the Pleadings, or in the Alternative, for Summary Judgment.

BACKGROUND

1. Plaintiff, faced with the threat of imminent homelessness after losing an unlawful detainer case which not only this court, but this very judge, presided over[1], had no choice but to return to his parents home.

2. Defendant, one of the parents of Plaintiff, decided to take this opportunity to humiliate Plaintiff and force him to agree to contractual terms that he would never have agreed to willingly. See Exhibit A. These humiliating terms include, but are not limited to, the following:

A) **The Respect Clause**. Plaintiff has to respect the Defendant, but the Defendant does not have to reciprocate that respect, so he could, if he wanted to, just bark insults at Plaintiff like a drill sergeant, and Plaintiff would just have to sit there like a little punk and take it.

B) **The Forced Labor Clause**. Plaintiff blindly agrees to do whatever the Defendant tells him to do, no matter what that task may be, no matter how *dangerous* the task may be, but the contract itself does not state what those tasks are until he decides what they are,

1 Meaning that no proof of this is required, as the Court can take judicial notice of it.

211

because the Defendant wanted to come up with those terms as he went along, and retroactively apply Plaintiff's signature to them.

C) **The Future Lawsuit Clause.** Plaintiff may not sue Defendant without first consulting an attorney *in person*... no phone, no email, only in-person?! There is no theoretical benefit could he possibly get out of that, except to make it harder for Plaintiff to seek justice against him. It is not even like a liability waiver, where the waiver's coverage is usually somewhat related to the contract itself[2]; this is a sweeping demand that applies to all lawsuits, and he seems to have *one* reason for demanding this: Suing him just hurts his feelings. Even if we were to accept that he wants Plaintiff to seek legal advice so as to deter him from filing frivolous lawsuits, that does not explain why the legal advice has to be given *in person*, when it seems as if a telephone or written conversation could accomplish that purpose just fine.

D) **The Permanent Effect Clause.** Even after Plaintiff moves out, he still has to "respect" the Defendant, and still has to speak to an attorney *in person* before suing him, for the rest of his life. FOR THE REST OF HIS LIFE! There is no escape for Plaintiff if this contract were enforced exactly as it is written; he is literally enslaved to the Defendant *for life*! FOR LIFE! If Plaintiff even *has* to explain to the Court why this clause simply reeks of unconscionability, then Judge Webb has no business serving on that bench because he clearly does not know the first thing about contract law.

3. However, for all the unconscionable terms, the Defendant decided to be "nice" (relatively speaking) and offered a few concessions: One of them was that Plaintiff was to receive "full Internet access whenever [the Defendant and his wife] were not using it," which Plaintiff will

2 For example a martial arts dojo may have a contract where the student agrees to not hold the dojo liable for injuries sustained in a training session, but the Court would not enforce a waiver that applied to all lawsuits generally.

refer to as the "Internet Clause." See Exhibit A.

4. However, on November 24, 2011, the Defendant was not performing his obligations under the Internet Clause, and so Plaintiff complained to the Defendant and demanded that the Defendant fix it. The Defendant failed to do so, and then decided to repudiate the contract altogether, starting by revoking the Internet router.

5. Plaintiff, knowing he had been robbed by the Defendant, entered the Defendant's quarters to retrieve the Internet router, but it was not returned to Plaintiff. The Defendant claims that Plaintiff attacked him with a knife, but as it will soon be established, the use of a knife is legally irrelevant (remember Paragraph #4 of the Revised Motion that this Brief supports).

6. The Defendant, fully ignoring the fact that he had stolen an item from Plaintiff, nonetheless accused Plaintiff of domestic battery to the police, who proceeded to arrest Plaintiff.

7. Plaintiff subsequently spent 113 days in the Boone County Detention Center.

8. The Defendant admits, in his Response to Plaintiff's Request for Admissions[3], that Plaintiff's calculation of damages in his Complaint were accurate. See Requested Admission #51. Well... if you want to get technical... he denied ultimate liability for the damages, but remained silent on their calculation. This, however, suffices a an admission, because... that is simply how requests for admissions work; see Ark. R. Civ. P. 36(a).

ARGUMENT I: THE CONTRACT

9. This motion seeks to dispose of three of the issues presented in this case, all of them so complex that their arguments could single-handedly suffice as their own separate motions. Therefore, to avoid the Argument section of this brief being a cluttered mess, this Brief will have three arguments, one for each issue.

10. The first argument will explain why Plaintiff is entitled to judgment as a matter of law on

3 Which is on-file in this case, and thus, does not need to be attached to this brief.

the contract issue.

Non-Full Internet constituted a breach.

11. First, the Defendant argues that he should not be held liable for the nonperformance of the Internet Clause because... he had no control over it. This is, fortunately, the easiest of his excuses for me to refute, because it simply requires the showing of a single piece of binding precedent.

12. The Defendant's claim that he should not be held liable for the violation of the Internet clause because he had no control over it is irrelevant as a matter of law; it simply does not provide him with a legal defense. See *Williams v. Williams*, 2010 Ark. App. 349 (2010), which states in pertinent part "Impossibility of performance of a contract sufficient to excuse the nonperformance upon the part of either party means an impossibility consisting in the nature of the thing to be done, and not in the inability of the party to do it."

13. This is actually a good precedent. The Defendant may think that it's completely unfair, but it actually is a good precedent. Think about it: If a person's personal inability to fulfill a contractual obligation were, in fact, a legitimate contract defense, then that would mean that creditors, such as credit card creditors, would be powerless to obtain judgments to recover that which they are rightfully entitled, so long as the debtor were merely indigent. We're not talking about the debtors being judgment proof, but if the debtor were to get a raise or promotion two years from now, the creditors could collect the judgment. No, we're talking about there not even *being* a judgment in the first place. THAT is the kind of world we would live in if the Defendant had his way on this issue.

14. Therefore, the precedent of Williams v. Williams is morally justified, and the Court *should* adhere to it, even if the precedent wasn't binding, which it is.

The Forced Labor Clause lacks reasonable certainty.

15. Now that that is out of the way, we then move onto his two excuses for why the Defendant believes he had the right to repudiate the entire contract. First, he claims that Plaintiff did not fulfill his obligation to quote-unquote "help out around the house." This is not – repeat... NOT – a valid contractual obligation. Why not, you ask? Because the contract does not impose any actual tasks upon Plaintiff.

16. See the Restatement (Second) of Contracts, §33, which states that "Even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain." It then goes on to say "The fact that one or more terms of a proposed bargain are left open or uncertain may show that a manifestation of intention is not intended to be understood as an offer or as an acceptance."

17. The contract provided to this Court as Exhibit A is exemplary of this rule, because the Defendant deliberately failed to actually describe the tasks Plaintiff would have to perform pursuant to the agreement. For example, let's say that a man enters into a contract: "to grow and sell chickens to Tyson foods". That contract would not be enforceable in court because it does not state the *quantity* he must sell to Tyson, nor the price to be paid, but at least *that* hypothetical contract at least states *what* is to be sold: Chickens.

18. But Exhibit A? That *piece of garbage* does not even give THAT detail! That one crucial, most fundamental detail of all is conspicuously absent from this contract. All it says is that, as a condition for this agreement, plaintiff has to do.... "*stuff*"... and the Defendant will, at his sole discretion, fill in the blank spots whenever he feels like it, and he'll retroactively apply Plaintiff's signature to whatever he makes up at the moment.

19. This is the exact opposite of how "meeting of the minds" works, and the third sentence of

Section 33 of the Restatement of Contracts clearly explains that in black and white. To bind someone to an agreement, the exact terms must be spelled out in the agreement itself, not made up after the fact by the party who simply had more bargaining power than the other (oh, rest assured, we'll get to that point in a little bit).

20. Therefore, in response to the Defendant's argument that the contract had already been breached by Plaintiff, even before the events of November 24, 2011, the only verdict this Court *can* pass on such an argument is... that the argument must be thrown out for want of an actual contractual obligation for Plaintiff to breach.

The Respect Clause is unenforceable.

21. Last but not least, the Defendant claims that he had the right to repudiate the entire contract because Plaintiff had violated the "Respect Clause." This clause, even if it were breached the night of November 24, 2011, is unenforceable as a matter of public policy, because to enforce it would violate the Arkansas Constitution, Article 2, Section 6. This is the State Constitution's free speech and free press section, basically the State equivalent to the First Amendment.

22. Now, the Defendant may argue that he is a private entity and thus is not bound by the Bill of Rights. However, to argue this would be to miss the point: Yes, *he* is a private entity, but *this Court* is not, and the Defendant is asking *this Court* to enforce the Respect Clause by recognizing its alleged breach as a legal excuse to his own behavior, which would fall under the category of... enforcing the clause period. In order for the Court to enforce the clause in any way, shape, or form, the clause must actually be enforceable as a matter of public policy, which it clearly is not.

23. Now, the Defendant may attempt to draw comparisons to the phenomenon of getting fired

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the deal because Plaintiff had initially repudiated his end, but if the Court were to accept that logic, then it must accept that it was him, and not Plaintiff, that first breached it. He *claims* that the non-full Internet access did not constitute a breach[4], but this Brief has already established that it does. Therefore, if Party A's breach gives Party B the right to breach in-turn, then we have to accept that the Defendant is Party A and I am Party B, not the other way around as the Defendant would like.

26. If the Court disagrees on this issue of law, it still does not help Plaintiff. If one contract party does not have the right to breach simply because the other party did first, then that renders the Defendant's decision to repudiate the contract even more inexcusable.

The contract was a lease contract, whether the Defendant likes it or not.

27. Recall earlier that this Brief established that the contract was clearly not at-will. However, even if the contract were at-will, such an at-will provision would be just as unenforceable as the Respect Clause. Since this contract is a living arrangement, that means that, even if the contract flatly stated otherwise, and even if the parties had equal bargaining power (yeah, we're *still* gonna get to that), the owner of the property could not simply terminate the contract at a moment's notice. The Defendant would have to go through eviction procedures, *even if the contract states otherwise*! And that, right there, is where his logic was flawed from the very beginning.

28. The Defendant, in an attempt to refute Plaintiff's claim that the contract was a lease contract, may attempt to draw comparisons to hotel room contracts, where the hotel does not have to go through eviction procedures when a guest refuses to leave after renting a room. However, that scenario is a completely different animal from this one. As evidenced by the

4 and thus, that the breach of the Internet clause occurred when the router was taken, which occurred *after* the Respect Clause was breached.

wording of the contract, Plaintiff was very clearly supposed to actually be *living* there, not just spending the night. Therefore, it is a lease agreement. Period.

29. Therefore, the Defendant's decision to repudiate the contract, even if it were justified as a matter of substantive law, was still illegal for procedural reasons.

The entire contract is unconscionable.

30. We now finally address the unconscionability issue that this Brief have been referencing. In the previous motion that this Motion seeks to revise, it is said that all Plaintiff needed was a full and complete discovery to prove that the Defendant went out of his way to give him every single contract defense that the State recognizes. However, since then, Plaintiff got to thinking: For the defense of unconscionability, is there even a need for a discovery?

31. Look at the contract. Take one look at it, and tell me with a straight face that any person in his right mind would accept those kinds of terms without being literally *forced* to? Plaintiff has been declared "in his right mind" by a forensics evaluation in the related criminal case, not to mention that the Court can take judicial notice of Plaintiff's at-the-time desperate position, because not only this Court, but this very judge was physically present for the events that created said desperate position.[5]

32. Now, do not misunderstand: Plaintiff is not saying that a disparity of bargaining power is not an essential element to unconscionability. Far from it. Rather, Plaintiff merely saying that the terms of the contract, in this case, are so incredibly one-sided that they not only prove that element, but also are sufficient create a presumption that the Defendant took advantage of a gross disparity of bargaining power, which necessarily means that such a disparity must have existed in the first place, in order to be taken advantage of.

33. How can the Court *not* find such a presumption, here? Think about it:

5 See Footnote #1 of this Brief.

A) Plaintiff has to respect the Defendant, but the Defendant does not have to reciprocate that respect, so he could, if he wanted to, just bark insults at Plaintiff like a drill sergeant, and Plaintiff would just have to sit there like a little punk and take it.

B) Plaintiff blindly agrees to do whatever the Defendant tells him to do, no matter what that task may be, no matter how dangerous the task may be, but the contract itself does not state what those tasks are until he decides what they are, because the Defendant wanted to come up with those terms as he went along, and retroactively apply Plaintiff's signature to them.

C) Plaintiff may not sue Defendant without first consulting an attorney in person... no phone, no email, only in-person. There is no theoretical benefit he could possibly get out of that, except to make it harder for Plaintiff to seek justice against him. It is not even like a liability waiver, where the waiver's coverage is usually somewhat related to the contract itself[6]; this is a sweeping demand that applies to all lawsuits, and he seems to have one reason for demanding this: Suing him just hurts his feelings. Even if we were to accept that he wants Plaintiff to seek legal advice so as to deter him from filing "frivolous" lawsuits, that does not explain why the legal advice has to be given *in person*, when it seems as if a telephone or written conversation could accomplish that purpose just fine.

D) Even after Plaintiff moves out, he still has to "respect" the Defendant, and still has to speak to an attorney in person before suing him, for the rest of his life. FOR THE REST OF HIS LIFE?! There is no escape for Plaintiff if this contract were enforced exactly as it is written; he is literally enslaved to the Defendant for life! FOR LIFE! If Plaintiff even has to explain to the Court why this clause simply reeks of unconscionability, then Judge Webb has no business serving on that bench because he clearly does not know the first thing about

6 See Footnote #2

contract law.

34. There are some contracts where the unconscionability demonstrates itself, just in the language of the contract itself, and this is such an instance.

35. This, of course, begs the question of... what sort of remedy should the Court afford Plaintiff? According to the provided Section 208 of the Restatement (Second) of Contracts, the Court has a variety of reliefs at its disposal, including but not limited to...

A) not enforcing the contract,

B) enforcing only the terms which are not unconscionable, or

C) enforcing the terms to as to avoid an unconscionable result.

36. Plaintiff would like for the Court to offer either Relief B or Relief C, because to offer Relief A would be to simply give the Defendant exactly what he wants, which would basically amount to the Court *rewarding* the practice of unconscionability, not discouraging it.

Recap and Conclusion

37. Therefore, to conclude this long-winded argument about the contract issue[7], let us recap the points:

A) Plaintiff did not breach the contract in the weeks and months prior to November 24, 2011, for want of a reasonably certain obligation in the first place.

B) The non-performance of the Internet clause constitutes a breach on the Defendant's part; whether he had any control over it or not is legally irrelevant.

C) The "respect clause," even if violated, is not enforceable in this Court.

D) Even if the respect clause is enforceable, then either...

i. the breach of the Internet clause entitled Plaintiff to breach the Respect Clause, or

7 And yes, this took a long time, but rest easy and take heart: This will be the longest of the legal arguments in this Motion.

ii. the Defendant did not have the right to repudiate the contract himself.

E) The Defendant's decision to repudiate the entire contract without giving Plaintiff due process and an unlawful detainer trial – the MAIN breach which Plaintiff is actually seeking damages over – violated his rights as a tenant (because, as established above, Plaintiff *was* a tenant, whether he liked it or not), and

F) The entire contract is unconscionable because the Defendant took advantage of Plaintiff being in a judicially noticeable desperate position in order to force Plaintiff to agree to humiliating and painful terms that Plaintiff never would have agreed to otherwise.

38. Therefore, for all of those reasons and more, Plaintiff asks that the Court order the Defendant to compensate him for repudiating the contract. The Defendant has admitted, in the request for admissions, that my calculation of damages is accurate. See Paragraph #8 of the "Background" section of this brief. Recall, in Plaintiff's Complaint, on Page 4 out of 5, Plaintiff requested damages of $2,500 for the automobile and $2,640.12 for the living arrangements. Therefore, those damages – totaling $5,640.12 – are the damages Plaintiff requests in this, the first of three Arguments.

39. With that finally out of the way, we now move onto the second of the three arguments:

ARGUMENT II: THE TORT OF THE CONVERSION

40. For the reasons set forth below, Plaintiff is entitled to judgment as a matter of law on the tort of conversion claim:

The Defendant's repudiation of the Internet router constituted theft.

41. The Defendant took the router, presumably under the belief that he was allowed to do so. He knew that the router was essential to Plaintiff's receiving the benefits of the Internet clause, and took the router specifically for that purpose.

42. Under A.C.A. § 5-36-103(a)(1), a person commits the crime of theft (and, by proxy, the tort of conversion) if he or she "Takes or exercises unauthorized control over... the property of another person with the purpose of depriving the owner of the property."

43. Plaintiff is faced with an uphill battle on this issue, due to the fact that he never truly *owned* that router. Sure, Plaintiff didn't *own* the router, but as previously established, it *was* leased to him. Defendant denies that Exhibit A was a lease, but Plaintiff has already established otherwise in Argument I of this Brief.

44. Wit that established, that's what a "lease" *is*! It is a temporary transfer of ownership rights! According to A.C.A. § 4-2A-103(j), "'Lease' means a transfer of the right to possession and use of goods for a term in return for consideration." Therefore, even though Plaintiff never "owned" the router, he had possessory rights to it.

45. Therefore, taking the Internet router to deprive Plaintiff of Internet access is just as much a theft as if he were to take the key to Plaintiff's rental car in order to deprive Plaintiff of enjoyment of that rental car. In other words, even if the thing being taken is not the actual leased item, it is the same as taking the leased item if the taking of the other item would deprive the lessee of contractually-agreed-upon enjoyment of the leased item. Such an act is legal if you have the right to do it (e.g. taking out the spark plugs of a car in order to enforce a mechanic's lein), but it is theft – and therefore conversion – if you do not have the right to do it, and the entirety of Argument I clearly showed that the Defendant did not have the right to do it.

46. Speaking of motor vehicles, that provides another good analogy. The Defendant did not technically take the computer, but he still stole the Internet nonetheless. Stealing a tool that a person needs in order to enjoy the leased item is legally the same as stealing the leased item itself. Another good example would be stealing the keys to a rental car; the car itself may still be

in the lessee's driveway, but the Court will nonetheless consider the car to be stolen, as the leasee has no way of enjoying the thing he is supposed to be leasing.

47. Therefore, for the reasons contained in this Argument, Plaintiff asks that the Court impose punitive damages on the Defendant proportionate to the compensatory damages requested in Argument I, since it is now established that the Defendant's repudiation of the contract was just as tortuous in nature as it was contractual. Specifically, Plaintiff asks for ten times the compensatory damages requested in Argument I, since the Defendant has admitted to that calculation of damages[8].

ARGUMENT III: MALICIOUS PROSECUTION

48. This is, easily, the hardest to justify of the three claims embraced in this motion. However, it still can be done:

Criminal law applies to the extent that the Defendant accused Plaintiff of a crime, but not to the accusation itself.

49. In this Argument, Plaintiff will be extensively citing criminal law, and will even be invoking the Rule of Lenity, even though this is a civil case. These citations are actually appropriate despite the fact that this is not a criminal case. The reason? Because the malicious prosecution is not governed by the Rule of Lenity.

50. Just what in the world is that incoherent previous paragraph talking about? Well, consider this:

A) When the Defendant accused Plaintiff of a crime, the decision to accuse Plaintiff was subject to malicious prosecution. Whether the Defendant *committed* malicious prosecution is subject to litigation, but it is a matter of common sense that the accusation itself was *subject* to malicious prosecution.

---

8 Again, see Paragraph #8 of the "Background" Section of this Brief.

B) However, the crime which Plaintiff was accused of (as opposed to the accusation itself) was governed by criminal law, including the Rule of Lenity.

C) Since the accusation itself does not enjoy the Rule of Lenity, then the doctrine of *ignorantia juris non excusat* ("ignorance of the law excuses no one") applies full-force to the accusation itself.

D) Therefore, if the Defendant was unaware of all the laws cited in this brief (both those laws which were already cited and those still to come), he has no excuse for not knowing them, because ignorance of the law excuses no one. Therefore, the Defendant's failure to apply these laws, including the Rule of Lenity, when choosing to accuse Plaintiff of a crime, is his own fault, and does not excuse him from liability for the tort of malicious prosecution.

51. If that still does not explain Plaintiff's logic to the Court, feel free to ask for clarification at the oral argument.

The knife attack is rendered irrelevant due to a nonfrivolous belief that a theft took place.

52. In Argument II, Plaintiff established that the taking of the Internet router constituted stealing. Therefore, Plaintiff had the right to recover the Internet router. See A.C.A. § 4-2A-508. Of course, it does not say *how* they are to be recovered, but that does not mean that Plaintiff is not allowed to just walk right up and take them back; rather, the lack of a specified method means that Plaintiff is not restricted to just one method, and that he may choose whichever reasonable method – REASONABLE method – is most appropriate under the circumstances.

53. Thus, was the use of force justifiable under criminal law? Yes, yes it is. In fact, even if the Defense can somehow show that there was NOT a theft involved, that doesn't help them...

...

54. Yes, let that soak in for a minute: Even if Plaintiff was mistaken in believing that a theft

was involved, Plaintiff *still* would have had the right to use nondeadly physical force to retrieve the router.

55. To support this claim, see A.C.A. § 5-2-609, which plainly states that a person is justified in using nondeadly physical force upon another person when and to the extent that the person reasonably believes the use of nondeadly physical force is necessary to prevent or terminate the other person's commission or attempted commission of theft or criminal mischief, or subsequent flight from same. The key words here (which are highlighted for emphasis) are "reasonably believes."

56. Even if the Court disagrees with the arguments contained in Argument II of this Brief, the arguments were nonetheless clearly made in good faith and were nonfrivolous. Therefore, Plaintiff's attempt to retrieve the router – knife or no knife – was legally justified.

57. Now, the Defendant MAY have a potential defense that the use of a knife was unnecessary and excessive, thus eliminating the self-defense argument. After all, it was emphasized that a lessee may only use "reasonable" means to recover a stolen object, was it not?

58. However, this defense to Plaintiff's argument was never raised in the Defendant's answer, and, pursuant to Arkansas Rule of Civil Procedure 8(d), is deemed waived.

59. Therefore, whether or not a knife was used in attempting to retrieve the router, it matters not. Plaintiff was still innocent of domestic battery because he had a nonfrivolous grounds for believing that the router-taking constituted stealing, and the Defendant committed malicious prosecution when he accused Plaintiff of same, because he acted in malicious and reckless disregard to Plaintiff's right to self-defense and his right to property.

Damages

60. Although the Defendant has admitted to the damages requested in the complaint, Plaintiff

wishes to make a new request for damages. This is allowed because a Plaintiff's recovery is only limited to the amount that is listed in the Complaint in the event of a default judgment. See Ark. R. Civ. P. 54B(c).

61. That being said, please see the persuasive precedent of *Peoples Bank & Trust Co. v. Globe Intern.*, 786 F. Supp. 791 (W.D. Ark. 1992), or "PB&T Co. v. Global" for short. And before the Defendant starts whining and complaining, let's get this out of the way right off the bat: No, this precedent is not "binding" on this court, at least not directly. However, the Court still has the discretion to be persuaded by the precedent. This is why it is called "persuasive" precedent. Plaintiff, in this motion, is asking the Court to exercise said discretion favorably to this precedent. Besides, it is a case from the Arkansas federal courts (and in fact, specifically the *Harrison* division), and is based entirely on diversity jurisdiction, which means that it applies Arkansas law because... that's just how diversity jurisdiction works in federal court; see Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938). Therefore, this precedent is as binding as non-binding precedent can get.

62. Anyway, in the case of PB&T Co. v. Global, the Plaintiff was awarded compensatory damages of $650,000, with the Court reasoning that "It may be... that [the Plaintiff] does not show a great deal of obvious injury, but a reasonable [person... as defined by the common law doctrine of the same name] might conclude, after hearing the evidence... that [the Plaintiff]'s experience could be likened to that of a person who had been dragged slowly through a pile of untreated sewage. After that person had showered and a few weeks have passed, there would be little remaining visible evidence of the ordeal which the person had endured and the resulting damages incurred, but few would doubt that substantial damage had been inflicted by the one doing the dragging." See *PB&T Co. v. Global* on page 796 (right near the end of that page).

227

63. Plaintiff was subjected to an redoubtably similar experience due to the incarceration which the Defendant caused him. Therefore, this is the standard for compensatory damages for emotional distress in this case.

64. However, there is just one problem: That case was published in the year 1992, and the injury in this case was sustained in the year 2011. Therefore, adjustment for inflation is appropriate. This is where the seemingly irrelevant Exhibit B comes into play: It shows how much that precedent was worth at the time the Defendant's actions invoked it. Therefore, Plaintiff requests emotional distress damages of $1,000,000 even-steven (to make the post-judgment interest easier to calculate, let's not worry about that extra forty-two thousand some odd dollars; it is miniscule in the grand scheme of things).

65. Plaintiff also requests punitive damages of $15.5 million (again, relatively small amounts reduced for the sake of easily calculation of interest). This is because, in the year 1993, the U.S. Supreme Court issued a precedent[9] known as TXO Production Corp. v. Alliance Resources Corp., 509 US 443 (1993), or "TXO v. Alliance" for short. In this precedent, they held that $10 million is an appropriate amount of punitive damages whenever the Defendant knows of the illegality of his actions and does them anyway. Here, the Defendant is presumed to know the illegality of his actions due to the doctrine of *ignorantia juris non excusat* ("ignorance of the law excuses no one"); therefore, the precedent of *TXO v. Alliance* applies full-force in this case. Therefore, after adjusting for inflation using the attached Exhibit C, we find that the punitive damages which are appropriate for such conduct in the year 2011 (when the Defendant actually incurred them) is a little bit over $15.5 million. Plaintiff, therefore, requests that much in punitive damages.

66. Ultimately, should the Court find the arguments of Paragraphs #59 - #64 to be

9 and this time, it *is* binding precedent; see *Cooper v. Aaron*, 358 U.S. 1 (1958)

unpersuasive, Plaintiff still has the admitted damages to fall back on[10]. Therefore, if Paragraphs #59 - #64 are unpersuasive to the Court, Plaintiff in the alternative asks that the Court impose award him the following damages:

A) $1,190, because that is the amount it cost me to be able to bond out of jail.

B) $113,000 in damages for his at-the-time 113 days incarceration.

C) $50,000 in damages for the loss of reputation within the community, and

D) Ten times all of that in punitive damages (because, again, the Defendant has admitted to them; see Footnote #7).

FINAL CONCLUSION

67. So, to bring all three of those arguments – and with them, the entire Brief in Support of Motion for Partial Judgment on the Pleadings – to a close, let us take one final moment to recap the points:

A) The Defendant is civilly liable for repudiating the contract.

B) The Defendant's contract repudiation was a theft, and thus, the tort of conversion, because the stealing of the Internet router is legally the same thing as stealing the Internet itself.

C) The nonfrivolous argument for the tort of conversion entitled Plaintiff to use nondeadly physical force to fight it, and any arguments that the force used was excessive have been waived by the Defense.

D) All damages are established by admission, and damages of $16.5 million are judicially noticeable.

E) Therefore, so far, Plaintiff has demonstrated an entitlement to a grand total of sixteen million, five hundred sixty-two thousand, forty-one dollars and thirty-two cents

10 Deferred, once again, to Paragraph #8 of the "Background" Section of this Brief.

($16,562,041.32) in damages, or in the alternative, to a grand total of one million, eight hundred sixty-eight thousand, one hundred thirty-one dollars and ten cents ($1,868,131.10) in damages.

68. Wherefore, premises considered, the Plaintiff respectfully prays that the Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Summary Judgment be granted, that all costs incurred be awarded, and for whatever other relief Plaintiff may be entitled.

69. It is so requested this 17th day of June, 2013.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

230

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2013 JAN 26 PM 3:38
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS. — NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

BRIEF IN SUPPORT OF ANSWER TO REVISED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Brief in Support of Answer to Revised Motion states:

1. The Plaintiff is an adult and was not forced to do anything including signing any document.

2. The Plaintiff is the one who prepared the "Contract" and thus Plaintiff humiliated himself. All the rest of paragraph two (2) is denied.

3. Defendant denies the alleged factual matters as set forth in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66.

4. The Defendant denies paragraph 67 as the final conclusion in that Defendant is not liable to the Plaintiff for anything. Defendant was not involved in a theft of Defendant's own property nor did Defendant convert his own property. The argument of conversion by the Plaintiff is frivolous. Plaintiff is not entitled to use physical force under the circumstances.

239

Plaintiff's damages are nonexistent and the amount claimed is ludicrous. Also, Plaintiff has demonstrated no entitlement to anything other than a dismissal.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that factual matters set forth in the Brief be denied and that said facts are controverted and are arguments and do not support a Motion for Partial Judgment on the pleadings or a Motion for Summary Judgment and the Defendant should have his Court costs, attorney's fees and all other proper relief to which Defendant is entitled.

DAVID D. STEBBINS

BY: _____

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

CERTIFICATE OF SERVICE

I, James E. Goldie, attorney of record for the Defendant herein, hereby state that the above and foregoing pleading has been served upon the Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, *pro se,* 123 W. Ridge, Apt. D, Harrison, AR 72601 on this 26th day of June, 2013.

_____
James E. Goldie

240

FILED FOR RECORD
2013 JUL -1 AM 8:42
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

REPLY TO ANSWER TO REVISED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE FOR PARTIAL SUMMARY JUDGMENT

1. Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to Defendant's Answer to Revised Motion for Partial Judgment on the Pleadings.

Defendant must do more than merely deny things.

2. Defendant, in its Answer to Revised Motion, offered no counter-arguments, and has failed to meet proof with proof. He fails to back up his claims with actual evidence, and in fact, does nothing but give blanket denials of the revised motion.

3. Such blanket denials, without any explanations behind them or exhibits supporting them, are insufficient to survive a motion for judgment on the pleadings or a motion for summary judgment. "Once the moving party has established a prima facie case showing entitlement to summary judgment [or judgment on the pleadings], the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact." See *Quattlebaum v. McCarver*, 2013 Ark. App. 376 (2013). Furthermore, "the issue of fact must be 'genuine.' When the moving party has carried its burden... its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." See *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 US 574, 586 (1986).

4. To interpret the Supreme Court case of *Matsushita v. Zenith*, the Court obviously must ask itself... what causes a doubt to be considered "metaphysical?" Well, in the absence of a legal

definition, the Merriam-Webster Dictionary – the most popular and commercially successful layman dictionary in the nation – becomes the authority on definitions. That being said, according to the Merriam-Webster Dictionary's official website (see Exhibit A to this Reply), the word "metaphysical" carries the following definitions (Definition C seems to be the most applicable in this context):

A) of or relating to metaphysics

B) of or relating to the transcendent or to a reality beyond what is perceptible to the senses

C) highly abstract or abstruse; theoretical

D) of or relating to poetry especially of the early 17th century that is highly intellectual and philosophical and marked by unconventional imagery

5. Along with those dictionary definitions, the thesaurus portion of this webpage gives the following synonyms for the word "metaphysical:" conceptual, ideal, ideational, abstract, notional, theoretical. It also offers the antonyms of "concrete" and "nonabstract."

6. Also, in the thesaurus section of that webpage, the following "related[1] words" are given: conjectural; immaterial; incorporeal; insubstantial; insensible; intangible. On that same vein, the following "near antonyms" are given: physical; discernible; tangible; defined; definite; distinct; actual; factual; real.

7. These definitions, synonyms, and antonyms clearly show that, to survive summary judgment or judgment on the pleadings, the Defendant must do more than merely *claim* that there is a dispute of fact. They must back their claims up with actual *facts*... facts which are concrete, specific, and empirically verifiable. The blanket denials found in Defendant's Answer

1 That is to say... words that do not mean *exactly* the same thing, but are close enough that the definition thereof can e reasonably inferred.

to Revised Motion fall far short of this exacting standard.

Defendant cannot deny what he has already admitted.

8. Even if the Defendant were allowed to make blanket denials without any explanations to back them up, remember that everything in the Revised motion is being pulled directly from Defendant's Answer to Complaint and his Response to Plaintiff's Request for Admissions. The Defendant is not at liberty to deny them now, since he has already admitted to them. "Any matter admitted... is conclusively established unless the court on motion permits withdrawal or amendment of the admission." See Ark. R. Civ. P 36(b).

9. Notice that this rule contains the words "on motion." These two words clearly indicate that the Court is not at liberty to grant this permission *sua sponte*. Even if the Court were *willing* to grant leave to withdraw or amend the admission on the mere grounds that the Defendant had simply changed his mind and did not want to admit it anymore, the Defendant must actually *file a motion* before the Court can do that.

Defendant is the author of the contract.

10. The closest Defendant came to making statement of fact that contains the requisite amount of concreteness was in Paragraph #2 of his Brief in Support of Answer, where he stated that Plaintiff, not Defendant, is the author of the contract that is the crux of this case.

11. This blows Plaintiff's mind on so many different levels:

A) First of all, why did Defendant feel the need to put the word *contract* in quotation marks?

B) Second, their allegation contains no evidenciary backing, and thus should be stricken. Remember, the Defendant must *meet proof with proof*, not merely meet proof with denial or meet proof with allegation.

C) Third, the allegation that Plaintiff is the contract's author is a plain lie. On June 27, 2013, Plaintiff filed a motion to compel cooperation in discovery. As an exhibit to that motion, a transcript of a deposition in which Defendant testified about this matter was attached. This transcript (specifically the cross-examination portion thereof) very clearly shows the Defendant identifying himself as the author of the contract. For example, he is recorded as stating that he "left it on the printer for [Plaintiff] to sign," which clearly counts as a declaration of authorship, and even acknowledged that he had "about fifteen other" versions of the contract in his head, but the one that ended up getting signed in the only one he ever presented to me. He very clearly considered himself to be the author of the contract during that testimony, which plainly refutes his claim that Plaintiff is the author.

i. For this reason, Plaintiff not only asks the Court to reject his claim that Plaintiff is the author of the contract, but also moves the Court to sanction the Defendant for violating the provision of Ark. R. Civ. P. 11 that requires all written pleadings to be "well grounded in fact" and that the belief in the truth thereof be "formed after reasonable inquiry." His allegation is clearly a blatant lie and both he and his counsel should be sanctioned for it.

D) Fourth, Sub-paragraph (C) assumes that the Defendant's ludicrous claim that Plaintiff is the contract's author even *needs to be refuted*. Sometimes, some claims, despite being *physically* possible, are still inconsistent with *behavioral* science, and this is such an instance. As a current judge and former prosecuting attorney, some basic knowledge of human behavioral science comes with the job description, which means that the Court can take judicial notice of the following phenomenon: No person of sound mind[2] would freely and

2 And it bears repeating: Plaintiff has already been declared to be "of sound mind" by Doctor George de Roeck of Little Rock, AR, when Plaintiff attended a court-ordered mental evaluation in the related criminal case.

willfully subject himself to that kind of torture.

i. That last bit – about a person of sound mind freely and willfully doing something – is something Defendant attempts to gloss over in Paragraph #1 of his Brief in Support of Answer, where he states that Plaintiff is an adult and thus was never forced into anything. However, if Defendant were to have his way on this issue, unconscionability, as a doctrine of contract law, would cease to exist. "As long as someone is an adult, then no contract he ever signs can ever be unconscionable." The mere fact that unconscionability even *exists* as a defense in contract law clearly shows the frivolousness of that legal argument.

E) Last but not least, why would Defendant wait until just now to bring up the allegation that Plaintiff drafted the contract?! In the original motion that the Revised Motion seeks to replace, Plaintiff pointed out the unenforceability of the Respect Clause; it was not as well developed as it was in the Revised Motion, but at least it was there, and arguing that Plaintiff drafted the contract would have provided a hard-hitting argument against Plaintiff's attempts to have the clause ruled unenforceable, so why not bring it up then? Clearly, it is because the Defense Counsel only realized the consequences thereof in the Revised Motion, where Plaintiff first established the unconscionability of the contract. They were willing to accept authorship of the contract because they did not believe that unconscionability provided a defense to the contract's enforcement; once they were educated otherwise, they decided to fabricate things in order to avoid liability... just like the Defendant is wont to do (the reason he framed Plaintiff for a felony).

You can indeed convert your own property.

12. The closest Defendant comes to making a coherent legal argument is when he states that

the Defendant cannot commit conversion over his own property. Admittedly, Plaintiff did acknowledge this as a "gray area" in his Revised Motion. However, it turns out that Plaintiff was right: Even if you own the property, it is still conversion if you repossess in the absence of the contractually-created criteria allowing you to do so! Since filing the Revised Motion, Plaintiff has found a published binding precedents that flatly affirm this legal doctrine. In the case of *Tackett v. McDonald's Corp.*, 3 SW 3d 340 (1999), the Arkansas Court of Appeals held the following:

> "7. CONVERSION — ELEMENTS OF. — Conversion is the exercise of dominion over property in violation of the rights of the owner **or person entitled to possession**; conversion can only result from conduct intended to affect property; the intent required is not conscious wrongdoing but rather an intent to exercise dominion or control over the goods that is in fact inconsistent with the plaintiff's rights." Areas of interest bolded for emphasis.

13. So there you have it. Defendant's actions were conversion, so long as Plaintiff was entitled to possession of the Internet router, and Plaintiff was entitled to possession of the Internet router as long as enforceable provisions of the contract were complied with. Since the Defendant makes no attempt to refute Plaintiff's claims that portions of the contract either (A) were not violated, or (B) are not enforceable, then those arguments remain unchallenged[3].

Plaintiff is proceeding *pro se*, and is thus entitled to liberal interpretation of pleadings.

14. Even in the event that Defendant's actions constitute some type of tort *other than* conversion, that still does not help Defendant. Remember, Plaintiff is proceeding *pro se*, and thus has the right to have his pleadings construed liberally. See *Haines v. Kerner*, 404 U.S. 519 (1972). See also Smith v. St. Bernards Regional Medical Center, 19 F. 3d 1254 (8th Cir. 1994) (dismissing a complaint precisely as it was written, but allowing the *pro se* Complaint to prevail

3 Or at least, no "genuine" dispute of material fact was actually *demonstrated* by means of meeting proof with proof.

since the facts alleged would amount to a cause of action).

Vague legal arguments unsupported by legal citations should be disregarded.

15. To conclude his Answer to Revised Motion, Defendant *claims* that Plaintiff's legal arguments are frivolous. However, he provides no legal citations to back up this claim. He does not merely claim that Plaintiff's legal arguments are mistaken; he claims that they are specifically "frivolous." As the Defense Counsel himself pointed out at the hearing dated May 13, 2013:

> "Well, the Court has found it is easy to understand how when one sees a guilty pleathat it could be interpreted as a guilty plea but it was not a bad faith motion. Additionally, in the alternative, even if it was an entry of an order of no contest, there are conditions under which a no contest plea can be used in the course of law. So it's not a bad faith argument, it may not have been an argument that was timely. It may not have been an argument that was complete. It may not have been an argument that didn't exactly fit the situation but his sanctions says it's bad faith and therefore you have to sanction them."

16. Therefore, Defense Counsel himself has admitted that it takes more than mere error of judgment to constitute a "frivolous" argument; rather, said error must be caused by sloppy or inattentive legal research (or at the very least, apathy of what the law is) and that is clearly not the case here; Plaintiff's legal beliefs were caused by careful study of the statutes, review of applicable case law,and review of statutes – such as those governing lease agreements – that were not directly related but may cause confusion. Clearly, Plaintiff's tort of conversion claim is not frivolous.

17. Defendant could... ya know... actually ***cite some statute or case law*** that refutes Plaintiff's claim! That would actually be a lot better than them just *claiming* that it is frivolous, because then, they would actually be backing up their claims with evidence! You know... *meeting proof with proof* and all that stuff?!

Defendant is the frivolous party here, not Plaintiff.

18. Rather, it is Defendant's actions and arguments which constitute his counselor's own

definition of frivolous. This is because Defendant is, for lack of a better term, an Aristotle of the Law. What that means is this: The ancient Greek scientist Aristotle believed that, as long as his scientific theories made sense, there was no need to test them by experiment. This philosophy led Ancient Greece to believing a lot of things we now know today to be false, such as atoms being indivisible and heavy objects falling faster than lightweight ones.

19. Similarly, Defendant seems to believe that, as long as his intuition of the law makes sense to him, there is no need for him to actually verify this intuition by actually researching and studying the law. This leads him to believing a lot of completely frivolous things about the law. For example, he thinks that…

A) … unconscionability does not provide the victim thereof with a legal defense to the enforcement of a contract.

B) … as long as the signatories to the contract are adults, the contract can never be unconscionable.

C) … the terms of a contract (such as this contract's Forced Labor Clause) do not have to be reasonably certain.

D) … he can unilaterally modify the terms of a contract, because... well... just because. Because he can. Even when the contract specifically states that it can only be amended "after reasonable conference and Written[4] agreement between all parties involved," that does not matter because... he can unilaterally modify *that* clause as well!

E) … as long as he technically "owns" the property, taking it from a lessee without legal process can never be considered "conversion," even when the lessee still has a possessory right to it.

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4 For the record, why is the word "written" capitalized in that contract? In fact, if you look at the contract, you will notice that a lot of words are randomly capitalized for no rhyme or reason.

Conclusion

20. Therefore, as the Court can clearly see, the few attempts made by Defendant to actually refute Plaintiff's claims are either legally meritless, completely frivolous, or are blatant lies where Defendant has already testified to the exact opposite on them.

21. Wherefore, premises considered, Plaintiff respectfully requests that the Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Partial Summary Judgment be granted, costs incurred be awarded, and other relief to which he may be entitled.

22. It is so requested on this 1st day of July, 2013.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

CERTIFICATE OF SERVICE

I, *pro se* Plaintiff David Stebbins, do hereby certify that a true and correct copy of this Reply to Answer to Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Summary Judgment was served on Defense Counsel by placing a copy thereof in the inbox of James E. Goldie at the office of the Boone County Circuit Clerk on June 27, 2013.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

FILED FOR RECORD
2013 JUL -1 PM 3:57
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

AMENDED BRIEF IN SUPPORT OF ANSWER TO REVISED MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Amended Brief in Support of Answer to Revised Motion states:

1. The Defendant reasserts and realleges each and every matter set forth in paragraph one (1), three (3) and four (4).

2. Defendant amends paragraph two (2) of the brief and states that it was the Defendant, the daughter of the Defendant and the Defendant's spouse who wrote the contract at the request of Plaintiff and that it is Plaintiff who freely and voluntarily executed the "contract". Defendant denies each and every matter set forth in paragraph two (2) of the revised Motion.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the financial matters set forth in the brief be denied and that said facts are controverted and are arguments and do not support a Motion for Partial Judgment on the pleadings or a Motion for Summary

462

Judgment and the Defendant should have his Court costs, attorney's fees and all other proper relief to which Defendant is entitled.

DAVID D. STEBBINS

BY: _____

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

CERTIFICATE OF SERVICE

I, James E. Goldie, attorney of record for the Defendant herein, hereby state that the above and foregoing pleading has been served upon the Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, *pro se,* 123 W. Ridge, Apt. D, Harrison, AR 72601 on this 1st day of July, 2013.

_____
James E. Goldie

463

FILED FOR RECORD
2013 OCT 24 PM 1:05
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ D.C.

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION TO COMPEL DISCOVERY AND FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following *third filing* of the motion to compel discovery.

1. Per the Court's order on October 21, 2013, Plaintiff submitted an email to Jim Goldie, which is hereto attached as Exhibit A. This email, along with serving him a copy of Plaintiff's script for the oral argument in support of his Motion for Partial Judgment on the Pleadings (which you can see was an attachment to that email), also went into detail about why, specifically, the Defendant's discovery responses were insufficient.

2. The arguments and complaints contained in this email are not meant to be exclusive. Rather, they are meant to be merely demonstrative of the consistent insufficiency of virtually every discovery response. In this motion to compel, Plaintiff not only asks that the correct the problems which were specifically pointed out in that email, but all other discovery responses where the logic of that email applies.

3. As you can see, this email was sent on October 21, 2013. Plaintiff stated that he would call Jim Goldie the next day to discuss the matter. He did so at approximately 1:30PM on October 22, 2013. Although Jim Goldie himself picked up the phone (and not just his secretary), he refused to speak to Plaintiff, stating that Plaintiff had pledged to call *the next day*.

4. There are a variety of reasons why his argument was frivolous and clearly designed merely to delay this case:

/ 742

(a) The email was clearly sent on October 21, 2013. "Tomorrow" for that day is clearly October 22, 2013. The Defense Attorney claims that he never *received* it until October 22; however, unless he wishes to claim a deficiency in the email system, then he "received" it at the same time it was sent. Emails are sent instantaneously unless there's a problem in the email system. Remember, you "receive" a letter in the mail when it is placed in your mailbox, not when you actually take it out of the mailbox and read it yourself; emails work exactly the same way, just that they're instantaneous.

(b) Plaintiff was never required to give *any* time frame in the first place! Unless this time frame was backed by contractual consideration or a preexisting legal obligation, Plaintiff was not bound by that time frame that he gave, and thus, was perfectly entitled to simply *change his mind*. The Defense Attorney had no right to bind Plaintiff to something that was, quite simply, not binding on him.

(c) Furthermore, Plaintiff was never required to ever call Goldie to discuss the matter in the first place. He could have simply sent the email and left it at that. Again, the Defense Attorney has no authority to bind Plaintiff to *anything* unless Plaintiff *chooses* to bind himself in exchange for contractual consideration.

5. Therefore, Plaintiff should be construed as having contacted the Defense Counsel, both in writing and over phone.

6. However, just in the hopes of not having to file this motion… *again*… Plaintiff decided to give in to the Defense Counselor's demands. He proceeded to call the Defense Attorney on October 22, 2013, not once, not twice, but three times. Once at 2:23PM, again at 3:12PM, and one final time at 4:35PM. None of those attempts to call him (which, just to reiterate, Plaintiff was never required to do in the first place, let alone multiple times, let alone on the Defense

Attorney's terms) resulted in any person in that office even picking up the phone.

7. Therefore, Plaintiff has made reasonable attempts to resolve this discovery dispute without court action.

8. Plaintiff therefore requests that the Court order the Defendant to provide full and complete discovery, consistent with the terms of that email.

9. Plaintiff also requests that, in addition to the sanctions sought so far, the Defense Attorney be sanctioned for the conduct spoken of in Paragraph #4 of this Motion, since it was clearly designed simply to delay the case, and was not based, by any stretch of the imagination, upon any legal right on his part or legal obligation on the Plaintiff's part. He was trying to bind Plaintiff to something he was, quite simply, not bound by and, for that matter, had no obligation to even pledge in the first place.

Wherefore, premises considered, Plaintiff requests that the motion to compel discovery be granted. So requested on tis 24th day of October, 2013.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

744

Subject: Plaintiff's Exhibit 1

From: David Stebbins (stebbinsd@yahoo.com)

To: goldie@goldielawfirm.arcoxmail.com;

Date: Monday, October 21, 2013 5:01 PM

Dear Mr. Goldie,

Attached, you will find the Script that I had given to the Judge for my Revised Motion for Partial Judgment on the Pleadings.

Furthermore, am I correct in assuming that you refuse to supplement your discovery responses? When I requested explanations for your denials, I wasn't asking for "three page responses." I'm just asking for your explanations to be unambiguous... and your client's answers were very, very ambiguous.

For example, your client denied Requested Admission #1, even though the contract very clearly states this. Are you refusing to explain how your client's denial of this requested admission was anything other than a lie?

In addition to this, your client denied my Requested Admissions #2 and #3, claiming "both parties had bargaining power." Are you saying that you refuse to elaborate and explain *what bargaining power* both parties had?! You know... to lend credence to this claim?

Furthermore, your client denied Requested Admission #7, even though the contract clearly states "[Plaintiff] will receive Room and Board at [Defendant's and Wife]'s residence... This will include a bedroom, and full access to both bath and kitchen facilities... Other ammenities included will be a reasonable amount of food." So, do you refuse to explain how your denial of Requested Admission #7 was anything but a blatant lie?

Then, you denied Requested Admission #22. What evidence or medical treatise do you use to back up your claim that ***ALL*** knife cuts - even little knicks you get on your finger while chopping food - meet the definition of "serious physical injury" under (I've provided a link to this definition for your convenience)?

Your client denied Requested Admission #29, claiming that "all officers present from up to one-half (½) hour." What evidence do you have to support this denial? Keep in mind: The total length of time is plainly on the Arrest Report; if you don't have one, I'm sure Wes Bradford would be willing to Xerox you a copy! So, your client has no excuse for getting this figure wrong, except laziness.

Your client denied Requested Admission #30. One of the portions of his denial was that the police officers "knew Plaintiff was guilty." On what personal knowledge does the Defendant base his claim that the officers "knew" I was guilty? Can your client read the officers' minds? And, for that matter, how did the officers "know" I was guilty? What evidence did *they* have to

745

support such concrete knowledge?

When denying Requested Admission #31, your client denied it "for lack of knowledge." How can you possibly lack knowledge? Your client obviously knows the day I was arrested, and if he doesn't know the day I was released from pretrial detention, he is married to someone who *does* know that date. Is your client simply too lazy to use his knowledge of how the Georgian Calendar works and counting the days?

In your client's response to Requested Admission #44, he says that he is religious. Obviously, you ponder as to what this has to do with anything. I concede to one thing: It can't be used simply to show that, by nature of his religious beliefs, he is discredited. However, the Rules of Evidence only prohibit the admission of this type of evidence to prove that one single thing. By extension, evidence of religion can be used to prove just about anything else.

For example, what if one of my purposes for this requested admission was simply... to TEST the Defendant to see if he would tell the truth? Although religion cannot be used to discredit a witness, his willingness to lie to portray himself in a positive light CAN be used to discredit a witness! So... can you give an explanation behind this denial that would show that the denial was not a lie? Because that, Mr. Goldie, will ALWAYS be relevant, even if the issue he lied about is not.

Those are just SOME of the examples of places where your client needs to improve. "Three page responses" are not necessary; unambiguous responses are.

In your response to Interrogatory No. 2, you stood by your denials, despite the warning that your response to that Interrogatory was under oath. Fair enough. However, there's one problem: There were a few of the Requested Admissions regarding the Defendant's actions that he admitted!

One of the most glaring examples of this (though not the only example) is Requested Admission No. 4. So let me get this straight: First, he admits to putting that condition in the contract, but then,in his response to Interrogatory No. 2, he denies putting that condition in the contract? Is that basically the gist of it?

That is just one example of the inconsistent responses your client gave that you need to rectify for him.

Continuing...

Your client's response to Interrogatory No. 3 doesn't even make any grammatical sense! Could you please re-phrase the blasted thing so that it doesn't sound like Engrish?

In your client's response to Interrogatory No. 4, you say you want me to take the witness's depositions to obtain their testimony. This is bullcrap. A party does not get to decide which methods of discovery the other side has to use. If that were the case, one party could say "Ok, you can only serve me with requests for admissions... and you have to use trial and error, and process of elimination, until you come across the right facts." Interrogatories are a perfectly valid method of obtaining discovery. So, please give the testimony and make it so that I don't

need to file the motion to compel one more time.

In your client's response to Request for Production No. 1, your client says that he has no evidence. Does he really have none? Do you really think that's strategically sound?

Remember, "all of Plaintiff's Interrogatories" includes Interrogatory No. 1, which, in and of itself, includes your client's responses to the Requests for Admissions. One of these responses is his response to Requested Admission #15, where he alleged, among other things, that the "Internet speed was not in control of the Defendant." Aside from that being more butchering of the English language... do you mean to tell me that your client has no actual *evidence* that it is out of his control? Under the precedent of (again, a link is provided for your convenience), it plainly states that "it must be shown that the thing required under the contract cannot be accomplished, and the burden of showing this is upon the defendant." So... is the Defendant admitting that he is unable to fill this burden? Or, is he just too lazy?

That is only one example of the sort of evidence he needs to provide. However, that should be enough to show you the chronic violations in his discovery responses.

Last but not least, your client needs to comply with Request for Production No. 4, and produce all the email conversations between himself and Dale Beavers. Your client is simply lying when he says that none of these email conversations were "about Plaintiff," and yes, I *can* prove that if I need to, so don't you dare give me incomplete conversations.

Besides, even if they *aren't* about me, that doesn't exempt them from disclosure; I still have the right to discover them, whether they are "about" me or not.

This email is not exclusive of the flaws in your client's discovery responses. However, by this point, you obviously know what I'm wanting out of these discovery requests, and can figure out the rest on your own.

I will be in touch sometime tomorrow to see if you are willing to correct these and other mistakes.

Sincerely,

David A. Stebbins

749

FILED FOR RECORD
2013 NOV -1 PM 12:32
BOONE CO. CIRCUIT CLERK
BY

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO MOTION TO COMPEL

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer to Motion to Compel states:

1. Defendant denies an e-mail was submitted but states the Plaintiff sent an e-mail on 10-21-2013 at 5:01 p.m., a time which is after normal business hours. Further, while the Plaintiff attaches an incomplete e-mail which makes the attachment meaningless the Plaintiff does not incorporate the incomplete e-mail as part of his Motion and thus the whole Motion is meaningless.

2. The Defendant denies paragraph two (2) in that the unincorporated e-mail demonstrates nothing and contains no rational logic.

3. Defendant states that his attorney had the distinct displeasure of answer a telephone call from the Plaintiff which was demanding in words and tone and verbally abusive. Since the e-mail was sent after normal business hours on October 21, 2013, the e-mail could not be viewed until October 22, 2013 and that makes the next day as set out in the email to be October 23, 2013. When that was explained to the Plaintiff at least three (3) times and Plaintiff could not grasp the simple logic of the position the attorney James E. Goldie hung up the telephone.

4. Defendant denies paragraph four (4), five (5), six (6), seven (7) and eight (8).

5. The Motion of Plaintiff should be denied as failing to comply with Rule 37 of the Arkansas Rules of Civil Procedure and for other reasons as follows:

a) An incomplete attachment is with the Motion as admitted by Plaintiff in his e-mail of October 24, 2013 that a page is missing as set forth in the attach Exhibit "A" which is incorporated herein as if set out word for word.

b) The Motion does not include the statement that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.

c) No attempts by Plaintiff were in good faith with an e-mail sent after business hours on October 21, 2013 and a Motion to Compel filed October 24, 2013 less than three (3) days later.

d) Even if the Court reviews the incomplete e-mail the language and logic are hardly of good faith but are a continuing series of acts by the Plaintiff to take control of the litigation without regard to Court rules or the law. A clear example of this attempt to take control is the Motion of Plaintiff filed October 23, 2013 wherein the Plaintiff seeks to instruct the Court how the Court is to conduct itself in these proceedings.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the Motion be denied and Defendant have his Court costs, attorney's fees and other necessary sanctions be imposed against the Plaintiff and that Defendant have all other relief to which the Defendant is entitled.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

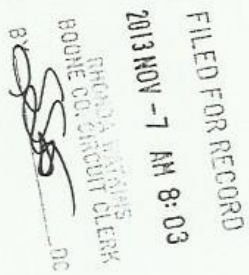
VS — CV CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

REPLY TO ANSWER TO MOTION TO COMPEL DISCOVERY

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to the Defendant's Answer to Motion to Compel Discovery.

1. In this Reply, Plaintiff will use the following precedents. The Court may wish to have them on-hand so that it can apply the law faithfully.



(a) *Charles Lee Smith v. State of Arkansas*, 818 SW 2d 945 (1991)

(b) Rule of Civil Procedure #37

(c) Rule of Civil Procedure #33

(d) Rule of Civil Procedure #61.

The attachment is complete.

2. First, the Defendant argues that, because a page was missing in the copy of the motion that he received, the attachment (and therefore, the whole motion) is meaningless.

3. Specifically, the Defendant alleges that the exhibit is missing a page. The page he speaks of is the second of the three-page exhibit. It is the page which begins with the words "support such concrete knowledge" and ends with the words "make it so that I don't."

4. The Defendant's argument that the incompleteness renders the motion worthless is a frivolous argument that is merely designed to delay the proceedings even further. Only the copy that he received was incomplete. When Plaintiff noticed that it was incomplete, he quickly returned to the Clerks' Office and confronted deputy clerk Carolyn Thomas about the filing. The

752

Court can ask Ms. Thomas to verify this if you so choose.

5. She pulled the filing and looked at it for Plaintiff; indeed, the original filing was complete, and had all six pages to it (three for the motion, and three for the attachment). Indeed, the exhibit which the Defendant himself attaches to his Answer plainly states that this happened.

6. Upon this being established, Plaintiff reasoned the following:

(a) The Defendant already had the entire email submitted to him; if he wanted it to be printed out, he can pull it from his own inbox and print it out himself.

(b) The Court was the only one involved in this case who did not already have the email in its own inbox.

(c) The Court – the one entity who actually *needed* the entire email submitted to it – had the entire email submitted to it.

(d) Since the Defendant already had the entire email in his counselor's own inbox, the fact that he was only missing a single page of the printed-out version fell within the protection of ARCP 61.

7. As a result, Plaintiff proceeded to serve the Defendant with the copies he did have. Remember, this Court is obligated under Arkansas Rule of Civil Procedure #61 to ignore anything that does not substantially prejudice another party; furthermore, the Court must presume a lack of prejudice unless the Defense can show otherwise. See *Smith v. State of Arkansas*, 818 SW 2d 945, 947 (1991) ("[T]he court has held that error is no longer presumed to be prejudicial")[1]. Therefore, the burden of proof is on the Defense to show that printing the email from his own inbox (the same way he printed the email sent to him on October 24) was not a plausible option for him. He has failed to do this.

1 As usual, Plaintiff asks the Court to actually *read* this precedent before the Court continues reading this reply. Plaintiff cites these precedents for a reason.

Attempts were made to obtain the discovery without court action; even if they weren't, this Court should consider taking upt his motion, anyway.

8. While Rule of Civil Procedure #37 do indeed require the parties to attempt in good faith to obtain the discovery without court action, it does not brightly define what actions constitute a "reasonable, good faith attempt." This seems to suggest that it would be at the discretion of the trial court to determine whether or not a party's actions constitute a "good faith attempt."

9. If we are to accept that it is within the trial court's discretion, perhaps this Court should consider the following factors:

(a) This is the *third time* we have tried to resolve this motion.

(b) Plaintiff will not be ready for a jury trial until he gets full discovery. Even if this motion to compel discovery is denied on its merits, rather than simply stricken *again*, Plaintiff will simply craft new discovery requests, and will not be ready for jury trial unless and until he has full discovery.

(c) Plaintiff has already done more to obtain the discovery without court action than what he has ever been required to do in the same situation in federal court.

(d) In the May 13, 2013 hearing (Page 16, Line 11 through Page 19, line 10), the Defense Attorney explained that he believed his client's *pro se* responses to be sufficient. In the October 21, 2013 hearing (Page 55, Lines 5 – 18)[2], the Defense Attorney reiterated their position on the issues. Therefore, even if this Court were to strike the motion … *again* … and Plaintiff were to satisfy the conditions the Court gives him pursuant to Paragraph 10(b) of this Reply, it would accomplish nothing; the Court would be forced to consider the motion to compel, as it is currently written, anyway. Going through all this "good faith attempts" business is merely delaying the inevitable, and doing so at great expense to the taxpayers.

2 Ralenn McBee has recently completed her transcription of this hearing, so the Court can ask her for a copy of the transcript if he so chooses.

10. For all these reasons and more, this Court should either…

(a) go ahead and consider the motion to compel (though not necessarily the motion for sanctions under Rule 37(d)) on the merits, or …

(b) just tell Plaintiff *straight up* what conditions the Court wants him to satisfy that the Court will consider to be "reasonable, good faith attempts." Without a bright line definition in the Rules of Evidence themselves,

11. If the Court does neither, this case will be going on for a long, long, looooooong time, because Plaintiff will not be ready for a jury trial until he gets full discovery. The Court could spend the next three years and hundreds of thousands of taxpayer dollars teaching Plaintiff the ins and outs of how Gordon Webb chooses to operate his court, or the Court could finally come to the realization that Plaintiff is, indeed, exercising good faith in this litigation, and is trying his best to get this case moving forward.

The Court should consider granting the Motion to Compel, even if it denies the Motion for Rule 37(d) sanctions, just in the hopes of moving this case forward.

12. Due to Plaintiff not being ready for jury trial until he actually has full discovery, and due to the subsequent fact that Plaintiff will simply draft a new discovery if this motion to compel is denied on the merits, this Court should consider also *granting* the Motion to Compel simply for the sake of expediting this litigation.

13. Plaintiff has already exerted great pains to explain why the Defendant's responses are insufficient (the most recent of which is Exhibit A to this Motion to Compel), and how the Defendant's "relevance" and "improper discovery" objections were waived under Rule 33(a)(4), so the Court would not be abusing its discretion if it granted the motion to compel despite not understanding how these discovery requests are relevant to the case.

14. Therefore, unless the Defendant may suffer some sort of prejudice if he is made to

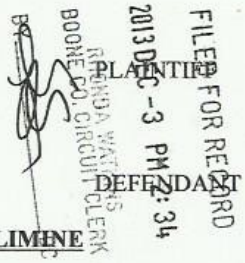
comply with the discovery requests, this Court should consider just accepting that Plaintiff is trying his best and do *its* best to accommodate Plaintiff.

WHEREFORE, premises considered, Plaintiff hereby requests that the motion to compel be granted, that the Court consider granting the Rule 37(d) Motion for Sanctions, award costs incurred, and any other relief to which he may be entitled.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

756

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION



DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION FOR PROTECTIVE ORDER AND IN LIMINE

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following motion for protective order pursuant to Ark. R. Civ. P. 26(c) and motion ***in limine*** in the above-styled action.

1. Counsel for the Defense, Jim Goldie, has apparently made it his personal mission to strip Plaintiff of access to the courts, now that Wes Bradford has declined to do so.

2. Goldie's grounds for seeking this deprivation are that Plaintiff has filed numerous law-suits. He claims that the frivolousness of the lawsuits are so obvious that there is no need to explain their frivolousness.

3. These issues are not relevant to the instant case, not because Plaintiff does not like the way they are being used, but because they fail to meet the legal definition of "relevant." Any cause of action in which they might be relevant has not been raised by the Defendant, and even if raised, would likely be improper in this action.

4. Meanwhile, Goldie attempts to block Plaintiff's attempts to demonstrate inconsistency of the Defendant's testimony, using Plaintiff's own argument that "no other case except this one is relevant to this action." This attempt to block introduction of evidence, however, is not based on any legitimate application of the Rules of Evidence (because, this time, it *does* meet the legal definition of "relevant"), but for no other reason than, he simply does not like the way it discredits his client's testimony.

761

5. Plaintiff, in this motion, asks the Court, pursuant to Ark. R. Civ. P. 26(c), to order the Defense to do the following:

(a) Refrain from mentioning or introducing Plaintiff's litigation history in this case, both in discovery and pretrial motions (as per the protective order) and also at trial (as per the incorporated motion *in limine*).

(b) Cease and desist the introduction of any evidence or facts which fail to meet the legal definition of "relevant."

(c) Refrain from placing any objection on any piece of evidence unless he can nonfrivolously demonstrate how the evidence is inadmissible under at least one Rule of Evidence.

6. Pursuant to Ark. R. Civ. P. 7(b)(2), a brief in support of this motion is being included. The arguments contained therein are hereby incorporated by reference.

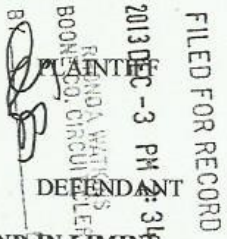
7. Wherefore, premises considered, Plaintiff requests that this motion be granted.

David Stebbins

David Stebbins
123 W. Ridge ST.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

762

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION



DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND IN LIMINE

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following brief in support of motion for protective order pursuant to Ark. R. Civ. P. 26(c) and motion *in limine* in the above-styled action.

TABLE OF AUTHORITES

1. Plaintiff will cite the following legal authorites in this Briefing. Thus, the Court and Defendant may wish to have them on standby.

(a) Ark. R. Civ. P. 26(c)

(b) Arkansas Rule of Evidence #401

(c) *Procup v. Strickland*, 792 F. 2d 1069, 1072 (11th Cir. 1986)

(d) *Forever Greenv. Lasiter Const., Inc.*, 384 SW 3d 540 (2011)

(e) *Farm Service Cooperative, Inc. v. Goshen Farms, Inc.*, 590 S.W.2d 861 (1979)

BACKGROUND

2. Jim Goldie, counsel for the Defense in the above-styled action, has (likely out of frustration over losing his motion for summary judgment) attempted to sabotage Plaintiff's case through more indirect methods. One of these is attempting to demonstrate to the Court (and, supposedly, also to the jury) that Plaintiff has a filed a lot of lawsuits whose frivolousness is so obvious that they require no explanation. He doesn't offer it as proof anything; he just throws it out there for the sake of throwing it out there.

763

3. Meanwhile, when Plaintiff attempts to point to previous times the Defendant himself (as opposed to his counsel) has given testimony or statements about issues central to this cause of action (such as the truth or falsity of the knife attack) that show the Defendant being inconsistent, Goldie attempts to interrupt Appellant's attempt to argue these issues, claiming that, according to Plaintiff's own logic renders them irrelevant.

4. Upon juxtaposing these two actions, it becomes clear that Goldie's personal definition of "relevant" is dependent entirely on whether or not it favors his client, and not based, even slightly, on whether or not it actually proves or disproves any fact of consequence.

ARGUMENT

5. The definition of "relevant," as far as the Court is concerned, is not something that the Court or counsel can simply make up as they go along. The definition is already set forth for the Court. It is found in Arkansas Rule of Evidence #401, which states the following:

> "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

6. Therefore, to determine whether or not Plaintiff's litigation history, as well as the Defendant's previous testimony and statements, are "relevant," we must ask ourselves: "Do either of these things actually prove or disprove any fact that is of consequence?" The answer regarding the former is, undeniably, "no," whereas the answer to the latter is, undeniably, "yes."

Plaintiff's litigation history

7. The Defense Counsel argues that Plaintiff should be denied court access simply because he has filed lawsuits in the past.

8. Plaintiff challenges Goldie to answer the following question: What fact of consequence does Plaintiff's litigation history actually prove?

764

9. So far, Plaintiff believes that a fact is considered to be "of consequence" if it falls into any of the following four categories:

(a) Refutes any essential element (such as "meeting of the minds" is a contract case) or aggravating factor (such as the element of malice, which would entitle a litigant to punitive as well as compensatory damages) upon which the Plaintiff bases his request for damages, or

(b) Proves any affirmative defense raised by the Defendant (for example, a restaurant receipt dated at a time when an illegal act was supposedly committed would meet the legal definition of "relevance" because it lends credence to the defense of alibi), or

(c) Either discredits, or bolsters the credibility of, any witness in this case.

(d) Proves nothing by itself, but is designed to build up to something that meets any of the above thee categories. For example, proving that a witness has demonstrated symptoms of Antisocial Personality Disorder (or APD for short) could be used to support a motion for mental evaluation, which in turn falls within the third category: Discrediting that witness.

10. Of course, this list of categories is not meant to be taken as exclusive. Plaintiff is an open-minded person, and he is willing to accept the possibility that additional categories may be included as "facts of consequence" if any are brought to Plaintiff's attention.

11. Anyway, it is unclear to Plaintiff how his litigation history even comes close to meeting the definition of "relevant," given the four categories of what causes as a fact to be "of consequence."

12. The first and categories are not satisfied, here. It is not an essential element to any of Plaintiff's current causes of action that the victim of the tort must be a *pro se* virgin. Nor does a victim's supposed[1] abuse give the Defendant the legal right to do any of these things. Such a

[1] Again, whether or not Plaintiff's litigation history is "abusive" or "vexatious" is debatable, and Plaintiff demands full due process on this issue before a determination is made.

defense would effectively strip Plaintiff of the protection of the law altogether, which, even if Plaintiff's litigation is vexatious (the Court is respectfully referred to the footnote on this page), would still not be allowed; see *Procup v. Strickland*, 792 F. 2d 1069, 1072 (11th Cir. 1986) ("An absolute bar against … filing any suit … would be patently unconstitutional").

13. Theoretically, the Defense may be able to use Plaintiff's previous lawsuits under Rule 404(b) to prove the element of "malice;" specifically, to prove that this lawsuit was filed with malicious intent in order to prevail on a claim of malicious prosecution. However, binding precedent forbids a claim for malicious prosecution to be brought in the same action that supposedly gives rise to the claim. See *Forever Green v. Lasiter Const., Inc.*, 384 SW 3d 540, 551-552 (2011) (citing the AR Supreme Court precedent of *Farm Service Cooperative, Inc. v. Goshen Farms, Inc.*, 267 Ark. 324, 590 S.W.2d 861, 867 (1979)). Therefore, before the bad

14. We can also rule out the fourth category. Even if Plaintiff's litigation history could be used to prove something else, Goldie is clearly not using it for that purpose. His motion to restrict Plaintiff's court access offers Plaintiff's litigation history as stand-alone grounds for imposing these restrictions. We know he can't be building up to something else … because he has already played his hand.

15. This leaves only the third category: discrediting Plaintiff. However, Plaintiff's litigation history fails to meet even that category, due to the simple fact that it does not, in any way, shape, or form, discredit Plaintiff's testimony.

16. There are two main ways to discredit a witness: You can either show a reasonable likelihood that they are lying (this is often accomplished by showing how this witness has an interest in the outcome of the proceeding … or a reason to hate someone on the opposing site that is unrelated to the matter at hand … or a known affiliation with an organization that is infamous for

having a bias, such as a KKK affiliation in a hate crime case with a black victim … or that the witness just has a history of lying). The second way is to demonstrate how, due to certain circumstances (such as impairment of vision), they cannot be certain of the testimony they are offering, even if they are offering it in good faith. Again, these methods are meant to be taken as exclusive and Plaintiff is open-minded to additional means of discrediting a witness.

17. However, the fact that Plaintiff has filed *pro se* lawsuits before does not, in any way, shape, or form, increase the likelihood that Plaintiff's claims are lies (at least not in any way that is not prohibited by the *Forever Green* precedent), nor does it cause the Plaintiff to be incapable of determining the truth of the facts right in front of him. Rather, it seems as if Goldie is simply attempting to stir up resentment against Plaintiff, instead of actually *proving* anything. He might as well also be pointing out how Plaintiff is a gay rights activist, despite being heterosexual himself.

18. Therefore, unless Goldie can demonstrate (A) how Plaintiff's litigation history falls into any of the four offered categories, or (B) why a different category should be included, and how Plaintiff's litigation history falls into that category, then Plaintiff is entitled to protection from this inquiry under Ark. R. Civ. P. 26(c).

Plaintiff's use of cases to show Defendant's inconsistency.

19. Because Goldie is a hypocrite, this apparently has to be spelled out for him.

20. Plaintiff has, on previous occasions in this case, attempted to draw reference to other times when the Defendant has testified in court regarding this matter. Goldie apparently feels that, under Plaintiff's logic, these matters are also irrelevant. One instance in which he raised this argument is at the October 21, 2013 hearing. Please find attached, as Exhibit A, Page 58 of the official transcript of that hearing; on lines 10 – 14, the Defendant rudely interrupted Plaintiff

(which is an ethical violation in and of itself, even if the arguments he made had merit to to them) and argued that Plaintiff stated that "all the other cases are totally irrelevant."

21. He is lying when he accuses Plaintiff of making that argument; Plaintiff's argument (as shown on Page 55 of the hearing transcript, hereto attached as Exhibit B) was that "no other case except this one is relevant to this case … unless maybe it's the criminal case [which forms the basis of this malicious prosecution action] or it embraces precisely the exact same issues."

22. Despite the Defense Counsel's best wishes, Plaintiff does have the right to inquire about, conduct discovery regarding, and introduce evidence of the Defendant's actions in other cases. Why, you ask? Because they actually prove something in this current case. Therefore, they meet the legal definition of "relevant" as set forth in the Rules of Evidence.

23. Specifically, they show that the Defendant is a lying a piece of trash and that the jury should not believe anything he says unless he can prove it with hard evidence. Therefore, this falls under the category set forth in Paragraph 9(c) of Brief.

24. The Defendant has testified inconsistently on a number of issues. For example …

(a) In his Answer to Complaint, he stated that he "did not punch Plaintiff." However, when testifying in Plaintiff's lawsuit against the University of Arkansas, he admitted to punching Plaintiff, claiming simply that he did so in self-defense.

(b) In the Defendant's Answer (filed on or around August 1, 2013, but Plaintiff is not certain of the file date) to Plaintiff's Second Motion for Sanctions (filed July 15, 2013), the Defense Attorney – acting presumably on the advice of his client – asserted that the emails Plaintiff attached to his Motion were not from the Defendant. However, in the protective order case the Defendant filed *pro se* against Plaintiff approximately one year ago (as of the date of this filing), the Defendant admitted to being the author of those emails.

25. This is clearly relevant, as showing past lies and inconsistent testimony are classic means of discrediting witnesses. Therefore, Plaintiff has the right to use them in an attempt to discredit the witness. It is relevant because it actually *proves something*, not simply because it disfavors the opposing side.

26. There is a lot of other things that Plaintiff could introduce if his only goal was to simply stir up resentment against the Defendant. For example, the fact that the Defendant is racist is sure to not win him very many friends in this Court. However, Plaintiff has not used that as evidence, not because it would not stir up any resentment, but because that is the only thing it would do. The Defense Counsel needs to adhere to the same policy.

Relief Requested

27. Arkansas Rule of Civil Procedure 26(c) states, in pertinent part, the following:

> "Upon motion by a party… the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; … (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;"

28. Pursuant to this rule, and in light of the total lack of any and all relevance Plaintiff's litigation history has to the present case, Plaintiff asks the Court to order the following:

(a) The Defense is to cease and desist his raising of Plaintiff's litigation history for the remainder of this case, both in pretrial motions and in the jury's presence.

(b) The Defense is to cease and desist his objections to Plaintiff's attempt to prove that the Defendant is a liar.

CONCLUSION

29. To wrap this Brief up, let us recap the points:

(a) Plaintiff's litigation history is irrelevant in this case, not because Plaintiff does not like

it, but because it fails to meet the legal definition of "relevant evidence."

(b) It is clear that the Defendant's attempt to introduce it into this case is being done for no other purpose than to stir up prejudice against against Plaintiff.

(c) Meanwhile, Plaintiff has gone to great lengths to only introduce evidence that he believes, in good faith, meet the legal definition of "relevant."

(d) Therefore, the Defendant should be ordered to refrain from referencing this evidence unless he can demonstrate how it actually proves something in this case (and it must be *this* case, not just a malicious prosecution action *concerning* this case).

30. Wherefore, premises considered, Plaintiff requests that the above-requested relief be granted. So requested this 3rd day of December, 2013.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

470

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 JAN -9 AM 8:55
BOONE COUNTY CIRCUIT CLERK
BY [illegible] DC

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION TO COMPEL DISCOVERY

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion to Compel Discovery.

LEGAL AUTHORITIES

1. This Motion will contain the following legal authorities. The Court may wish to have them on-hand when reviewing this motion.

(a) Arkansas Rule of Civil Procedure 26

(b) Arkansas Rule of Civil Procedure 33

(c) Arkansas Rule of Evidence 404.

(d) *Lake Village Healthcare Center, LLC v. Hatchett*, 2012 Ark. 223 (2012)

(e) *Brown v. Tucker*, 954 SW 2d 262, 265 (1997)

2. A copy of *Lack Village Healthcare v. Hatchett* will be attached to this motion for the Court's convenience, since it was published after the new judge retired from full-time duty.

BACKGROUND

3. On November 25, 2013, Plaintiff submitted a total of six interrogatories to the Defendant, through his counsel of record, James E. Goldie.

4. On December 5, 2013, the Defense Counsel filed blanket objects to all discovery requests which simply stated "Objection pursuant to Rule 26 in that the information sought is not relevant." A copy of these objections were filed with the Court, and thus, they will not be

794

attached here.

5. When serving Plaintiff with a copy of these motions, Goldie attached a cover letter, threatening to move for a protective order unless Plaintiff withdrew his discovery requests. A copy of this cover letter was included as an attachment to his Motion for Protective Order filed on Dec. 26, 2013. Thus, to prevent redundant filings, Plaintiff will not attach it here.

6. Also attached to that motion was the email Plaintiff sent to Defense Counsel on December 6, 2013, demanding that he revoke his discovery objections. Therefore, Plaintiff does not need to attach it in order to prove that he made good faith attempts to secure the discovery without court action.

ARGUMENT

7. For all the reasons set forth below, the Court should grant this motion and order the Defense to provide full discovery.

The objections are legally insufficient in that they are not stated with any degree of specificity.

8. The Defendant claims that the discovery sought "is not relevant." However, he does not even *attempt* to provide any explanations beyond that. He apparently feels as if the lack of relevance is so patently obvious that to tediously explain the lack of relevance would just be a waste of time.

9. However, even if this were *logically* sound (which it is not; more on that in a minute), the rules of civil procedure and the case law interpreting them clearly state that this is insufficient.

10. Rule 33(b)(4) of the Arkansas Rules of Civil Procedure state, in no uncertain terms, "[a]ll grounds for an objection to an interrogatory shall be stated with specificity."

11. Since this new judge's retirement from full-time duty, the Arkansas Supreme Court has flatly confirmed Plaintiff's interpretation of this Rule of Civil Procedure in the case of *Lake*

795

Village Healthcare Center, LLC v. Hatchett, 2012 Ark. 223 (2012). On the final page of the printed version of this case law, the Supreme Court stated "Arkansas Rules of Civil Procedure 33(b) and 34(b)(2) provide that objections to interrogatories and requests for production **must** be specific and timely." The objections "must" be specific. They "must" be.

12. Even if the Defense were to correct their mistake and provide specific grounds for his objections now, it would be too late. Ark. R. Civ. P. 33(b)(4) also states without ambiguity that "[a]ny ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown." Again, Plaintiff's logic has been flatly confirmed by the precedent of *Village Healthcare v. Hatchett*; indeed, the central issue of that case was affirming the Circuit Court's refusal to consider discovery objections which were not timely raised.

Even if mere conclusions are enough, there still is not enough of them for the Court to award relief.

13. Even if we assume that the claim of lack of relevance had some detail behind it, to the extent that the Defendant is objecting to discovery, rather than admissibility at trial, the Defendant still has not alleged enough information to lawfully avoid discovery.

14. Ark. R. Civ. P. 26(b)(1) plainly states, in no uncertain terms, "It is not ground for objection … if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

15. Although the Defendant have affirmatively and aggressively stated that the information being sought in Plaintiff's latest interrogatories is, in his view, "irrelevant," he has not even suggested, let alone raised the corresponding objection, that the interrogatories have virtually no chance of leading to admissible evidence.

16. Since the Defendant is not representing himself anymore, he is no longer entitled to have

796

his pleadings construed liberally pursuant to the precedent of *Haines v. Kerner*, 404 U.S. 519 (1972). Thus, if he does not allege an essential element (such as this one) that is required in order to be entitled to relief, the Court must deny the requested relief. See *Brown v. Tucker*, 954 SW 2d 262, 265 (1997) (upholding the Circuit Court's dismissal for failure to state a claim, simply on the grounds that the Plaintiff had neglected to allege the first or fourth elements for the claim of tortuous interference).

The objections are patently without merit, anyway.

17. Even if we assume that the relevance objection is properly before the Court, notwithstanding the previous two sections, this Court should still grant this Motion to Compel (and subsequently deny the Defendant's Motion for Protective Order), because the objections are completely frivolous and patently without merit.

18. The relevance a piece of evidence has to a case does not need to be obvious, or even significant. Furthermore, the Defendant is not entitled to know Plaintiff's litigation strategies, which means that he is not allowed to raise this objection simply because he does not see what it has to do with the case.

19. By the Defendant's own admission, Plaintiff has already submitted multiple binding precedents setting forth the standard for relevance when he contacted the Defense Counsel by email and attempted in good faith to resolve this discovery dispute without court action. Therefore, since the docket in this case is already massive enough, Plaintiff will not repeat those citations here for the sake of avoiding redundancy on the docket. Suffice it to say, these precedents clearly entitle Plaintiff to discovery on all these issues.

20. Assuming, for the sake of argument, that Plaintiff bears the initial burden of showing at least some arguable premise of relevance, consider the following arguments:

(a) Interrogatory No. 1 can show just how capable the Defendant is of anything altruistic. E.g. is he merely *mostly* evil, or is he 100% *pure* evil? If this is what Plaintiff's litigation strategy is, then it would be admissible under Rule 404(a)(1) of the Rules of Evidence.

(b) Interrogatory No. 2 – requesting information regarding crimes the Defendant continues to commit to this day – is facially admissible under Rule of Evidence 404(b). Although this sort of evidence cannot be used simply to prove that the Defendant acted in conformity therewith on a particular occasion, it *can* be used for virtually anything else.

(c) Interrogatory No. 3 is facially discoverable because it may lead to the discovery of witnesses with testimony that is relevant under Rule of Evidence 404.

(d) Interrogatory No. 4 is facially relevant under Rule of Evidence 404(a)(1), just like Interrogatory No. 1.

(e) The Defendant's objection to Interrogatory No. 5 is the most facially frivolous of all the discovery objections. The Defendant is essentially stating that, in a case where he is accused of framing his son for a felony because he did not want to have to take responsibility for his actions, his history of avoiding responsibility for his actions is not relevant! His history of X is not relevant to a case where the motive for his accused conduct is X! This is 100% frivolous and should be struck down by the Court with *extreme* prejudice.

(f) Interrogatory No. 6, to the extent needed to show a facial right to discovery, could be thought of essentially as an inverse version of Interrogatory No. 1. Though Plaintiff declines to share his *true* litigation strategies, this should be sufficient to satisfy any burden Plaintiff may or may not hold to demonstrate at least a *theoretical* possibility of relevance.

21. Of course, the Defendant is probably acting in bad faith, anyway, when he makes these objections. However, Plaintiff will save that argument for his motion for sanctions (again, to

prevent redundant filings).

CONCLUSION

22. To wrap up this motion, let us recap the points:

(a) The Defendant claims that Plaintiff's discovery requests are "not relevant," but offers nothing beyond that.

(b) His failure to state the grounds for his objection with specificity prevents this Court from having the discretion to entertain the motions.

(c) He has not alleged that the discovery requests are not reasonably calculated to lead to the discovery of admissible evidence; thus, he has failed to state a sufficient objection, even if specific grounds are unnecessary.

(d) His objections, even if properly before the court, and patently without merit. "Relevance" is a very broad and inclusive concept, and even though the Defense may not personally understand the relevance of these interrogatories, Plaintiff is nevertheless entitled to discover them.

23. Wherefore, premises considered, Plaintiff requests that this Motion to Compel be granted, costs incurred be awarded, and any other relief to which he may be entitled. So requested on this, 9th day of January, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

799

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 JAN 13 PM 9:30
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: _____ DC

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

ANSWER TO MOTION TO COMPEL

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer to Motion to Compel states:

1. Defendant denies paragraph one (1) and two (2).
2. Defendant admits paragraph three (3).
3. Defendant denies paragraph four (4) through twenty three (23).
4. Defendant states that the explanation provided by the Plaintiff as to why the six (6) Interrogatories are not relevant clearly show that the Interrogatories are so patently obvious as being irrelevant but also an annoyance, embarrassment, oppression and undue burden or expense as set forth in the Defendant's letter of December 5, 2013.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays that the Motion to Compel Discovery be denied and Defendant have his Court costs, attorney's fees and all other relief to which the Defendant is entitled.

DAVID D. STEBBINS

BY: _____

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 APR 14 AM 9:01
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: [signature] DC

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

COURT RULINGS AS OF MAY 13, 2013 AND OCTOBER 21, 2013

A review of the May 13, 2013 transcript of the hearing shows that the following Motions were considered by the Court as follows:

May 13, 2013 Transcript

Date of Pleading	Pleading Status
June 11, 2012	Motion for Mental Exam – filed by Defendant Withdrawn by Defendant – May 13, 2013 transcript Pg.3 Line 16-20
June 20, 2012	Motion to Compel Discovery – filed by Plaintiff Denied by Judge – May 13, 2013 transcript Pg.27 Line 18-20
June 21, 2013	Second Motion to Compel Discovery – filed by Plaintiff Withdrawn by Plaintiff – May 13, 2013 transcript Pg.29 Line 9
February 25, 2013	Motion for Summary Judgment – filed by Defendant Denied by Judge – May 13, 2013 transcript Pg.41 Line 11-12
March 26, 2013	Motion for Sanctions – filed by Plaintiff Denied by Judge – May 13, 2013 transcript Pg.48 Line 13-14
May 13, 2013	Plaintiff's Motion to Strike Defendant's Motion to Strike and Answer to Same filed by Plaintiff Dismissed by Judge – May 13, 2013 transcript Pg.50 Line 20-24

October 21, 2013 Transcript

Date of Pleading	Pleading Status
September 3, 2013	Motion and Brief to Recuse – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.8 Line 6-7

August 26, 2013	Motion to Restrict Oral Arguments – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.13 Line 18-19
June 12, 2012	Motion for Partial Judgment on the Pleadings or In the Alternative for Partial Summary Judgment – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.20 Line 20-22
May 15, 2013	Renewed Motion to Compel Discovery – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.54 Line 6-11
May 15, 2013	Motion for Appointment of Court Reporter – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.57 Line 12-14
May 15, 2013	Motion for Mental Evaluation – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.64 Line 2-3
June 27, 2013	Motion to Compel Cooperation In Deposition – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.72 Line 1
July 15, 2013	Motion for Sanctions – filed by Plaintiff Denied by Judge – October 21, 2013 transcript Pg.87 Line 6-7

DAVID D. STEBBINS

BY: _____

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

CERTIFICATE OF SERVICE

I, James E. Goldie, attorney of record for the Defendant herein, hereby state that the above and foregoing pleading has been served upon the Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, *pro se,* 123 W. Ridge, Apt. D, Harrison, AR 72601 on this _____ day of April, 2014.

_____
James E. Goldie

FILED FOR RECORD
2014 APR 15 PM 1:28
KRISTA WATKINS
BOONE COUNTY CIRCUIT CLERK
BY DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION AND INCORPORATED BRIEF IN SUPPORT THEREOF FOR CONTEMPT AND FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who, on this 15th day of April, 2014, hereby submits the following Motion to Hold Defense Counselor Jim Goldie in contempt of court, and for the Court to impose sanctions for submitting a pleading in violation of Ark. R. Civ. P. 11.

LEGAL AUTHORITIES CITED

1. In this motion, Plaintiff will refer to the following legal authorities. The Court may wish to have them on standby for its convenience.

(a) Ark. Code Ann. § 16-10-108(a)(3)
(b) Ark. R. Civ. P. 11
(c) *Crockett & Brown, PA v. Wilson*, 901 SW 2d 826, 828 (1995)

BACKGROUND

2. On April 2, 2014, Judge David Clinger ordered Defense Attorney Jim Goldie to draft a summary of written orders that have been issued thus far in the above-styled action, so that the new judge would know where he stood.

3. Although Goldie was told to take the initiative, the Court made it abundantly clear to both parties that they were to attempt to reach a mutual agreement regarding the rulings, and rulings whose nature was in dispute should only be submitted to the Court for resolution if private resolution was unsuccessful.

4. On April 14, 2014, Jim Goldie submitted a pleading which he named "Court Rulings as

832

of May 13, 2013 and October 21, 2013."

5. However, in directly violation of the order described in Paragraph #3 of this motion, Goldie submitted this report *without* consulting with Plaintiff first regarding the accuracy thereof. Plaintiff received a copy of this report only after it was submitted to the Court.

6. Plaintiff has five (5) distinct objections to Goldie's report, objections which he was supposed to be afforded an opportunity to air *before* the report was filed. These objections, in order in which they appear in the report, are:

(a) Plaintiff's Motion to Compel Discovery on May 13, 2013 was indeed denied. However, it was denied *without prejudice* because of a technical deficiency. This is important to specify, since the whole reason the Court cares about this report is so it can know what motions it has discretion to decide.

(b) Plaintiff's Renewed Motion to Compel Discovery – heard on October 21, 2013 – was not denied, but *stricken*. This is also important, as making this distinction directly impacts the Court's discretion to entertain the Motion to Compel Discovery which has been filed for literally the third time this case.

(c) Plaintiff's Motion for Mental Evaluation – heard on October 21, 2013 – was indeed denied. However, per Plaintiff's request, the previous judge agreed to downgrade the denial to *without prejudice*. See P. 64, Lines 4 – 9. This is important for the same reasons as in Sub-Paragraph (a).

7. Last but not least, Plaintiff's Motion for Partial Judgment on the Pleadings or in the Alternative for Summary Judgment. This is such a flagrant violation that it deserves its own separate paragraph.

(a) Goldie alleges that the motion was denied.

(b) This is a flat-out lie. The previous judge was *about* to deny it, but Plaintiff asked the Court to entertain his oral argument (see P. 20, Lines 1-6), and the previous judge obliged (see P.20, Line 7). When it was clear that ruling on the motion would require extensive legal research, the previous judge decided to defer ruling on the matter (starting on P. 36, Line ## and ending on P. 48, Line 16). He then chose to recuse himself before he had a chance to do so, and so the motion is still pending.

(c) This deserves its own paragraph because of how blatant the action is. A total of 29 pages of the 93-page transcript was dedicated to arguing this motion; nearly *a third of the entire hearing* was dedicated to this one motion. Goldie has absolutely zero excuse for not knowing that the motion was deferred. He was there; he knew what happened, and he knew the motion was deferred. When he states, in his unilateral report (which was not even supposed to be unilateral) that the motion was denied, there is no way to give him the benefit of the doubt: He is simply lying.

(d) This is, most likely, the reason Goldie tried to file this bilateral report unilaterally in the first place, before Plaintiff had the chance to object. He probably knew the motion would likely be granted if Plaintiff got a proper ruling on the motion (the same reason the Defense has so far been unable to give any specific disputes of fact beyond a catch-all "We don't owe him a penny"), so he tried to shamelessly prevent a proper ruling by leading the new judge to believe that the motion had already been denied, hoping that both Judge Clinger and Plaintiff would both be too stupid to figure out what was going on. If he obeyed the Court's order described in Paragraph #2, Plaintiff would have objected instantly and Judge Clinger would undoubtably have sided with Plaintiff, which would have fatal to the Defense's case.

8. Because of the violation shown in Paragraph #5 of this motion, Plaintiff was unable to

place any of the objections described in Paragraphs #6 – 7. Because Goldie acted in directly violation of the Court's order, this Court now must spend extra time figuring out what the *true* rulings are.

ARGUMENT AND LAW

9. For the reasons set forth below, the Court should grant both the Motion for Contempt and the Motion for Sanctions.

Contempt of Court.

10. The Court may hold a person in contempt of court for, among other things, "[w]illful disobedience of any process or order lawfully issued or made by it." See Ark. Code Ann. § 16-10-108(a)(3).

11. This Court made a very clear order to the parties to attempt in good faith to work out any disputes between the parties, and only submit the report of the existing rulings once an agreement had been reached by both parties.

12. Goldie acted in clear violation of this order. Therefre, it is appropriate to hold Goldie in contempt of court.

Rule 11 Sanctions.

13. When an attorney or *pro se* party signs a pleading which is then filed with the Court, that signature constitutes an oath that, among other things, "that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact." See Ark. R. Civ. P. 11(a).

14. In addition, the signature also constitutes an oath that the pleading is not submitted for any improper purpose. See *id*.

15. Pleadings submitted in violation of either of those two oaths can be sanctioned by the

Court. See Ark. R. Civ. P. 11(b). Furthermore, "when a violation of Rule 11 occurs, the Rule makes sanctions mandatory." See *Crockett & Brown, PA v. Wilson*, 901 SW 2d 826, 828 (1995).

16. In Paragraph #7 of this Motion, Plaintiff pointed out how the Defense Attorney's statement that Plaintiff's Motion for Partial Judgment on the Pleadings or in the Alternative for Summary Judgment was patently false. Paragraph #7(c) points out how this patent falsity could not possibly have been formed "after reasonable inquiry." Paragraph #7(d) demonstrates how this statement (which was already submitted in violation of the order of the Court) was likely done for an improper purpose.

17. Therefore, sanctions have now become mandatory.

CONCLUSION

18. To recap, Goldie submitted his report of the existing court orders, but never consulted with Plaintiff to sort out any disputes as to the nature of the orders, which is grounds for a contempt of court, as the Court plainly ordered the parties to work out the matter between themselves. Goldie made a patently false statement which he knew to be false, and most likely did it in a direct, malicious attempt to block a proper ruling on the motion that the knows full well that Plaintiff is entitled to a proper ruling on.

19. Wherefore, premises considered, Plaintiff respectfully requests that this motion for contempt and for sanctions be granted. So requested on this, 15th day of April, 2014.

David A. Stebbins

David A. Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

836

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 APR 28 AM 9:16
RHONDA WILLIAMS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

ANSWER TO MOTION AND INCORPORATED BRIEF IN SUPPORT OF CONTEMPT AND FOR SANCTIONS

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer states:

1. Plaintiff filed his Motion and relief requested based upon Arkansas Rules of Civil Procedure, Rule 11. The Motion and relief requested is not well taken. Further, Plaintiff's reliance upon A.C.A. 16-10-108(a)(3) regarding criminal contempt simply does not apply to the real facts of this case.

2. On April 2, 2014 the trial Judge requested the attorney for the Defendant to review the transcripts of the hearings of May 13, 2013 and October 21, 2013. The review was to set forth the Motions heard by the Curt and the rulings of the Court on those Motions. A copy was to be sent to the *pro se* Plaintiff to review. If there was a disagreement and the parties could not resolve the disagreement, then the Court would do so.

3. On April 11, 2014 the attorney for the Defendant sent the proposed summary of court rulings on Motions in the two hearings. In order to provide proof that the proposed summary was sent to the *pro se* Plaintiff the proposed summary was filed with the Clerk and a Certificate of Service was executed.

4. At no time was the proposed summary sent to the Judge. There is absolutely no reason for anyone to believe that was done and there is no evidence demonstrating that the

proposed summary was sent to the Judge. Also, the proposed summary was never submitted to the Court. The proposed summary was sent to the *pro se* Plaintiff.

5. The objections to the proposed summary by the *pro se* Plaintiff is not well taken as follows:

a) In paragraph 6(a) of the Motion the *pro se* Plaintiff claims the June 20, 2012 Motion to Compel Discovery was denied but denied without prejudice. However, the May 15, 2013 transcript on Page 27 line 18-19 states the Motion is denied. The words without prejudice are not used by the Court. However, the distinction sought to be made by the *pro se* Plaintiff is meaningless since denied includes denied without prejudice. To deny a Motion or any pleading with prejudice the court must clearly say so. Otherwise the denial is always without prejudice (excluding issues of res judicata on claims for relief).

b) In paragraph 6(b) of the Motion the *pro se* Plaintiff claims the May 15, 2013 Renewed Motion to Compel Discovery was not denied but stricken. While in the October 21, 2013 transcript on page 54 line 9-11 the Court does strike the Renewed Motion the effect of striking the Motion is the denial of the Renewed Motion. The *pro se* Plaintiff is seeking to make a distinction that is meaningless. Striking a Motion, even a Renewed Motion is a denial of the Motion.

c) In paragraph 6(c) of the Motion the *pro se* Plaintiff claims the May 15, 2013 Motion for Mental evaluation was denied, but denied without prejudice. The Court's ruling of October 21, 2013 in the transcript on page 64 line 2-3 clearly states the Motion is denied. As to the distinction between denied and denied without prejudice see above discussion.

d) In paragraph 7 of the Motion the *pro se* Plaintiff claims the Court deferred the ruling on the June 12, 2013 Motion for Partial Judgment on the pleadings or In the Alternative for Partial Summary Judgment. Unfortunately, the *pro se* Plaintiff is wrong

in accusing the attorney for the Defendant of lying. The fact is that on October 21, 2013 on page 20 line 25 of the transcript the Court denies the Motion. Although the *pro se* Plaintiff is correct in that the Court did agree to consider written arguments, the Court never changed the original denial. Similar to Rule 59 of the Arkansas Rules of Civil Procedure if the matter is not ruled upon in thirty (30) days, then the reconsideration is deemed denied. The trial Judge's failure to rule on the reconsideration from October 21, 2013 to now, or over six (6) months is a denial. The Motion is not pending.

6. All the paragraphs of the *pro se* Plaintiff's Motion are denied including paragraphs one (1) through nineteen (19). The Defendant would request the Court to consider the abusive and scandalous language used by the *pro se* Plaintiff in his Motion including falsely accusing the Defendant's attorney of submitting a document to the Court, "Goldie has absolutely zero excuse for not knowing", "Goldie is simply lying", "tried to shamelessly prevent a proper ruling", "hoping that both Judge Clinger and Plaintiff would be too stupid" and Goldie's statement was patently false. Such language should not be allowed in this Court and never should be a part of any Court pleadings. The Court should take appropriate remedial action.

WHEREFORE, PREMISES CONSIDERED, the Defendant prays the Motion be denied and appropriate remedial action be taken regarding the abusive and scandalous language used by the *pro se* Plaintiff and for all other proper relief.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-743-3013

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 MAY -5 AM 8:04
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK

DAVID A. STEBBINS PLAINTIFF

VS CV CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

REPLY TO ANSWER TO MOTION FOR CONTEMPT AND SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to Defendant's Answer (dated April 29, 2014) to Plaintiff's Motion and Incorporated Brief in Support Thereof (filed April 15, 2014) for Contempt and for Sanctions.

BACKGROUND

1. On April 14, 2014, Defense Counsel submitted a report of how he believed the motions were ruled on. However, he did so without consulting with the Plaintiff first, defying the Court's order to work the matters out between the parties.

2. On April 15, 2014, Plaintiff – not realizing that Defense Counsel had already submitted the report to the Court before serving Plaintiff with it – submitted objections to the Defense Counsel identical to those listed in the Motion for Contempt. See Exhibit A.

3. Also on April 15, 2014, Plaintiff filed a motion for Contempt and Sanctions after realizing what Defense Counsel had done, arguing that the Defense Counsel had made numerous, patently

4. On April 26, 2014, Defense Counsel served Plaintiff with a letter, stating that he does not agree with Plaintiff's objections, but giving no grounds for this disagreement. See Exhibit B.

5. On April 28, 2014, Defense Counsel filed an Answer to Plaintiff's Motion for Contempt and for Sanctions ("the Answer").

6. In the Answer, the Defense Counsel asserted that the Court – rather than giving the

841

Defense Counsel the purely ministerial and physical job of *typing up* the report – instead gave Goldie the *judicial* role of reviewing the transcripts and determining what the rulings were.

7. In the Answer, Defense Counsel also asserted, contrary to his previous arguments, that a denial is presumed to be without prejudice. This directly contradicts his previous arguments that a ruling on the merits of a motion terminates that motion and precludes new arguments from being raised in a renewed motion (see Answer to Renewed Motion to Compel Discovery, orally argued on October 21, 2013).

8. In the Answer, the Defense Counsel also stated that Plaintiff's Revised Motion for Partial Judgment on the Pleadings is not pending because the renewed ruling was not issued within 30 days, and thus is barred under Ark. R. Civ. P. 59(b). In doing so, the Defense Counsel made the following patently-frivolous legal arguments:

(a) That Rule 59 is even applicable here in the first place, and that it is not, on its face, applicable to a particular type of motion that is specific to a stage of litigation that this case has not even reached yet.

(b) That Page 21, Line 7 of the Transcript of the October 21, 2013 hearing did NOT constitute a Judge's Order Granting a Motion for Reconsideration (meaning, the motion for reconsideration depicted on Page 21, Lines 1 – 6 was NOT granted instantly), and

(c) That the 30-day time limit spoken of in Rule 59 (which may or may not even be applicable here in the first place) is an absolute bar to reconsideration, even though the REASON the 30 day time limit is even applicable in the first place (assuming it even is) is because the last judge *recused himself*!

ARGUMENT

9. First of all, the Defense Counsel argues that he was given the judicial task of deciding

what the orders were, not the purely physical task of typing the motion. Even if this is what the Defense Counsel believed, he should have immediately objected. If you're going to have him decide what the previous orders were, you may as well just hand him the gabble and let him decide the entire case. It is the JUDGE'S job to decide what the previous orders were (which is why Plaintiff interpreted this Court's order as one to only submit proposed orders if the parties agreed on them, and let the Court resolve any disputes in their interpretation). For the judge to allocate such a job to an attorney of record is a flagrant violation of Plaintiff's due process rights (specifically, the right to an impartial tribunal, which, as established in a previous motion, is an absolute right).

10. Next, the arguments recited in Paragraph #7 of this Reply are patently frivolous, in that they directly contradict the Defense Counsel's previous arguments. In late May of 2013, Defense Counsel filed an Answer to Plaintiff's Renewed Motion to Compel Discovery where he argued that the motion was denied on the merits. That's all fine and good, but the contradiction comes when he says that this means that the Renewed Motion was not properly before the Court.

11. This only adds to the evidence of Plaintiff's theory that the Defense Counsel is trying to block a proper ruling on Plaintiff's motions. He previously opposed a proper ruling on Plaintiff's Motion to Compel Discovery, and it seems as if his unilateral report (filed in violation of the Court's order to make it bilateral) was done in furtherance of the goal we already know he has.

12. Here, his contradiction only adds credence to Plaintiff's claim. This is the classic, proverbial "not keeping his story straight," and it's one of the first things attorneys are taught in law school to look for when discrediting witnesses.

13. Last but not least, the frivolous legal arguments listed in Paragraph #8 are so frivolous that Plaintiff will not dignify them with a response. If this Court honestly believes that these

implicit arguments are not patently frivolous, are not made up at the spur of the moment, and are not designed exclusively to cover for the fact that Plaintiff caught the Defense Counsel red-handed trying to block a proper ruling on the motion, then chances are that the new Judge and the Defense Counsel have already determined the outcome of this case beforehand, and thus, nothing Plaintiff says will have any impact. Suffice it to say, even if sanctions were not mandatory before, they have become such.

CONCLUSION

14. The new judge previously stated – in response to Plaintiff's claim that lawyers are, on their face, professional liars – that there are certain limitations an attorney has to representing a client, and consequences attach if those limitations are violated. This is the new judge's first chance to actually put his money where his mouth is. The Defense Counsel has clearly engaged in frivolous legal arguments in an attempt to cover up for an already frivolous unilateral report that was itself undertaken in clear violation of Plaintiff's absolute right to an impartial tribunal, which means that it is time to put up or shut up when the new judge says that consequences are supposed to attach. If consequences do not attach in this case, that only proves Plaintiff's claim that attorneys are professional liars, and even if consequences COULD attach, *de jure*, they never WILL attach, *de facto*, which only proves Plaintiff's claim.

Wherefore, premises considered, Plaintiff respectfully requests that the Motion be granted. So requested this, 5th day of May, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

844

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 JUN 18 AM 8:02
RHEA WAUGH
BOONE CO. CIRCUIT CLERK
BY: _____ DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

AMENDED COMPLAINT

1. Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Amended Complaint to include, in this lawsuit, the torts of identity theft, tort of outrage and tort of negligence. In addition, pursuant to his rights under A.C.A. § 16-118-10 (allowing victims of felonies to bring civil suit for the felonies themselves, rather than just the civil equivalent to them), Plaintiff also sues the Defendant for the Class C felony of Forgery in the Second Degree, A.C.A. § 5-37-201.

FACTS OF THE CASE

2. When the Defendant signed up for either Internet or television services from Windstream Communications, he gave that company Plaintiff's phone number, without Plaintiff's knowledge or consent.

3. Thus, when the Defendant accumulated more than $400 in unpaid bills, Plaintiff is now the one who is getting harassed by debt collectors.

4. Plaintiff has been gravely distressed as a result of this tort. He is afraid to pick up the phone when it rings because he is afraid that, if he does, he will be cussed out and insulted by a person he does not even know.

ARGUMENT AND LAW

5. For the reasons set forth below, the factual allegations spoken of in ¶¶ 2-3 of this Complaint entitle Plaintiff to relief under all the torts – and the felony – listed in ¶ 1 of this

852

Complaint.

Tort of Negligence

6. To recover on a tort of negligence, Plaintiff must demonstrate three elements:

(a) That the Defendant failed to act as a reasonable person would in like circumstances.
(b) That the Plaintiff sustained some sort of injury.
(c) A causal connection between the Plaintiff's injury and the Defendant's actions.

7. Plaintiff has pled the first element in ¶¶ 2-3 of this Amended Complaint. He ha pled the second and third elements in ¶ 4 of this Amended Complaint.

8. Therefore, Plaintiff has stated a claim for tort of negligence. Thus, even if, by some miracle, the Plaintiff is unable to establish the elements of either malice or reckless disregard (which, in all honesty, *should* come without saying), Plaintiff still has the right to recover compensatory damages against the Defendant.

Tort of Outrage

9. "To establish a claim for outrage, a plaintiff must demonstrate the following elements: (1) the actor intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was extreme and outrageous, beyond all possible bounds of decency, and was utterly intolerable in a civilized community; (3) the actions of the defendant were the cause of the plaintiff's distress; (4) the emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it." See Rees v. Smith, 301 SW 3d 467, 471-472 (2009)

10. The first element is established via common sense. It goes without saying that the Defendant committed these acts with an intent to harass Plaintiff. If the harassment of Plaintiff was not the Defendant's entire motive, his motive obviously was to relieve himself – at Plaintiff's expense – of the stress of being harassed by debt collectors. Thus, common sense dictates that

the first element is established.

11. Besides, the preexisting lawsuit Plaintiff has against the Defendant certainly provides the Defendant with a motive to have Plaintiff harassed.

12. Plaintiff also asserts that the conduct spoken of in ¶¶ 2-3 establish the second element. The Court can take judicial notice that it is standard in our society that you do not give out phone numbers to people unless (A) they are YOUR phone numbers, or (B) you have permission from the true user of that phone number.

13. Element #4 has been sufficiently pled via ¶ 4.

14. Element #3 is also pled in ¶ 4. Specifically, it is pled when Plaintiff stated that his stress was "as a result of this tort."

15. Therefore, Plaintiff has pled sufficient facts to recover on a tort of outrage claim.

Forgery in the Second Degree

16. Under Ark. Code Ann. § 16-118-107, the victim of a felony can bring civil suit to recover damages for the actions caused by the felony.

17. With that said, "[a] person forges a written instrument if, with purpose to defraud, the person makes, completes, alters, counterfeits, possesses, or utters any written instrument that purports to be or is calculated to become or to represent if completed the act of a person who did not authorize that act." See Ark. Code Ann. § 5-37-201(a)(1). This crime is "in the Second degree," and thus a Class C felony, if the instrument being forged was a contract that does not evidence a change in property interests. See § 5-37-201(c)(1).

18. Such is the case here. The Defendant attempted to secure either Internet or Television (Plaintiff does not know which one and frankly does not care) services from Windstream Communications, and in doing so, represented to that company that Plaintiff had authorized an

act (the use of his phone number) which he did not authorize.

Identity Theft

19. Identity theft occurs when a person (the Defendant) presents himself to a creditor or service provider (Windstream), portraying himself as another person (Plaintiff), with the intention of obtaining credit or services for himself while dumping the obligation of debt repayment on the person he impersonates.

20. Here, it was actually fairly easy for the Defendant to steal Plaintiff's identity, since the two parties share genes together (indeed, Plaintiff has often been told that he looks like a younger version of the Defendant), have the first first and last names (just a different middle name, which has always caused a ton of confusion between us), and indeed, even once shared an address together.

21. The only thing Plaintiff and Defendant do not share and never did share was the phone number of (870) 204-6516. However, if the Defendant gave Windstream that number as the number they could use to reach that Defendant, Windstream would most likely not have launched an investigation (at least not initially) to confirm if this was the case.

22. And why should they? The Defendant obviously had his ID on hand, to confirm that he was in fact David Stebbins; he probably even had the phone book listing (assuming he needed it) to show that David Stebbins' phone number was (870) 204-6516. How were the Windstream representatives supposed to know – without launching a full-blown criminal investigation into the matter – that there were two different David Stebbinses in the city of Harrison? As Plaintiff said before, this name anomaly has always caused a ton of confusion; this time, it seems, the Defendant was *deliberately trying* to instill this confusion.

23. So, when Plaintiff accuses the Defendant of stealing Plaintiff's identity, what he means is

this: The Defendant used the Plaintiff's identity (as evidenced by his use of what is clearly Plaintiff's phone number) under the hopes that the name issue would prevent anyone from realizing the truth, in a direct attempt to obtain more than $400 worth of free services from Windstream Communications, and ensure that Plaintiff would be the one harassed by the debt collectors when he did not pay his bill.

INJURIES & DAMAGES

24. Plaintiff's entitlement to damages in this case is governed by the precedent of Growth Properties I v. Cannon, 669 SW 2d 447, 448 (1984), which states, in pertinent part, the following:

> "If the conduct is sufficiently flagrant to give rise to the tort, then the injury the law seeks to redress is the anguish itself and it need not rest, parasitically, on more demonstrative loss or injury... Hence, mental anguish itself is the actual damage, and proof of special damage in terms of out-of-pocket expenses of exact pecuniary measurement is not essential to a recovery of compensatory damages." (Citations and quotations omitted).

25. In that regard, Plaintiff asks for one thousand dollars ($1,000) in emotional distress damages, for each month that the debt collectors continue to contact Plaintiff.

26. Plaintiff is already demanding a jury trial in this case, so no new demands are necessary.

Wherefore, premises considered, Plaintiff respectfully prays that the relief requested in Paragraph #25 be granted, costs incurred be awarded, and any other relief the Court fins appropriate. So requested on this, the 18th day of June, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

856

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 JUN 27 AM 9:47
BOONE CO. CIRCUIT CLERK

DAVID A. STEBBINS PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION TO STRIKE AMENDED COMPLAINT

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and pursuant to Rule 15 of the Arkansas Rules of Civil Procedure states:

1. On April 10, 2012 the Plaintiff filed a Complaint alleging malicious prosecution, abuse of process, defamation, breach of contract, conversion and battery as the result of certain events that occurred on Thanksgiving Day, November 24, 2011.

2. Now, over two (2) years later the Plaintiff files an Amended Complaint regarding events that occurred on an unknown date alleging Defendant gave Plaintiff's telephone number to a company and the Plaintiff now alleges new and unrelated causes of action of negligence, tort of outrage, civil forgery (?) and civil identity theft.

3. Due to this totally new cause of action that occurred at an unknown date, the disposition of this case will be unduly delayed because of discovery demands and numerous foreseen pre-trial Motions. Also, the mixing of unrelated events and unrelated causes of action will result in prejudice and undue delay at the disposition of this cause.

4. Because the new claim asserted by the Plaintiff in the Amended Complaint filed June 18, 2014 does not arise of the conduct, transaction, or occurrence set forth in the original pleading the Amended Complaint does not relate back to the original pleading. Therefore, there

860

is a substantial reason to believe that the Statute of Limitations on the allegation of the Plaintiff in the Amended Complaint act as a total bar to the Amended Complaint.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Motion be granted and the Amended Complaint of the Plaintiff be stricken and dismiss and that Defendant have this costs, attorney's fees and all other proper relief.

DAVID D. STEBBINS

BY: Original Signed By: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

CERTIFICATE OF SERVICE

I, James E. Goldie, attorney of record for the Defendant herein, hereby state that the above and foregoing pleading has been served upon the Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, 123 W. Ridge, Apt. D, Harrison, AR 72601 on this 23rd day of June, 2014.

Original Signed By: James E. Goldie

James E. Goldie

863

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 OCT -9 PM 2:18
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

MOTION FOR WRIT OF MANDAMUS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion for the newly-appointed judge Russel Rogers to issue a writ of mandamus to Court Reporter Relenn McBee, ordering her to complete Plaintiff's requested transcript of the protective order hearing between these two parties, in the Boone County Circuit Court, and to do so by a date certain.

1. In 2012, Defendant filed a Protective Order action against Plaintiff, concerning the same domestic dispute which is the crux of the current action.

2. In this protective order hearing, the Defendant and his witnesses made numerous statements which contradict statements made in the current proceeding, as well as evidence that Plaintiff has since managed to secure.

3. Plaintiff is of the opinion that evidence of these statements made in the course of the protective order hearing would be useful in discrediting the Defendant as a witness in the current proceeding.

4. A good example of one such contradiction is thus:

(a) In the current proceeding[1], Plaintiff attached – in response to the Defendant's complaint that Plaintiff was not showing the Defendant the respect he believes that he deserves – a series of emails sent to Plaintiff, from the Defendant, using the Defendant's

1 Although the date is unknown, since this case has been plagued with so many delays (only a few of which are not the Defendant's fault), one tends to lose track.

881

wife's email address, where he cussed out and insulted Plaintiff in a manner far more extreme than any conduct they were complaining about in the instant case.

(b) The Defendant replied, stating that these emails were not from him.

(c) However, this contradicts oral testimony given at the protective hearing, where he freely admitted (at a time when he did not believe that it prejudiced him to admit to it) that these emails were from him.

(d) This contradiction shows that the Defendant is not afraid to blatantly lie to advance his agenda. Thus, the jury should not believe anything that comes out of his mouth.

5. As such, Plaintiff has asked Court Reporter RaLenn McBee to prepare a transcript of that hearing. Plaintiff issued this request in the form of an email, a copy of which is hereby attached as Exhibit A.

6. However, according to Ms. McBee, the audio recording for the protective order hearing is of poor quality. She claims that she has difficulty hearing what the Defendant (Petitioner in that case) was saying.

7. Ms. McBee attributes the audio quality to the size of the Boone County District Court, which is located approximately 100m Northeast of the Circuit Court. The higher-than-usual roof caused the voices to echo much more than in the Circuit Court. The human ear is equipped with evolutionary features so as to automatically tune out (to some degree) sounds our brains consider "insignificant." However, computer microphones do not have this feature, and so they pick up all sounds, indiscriminately. This causes the amplified echo to muffle out the words that we – as human beings – heard without issue back when we were there, in-person.

8. Unfortunately, since this explanation was given to Plaintiff in-person, Plaintiff has no exhibit to attach.

9. As such, on the date of May 18, 2014, Plaintiff received, from Ms. McBee, an email where she stated that she was considering abandoning the project. She would have a decision for Plaintiff that week. A copy of this email conversation is hereby attached as Exhibit B.

10. Please note that the emails are counter-intuitively listed from most recent to oldest. Plaintiff could re-arrange the order, but that would constitute "tampering with evidence." The new Judge will have to the timestamps for these emails to figure which ones are responding to which emails (e.g. the one taking place at 5:21PM is responding to the one taking place 5:18PM, which is in-turn responding to the one at 2:40PM, and so forth).

11. Plaintiff has, so far, not heard anything back from her, nearly half a year later. Plaintiff presumes that the project was abandoned.

12. Plaintiff waited until a new judge was appointed to file this Motion.

ARGUMENT

13. For the reasons set forth below, this Motion should be granted.

Applicable Law and Standards

14. The Order assigning Judge Russel Rogers to this case also applies to "any ancillary proceedings," thus giving Judge Russel Rogers jurisdiction over this motion.

15. Plaintiff cites the Arkansas Supreme Court case of *Clowers v. Lassiter*, 213 SW 3d 6 (2005), a copy of which is hereby attached as Exhibit C.

(a) "We have often held that mandamus is an appropriate remedy when a public officer is called upon to do a plain and specific duty, which is required by law and which requires no exercise of discretion or official judgment."See *id* at 9.

(b) "There are, however, exceptions to [the rule of sovereign immunity]. For example, if the state agency is acting illegally or if a state agency officer refuses to do a purely

883

ministerial action required by statute, an action against the agency or officer is not prohibited." See *id* at 9.

16. A Court Reporter's preparation of transcripts is one such example of a purely ministerial act that requires no individual discretion or judgment. See *Antoine v. Byers & Anderson, Inc.*, 508 US 429 (1993), a copy of which is hereby attached as Exhibit D.

> "As noted above, court reporters are required by statute to record verbatim court proceedings in their entirety ... They are afforded no discretion in the carrying out of this duty" See *id* at 436 (citations and quotations omitted)

RaLenn McBee is at fault for this failure.

17. The mere fact that the job is difficult is not a defense to having to produce it. See *Antoine* at 436 ("We do not mean to suggest that the task is less than difficult, or that reporters who do it well are less than highly skilled," and then holding the difficulty thereof irrelevant).

18. It is the responsibility of the court reporter, not just to produce the transcripts, but to ensure the sufficient capture of the audio recordings so as to ensure that a transcript even can be made. If the equipment was not sensitive enough to capture the *pro se* Defendant's voice, it is her fault for negligently setting up the equipment.

19. If she was in a building that she was not accustomed to working in, she should have tested the equipment beforehand. It is not Plaintiff's fault that she was ill-prepared; it is HER fault. She is *supposed* to be a *professional*!

Arkansas statute supports liability in this case.

20. For one final legal authority in Plaintiff's favor, Plaintiff cites the Arkansas *Statute* of A.C.A. § 16-13-507, a copy of which is hereby attached as Exhibit E. The first and foremost constitutional function of the judiciary is to interpret the law, correct? Well, it is time to do some statutory interpretation.

884

21. As Exhibit E clearly shows, "Court reporters shall not be liable, criminally or civilly, for the unintentional loss, damage, or destruction of their official records ***which are more than five (5) years old***." The last portion of that statute has been underlined, highlighted, and bolded, for emphasis.

22. The protective order hearing took place in either September or October of 2012. This means that, as of the time of this writing, it would, at best, be two years old, well within the time limit specified by that statute.

23. "So what," the Court is probably thinking to itself right now, "That only means that the court reporter does not have that affirmative defense. That statute does not impose liability in the first instance."

24. Actually it does. This is where the "judicial interpretation of statutes" comes into play.

25. Courts must interpret a statute by the general assembly as making some sort of change. There must be some sort of circumstances that were different before the statute was passed; otherwise, passing the statute is entirely pointless.

26. This statute assumes liability in the first instance, and because the General Assembly which passed this statute assumed as such, the Court should assume such as well.

27. This statute also freely acknowledges that the destruction or loss of records may be unintentional, but assumes liability in the first instance, nonetheless. As a result, the Court should not require a showing of intent before imposing liability.

RELIEF REQUESTED

28. Plaintiff asks that this Court order Court Report RaLenn McBee to complete transcription of the protective order hearing by a date certain.

29. This deadline should be at least six weeks before trial. That way, Plaintiff will have an

opportunity to review the transcript and find the locations of the contradictions in preparation for his case.

30. If Ms. McBee fails to produce the transcript at the date specified, she should be made liable to Plaintiff for the costs of this case, assuming he loses it to a jury verdict. After all, since we cannot ask the jury why they issued the verdict they did, we have to assume that their verdict was based on a credibility determination.

31. Now, if the Defendants can show that they won the case for reasons having nothing to with the Defendant's (and *specifically* the Defendant's) credibility, then Ms. McBee would be relieved of liability pursuant to this Motion, pursuant to the provisions of Arkansas Rule of Civil Procedure 61 (harmless error rule).

32. Even if Ms. McBee were willing to testify, as a witness[2], that she bore direct witness to the testimony spoken of in ¶ 4(c) of this Motion, so Plaintiff could establish that specific contradiction that way, it still would not make Plaintiff whole. ¶ 4 of this Motion was meant to merely give *just one example* of the sort of contradictions Plaintiff was hoping to show. Plaintiff still needs the transcript.

33. If Ms. McBee can remember ALL of the contradictory testimony, why can't she make the transcript?

34. We do not need to know the Defendant's exact wording; as long as we know the messages that the Defendant was trying to communicate to the protective order judge, the contradictory testimony would still be present. Enough for Plaintiff to show contradictions.

CONCLUSION

35. As the Court can clearly see, Plaintiff needs (not wants, but needs) this transcript in order

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2 This, of course, would require that she remove herself as court reporter for the trial. Besides, Plaintiff does not know for sure, but there is a good chance it would be unethical for her to be a witness in a case she has already served as a former court reporter on.

to fully present his case in the current proceeding. Plaintiff should not be denied his day in court (or a large portion thereof) simply because the Court staff is incompetent at setting up their equipment.

36. Wherefore, premises considered, Plaintiff respectfully requests that this Motion for Writ of Mandamus be denied.

So requested on this, the 9th day of October, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

CERTIFICATE OF SERVICE

I, *pro se* Plaintiff David Stebbins, hereby certify, under penalty of perjury, that the above-mentioned Motion for Writ of Mandamus was served on …

- Jim Goldie, by emailing a copy thereof to goldie@goldielawfirm.arcoxmail.com, and
- RaLenn McBee, by emailing a copy thereof to ralenn.mcbee@yahoo.com,

… on the 9th Day of October, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

887

Subject: Re: Transcript

From: David Stebbins (stebbinsd@yahoo.com)

To: ralenn.mcbee@yahoo.com;

Date: Monday, October 7, 2013 7:02 PM

By the way, Judge Kirkpatrick tells me that you are the one I should speak to if I wanted a transcript of the hearing in Case No. DR2012-497-4. If so, I need to place an order for it.

I need it under Case No. CV2012-85-4, which means that I shouldn't be charged for it. Paragraph #4 of the Order Granting IFP in that case states that no officer can charge me any costs incident to this action, whatsoever... meaning that, just by nature of it being incident to this case (even if it's not filed directly under it), I should be free of all costs.

From: RaLenn McBee <ralenn.mcbee@yahoo.com>
To: David Stebbins <stebbinsd@yahoo.com>
Sent: Monday, October 7, 2013 2:21 PM
Subject: Re: Transcript

About to send it to you!

Sent from my iPhone

On Oct 6, 2013, at 7:35 PM, David Stebbins <stebbinsd@yahoo.com> wrote:

> Ms. McBee,
>
> How goes the transcript?

Exh. A

Subject: Re: Nov. 30, 2012 transcript?

From: RaLenn McBee (ralenn.mcbee@yahoo.com)

To: stebbinsd@yahoo.com;

Date: Sunday, May 18, 2014 7:03 PM

Yes, and yes, I'm paid if it is finished. The audio is so horrible that I am contemplating it. I know you want it and I am doing my best but an incomplete transcript with so many in audibles and indiscernables is not of use for anything or to anyone. As I said, I am contemplating and need to consult a few people and will have a decision this week.

Sent from my iPad

On May 18, 2014, at 5:21 PM, David Stebbins <stebbinsd@yahoo.com> wrote:

> Ms. McBee,
>
> What are you talking about, you're trying to decide whether or not to finish it? Doesn't the statute entitle me to it? And aren't you being paid by the AR Government for this?
>
> m
> On Sunday, May 18, 2014 5:18 PM, RaLenn McBee <ralenn.mcbee@yahoo.com> wrote:

Exh. B

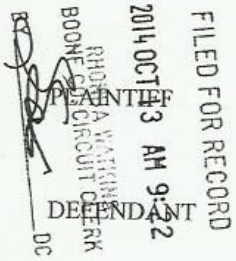
It is still on my desk, I'm trying to decide whether I'm even going to attempt to try to finish it, I'll have a decision by the end of the week. I would like to continue to be the liaison. That way there is less confusion and everybody knows what's going on.

Sent from my iPhone

On May 18, 2014, at 2:40 PM, David Stebbins <stebbinsd@yahoo.com> wrote:

> Ms. McBee,
>
> How goes the transcript for the Nov. 30, 2012 hearing?
>
> Do you know the email address of the substitute court reporter, so I can contact her directly for future updates? Or, would you prefer to just continue to be our liaison.
>
> Sincerely,
> David Stebbins

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION



DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO MOTION FOR WRIT OF MANDAMUS

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer states:

1. Plaintiff seeks a Writ of Mandamus against a Court Reporter to prepare a transcript of a Protective Order case.

2. The case in which the Plaintiff seeks a transcript is David D. Stebbins vs. David A. Stebbins, Boone County Circuit Court, DR 2012-497-4. A final Order of Protection was entered in this case on October 16, 2012. A copy of the final Order is attached hereto and incorporated herein as if set out word for word as Exhibit "A".

3. On October 16, 2012 the Plaintiff in DR 2012-497-4 filed a Motion for Free Transcript. The Motion is attached hereto and incorporated herein as if set out word for word as Exhibit "B".

4. On October 24, 2012 the trial Judge in DR 2012-497-4 entered an Order Denying Motion for Free Transcript. The Order is attached hereto and incorporated herein as if set out word for word as Exhibit "C".

5. Now almost two (2) years later the Plaintiff seeks this Court to overrule the Trial Judge on the Order of Protection case. Plaintiff is using the wrong remedy. The Plaintiff should have appealed the October 24, 2012 Order. The Plaintiff did not. The Plaintiff is barred from

the relief sought in his latest pleading, a Writ of Mandamus by *res judicata* and collateral estoppel.

WHEREFORE, PREMISES CONSIDERED, the failure of the Plaintiff to appeal the October 24, 2012 precludes any remedy sought by the Plaintiff in this Motion and the Motion should be dismissed.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-741-4800

CERTIFICATE OF SERVICE

I, James E. Goldie, attorney of record for the Defendant herein, hereby state that the above and foregoing pleading has been served upon the Plaintiff herein, by placing a copy of the same in the U.S. Mail, postage prepaid, addressed to David A. Stebbins, 123 W. Ridge, Apt. D, Harrison, AR 72601 on this 13th day of October, 2014.

James E. Goldie

902

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 OCT 16 PM 12:40
RHONDA WORKMAN
BOONE CO. CIRCUIT CLERK
BY
D.C.

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

REPLY TO ANSWER TO MOTION FOR WRIT OF MANDAMUS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Reply to the Defense's Answer to Motion for Writ of Mandamus.

1. Defendant opposes this Motion on one ground, and one ground alone: That the Motion is barred by *res judicata* and collateral estoppel. The Defendant has not even *attempted* to offer any other, alternative defense.

2. The Defendant's argument is patently frivolous in a number of ways:

No. 1: The elements of collateral estoppel are absent on its face.

3. "Unlike *res judicata*, which acts to bar issues that merely could have been litigated in the first action, collateral estoppel requires actual litigation in the first instance." See *State Office of Child Support Enforcement v. Willis*, 59 SW 3d 438, 444-45 (2001), a copy of which is hereby attached as Exhibit A (the portion being cited here is located at the bottom of Page 4 of that print-out).

4. Here, the two Motions encompass two completely different issues. Although both motions concern the same legal document, the two issues being litigated have nothing to do with one another.

5. The Motion for Free Transcript that the Defendant attaches concerns a request from Plaintiff to have someone, other than Plaintiff, foot the bill for the transcript. At this point in time, the court reporter's ability and/or willingness to create the transcript in the first instance

910

was not in dispute.

6. The current motion, however, tackles the exact opposite issue: The Court Reporter's ability to procure payment for her services – and the source by which she obtains said payment – is not in dispute. See the exhibits attached to the original motion, where she agrees that she is entitled to payment by the Arkansas Registrar.

7. The current motion, instead, tackles the issue of her making the transcript, once the order has been formally placed. This motion would have the exact same amount of merit, even if Plaintiff were the one paying her.

8. NOTHING in the Order the Defendant has attached states – or even remotely suggests – that Plaintiff was being denied the right to a transcript of that hearing altogether.

9. As a result, the current issue has never actually been litigated. Thus, collateral estoppel is not applicable in the first instance.

No. 2: The previous hearing has no preclusive effect whatsoever on any of the current proceedings.

10. The protective order case does NOT have any prejudicial or preclusive effect, in any way, shape, or form, on the proceedings of this case, whether by *res judicata* or otherwise.

11. For res judicata or collateral estoppel to apply, the previous suit must have been filed before (not simply terminated before) the current proceeding. The date of filing for the ENTIRE PROCEEDING is what triggers the applicability of res judicata.

12. The binding precedent which sets this requirement is *Bowen v. Danna*, 632 SW 2d 234, 235 (1982), where the Arkansas Supreme Court adopting persuasive precedent from the Ninth and Seventh Circuits, and turned that persuasive precedent into *binding* precedent in this state. A copy of this opinion is hereby attached as Exhibit B (The portion being cited is found at the bottom of Page 2 of this print-out).

911

13. Why do you think the Defendants have not yet moved for summary judgment on this matter? If the protective order hearing creates *res judicata* in this case, then shouldn't that preclude Plaintiff's right to litigation entirely, in this proceeding? And unlike with the Defendant's first attempt at summary judgment, this time, Plaintiff could not argue that the evidence for the *res judicata* was inadmissible under Arkansas Rule of Evidence 410.

14. The reason they did not move for summary judgment at that point in time is thus: The Defense Counsel plainly knows that it is an essential element of *res judicata* that the proceeding which has *res judicata* effect must have been initiated before the proceeding sought to be barred. They Defense Counsel plainly knows this; however, until recently[1], the Defense did not believe that it needed such cheap tricks to escape liability, because until recently (remember Footnote #1), they thought they had a slam-dunk victory on the merits, since they believed that the Defendant had done a fairly thorough job of covering up the evidence of his crime.

No. 3: At least one element of "res judicata" has not been satisfied.

15. Third, the defense of *res judicata* is also not applicable in the first instance, despite the aforementioned citation saying that *res judicata* also bars issues which "merely could have been litigated."

16. How so, you might ask? Because that issue COULD NOT HAVE BEEN LITIGATED in the previous case! The previous order's refusal to allow a transcript at taxpayer's expense ensured that Plaintiff never got to this particular stage in the transcript process.

17. Plaintiff, at that point in time, had no way of anticipating (and thus, no way of litigating) the physical or technical aspects of transcript-preparation.

18. Thus, at least one essential element of *res judicata* is not present here.

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1 Relatively speaking, of course. This case has been held in abeyance for nearly a year while the Administrative Office of the Courts has struggled to find a judge to preside.

No. 4: The circumstances on which the previous order was denied are completely opposite in this case.

19. By the Defendant's own admission (as evidenced by his attachment of the exhibit), the previous case's Motion for Free Transcript was denied on one specific ground, and one ground only: That the Plaintiff in this case was the Respondent in the previous case, and Defendants/Respondents are not allowed to proceed *in forma pauperis* in the State of Arkansas.

20. In this case, Plaintiff is … well … the Plaintiff. Thus, the circumstances on which the previous motion was denied are completely inapplicable in the instant case. In fact, it is the complete opposite.

21. Opposite circumstances should render opposite results.

No. 5: The Defendant is a filthy hypocrite.

22. Last but not least, the Defendant himself stated, in a filing he made in this case on April 28, 2014, that "To deny a motion or any pleading with prejudice the court must clearly say so. Otherwise the denial is presumed to be without prejudice (excluding issues of res judicata or claims for relief).

23. Granted, one of the few exceptions he listed is "res judicata," an exception which he is raising here. However, his raising the defense in this instance is completely inconsistent with his previous statement that an order of denial is presumed to be without prejudice. Specifically, what type of motion was that particular order of denial concerning? The first time he brought it up, it concerned the denial of a Motion to Compel Discovery. Then, he referenced this legal nuance again in reference to an Order Denying a Motion for Mental Evaluation filed pursuant to Ark.R.Civ.P. 35.

24. What do these two motions have in common? They are both motions where the movant (in this case, the Plaintiff) asked the court to compel the production of potentially relevant

evidence. Thus, Goldie is of the opinion that "requests for the compulsion of potentially relevant evidence" do not create *res judicata*.

25. This current action falls squarely into that category. The Defendant does not appear to be denying Plaintiff's assertion that the transcript would produce potentially relevant evidence, and it is clear on its face that the current motion is a request for the Court to compel its production.

26. Thus, for the Defendant to argue that it is barred by *res judicata* and collateral estoppel (even if the elements were present, which they are not; see ¶¶ 3-9 and ¶¶ 15-18) shows that they have absolutely no regard for justice or the Rule of Law. The only thing they care about is getting what they want, and do not care what inconsistencies or violations of procedural law they must make to get it.

Conclusion

27. Let us recap the points:

(a) The current motion concerns an issue entirely different from any which has been previously litigated.

(b) A proceeding can only have any preclusive effect on another proceeding if the first proceeding was filed before the second proceeding. Thus, there is no *res judicata* or collateral estoppel in the first instance, here.

(c) Plaintiff *could not have* previously litigated the issue in question in this case, seeing as how other rulings prevented him from ever getting that far. Thus, *res judicata* is not applicable anyway.

(d) The circumstances upon which the previous motion was denied were completely the opposite of the circumstances in this case.

(e) The Defendant and his Counsel have both, once again, demonstrated their shameless

hypocrisy by making legal arguments that are 100% contradictory to previous arguments they have made over the same subject matter. All they care about is getting what the want, and if that means completely butchering the Rule of Law, that does not bother them any more than stomping on a cockroach (after all, that is how they view anyone who gets in their way: They're like bugs, worthless things to be crushed).

28. As a result, the Defendant's only argument against this motion is patently without merit on at least five different grounds. Thus, the Motion remains unopposed.

29. Wherefore, premises considered, Plaintiff requests that his Unopposed Motion for Writ of Mandamus be granted, and for whatever other relief to which he may be entitled.

So requested on this, the 16th day of October, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

915

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

2014 NOV 6 AM 11:00
RHONDA WATKINS
BOONE CO CIRCUIT CLERK
BY: DC

FOURTH MOTION FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion for the Defendant to be Sanctioned under Rule 11 for raising frivolous legal arguments.

1. On October 13, 2014, a mere four days (and only two business days) after Plaintiff filed his Motion for Writ of Mandamus, the Defendant filed his Answer to the Motion, arguing that the Motion for Writ of Mandamus was barred on the grounds of *res judicata* and collateral estoppel.

2. On October 16, 2014, Plaintiff has already filed his Reply, arguing how the Defendant's response is patently without merit. The contents of that Reply are hereby incorporated by reference.

3. However, the arguments contained in that Reply demonstrate something much darker than a mere lack of merit to their Answer. It demonstrates that the Defense Counselor has no inhibitions, whatsoever, about filing whatever pops into his head, without any regard as to whether these arguments are legally sound or not.

4. Plaintiff received a copy of the Answer on October 15, 2014, and he was able to find a total of five grounds upon which the Defendant's arguments within mere hours. The amount of time it took to physically type the Reply up meant that it had to be filed the next day, but Plaintiff noticed these flaws right away.

5. This raises the question of how the Defense Counselor himself could possibly have missed these flaws, if Plaintiff can identify them so readily.

936

6. Sure, the Defendant took two business days to file his pleading. However, we have to assume that a good chunk of this time was taken up by consulting with his client about he wanted to do, and also, securing the papers to attach as exhibits. Thus, the Defendant may as well have filed the motion within mere hours.

7. In the past, judges in this case have denied motions for sanctions, simply on the grounds that the legal arguments being raised were not "substantially frivolous." However, he never stated exactly what element of "substantial frivolousness" the Defendant's argument was lacking. This is because there was none: He simply did not want to have to sanction his buddy.

8. Plaintiff is in the hopes that this new judge will be better than that. If the new judge denies this Motion for Sanctions, Plaintiff hopes that this new judge will at least explain, in detail, what the elements of "substantially frivolous" are, and why the Defendant's pleading on October 13, 2014 failed to meet those elements.

9. Remember: When a violation of Rule 11 occurs, sanctions are mandatory. What matters is not whether the Court finds the legal argument to be "stupid," but rather, whether the Defendant made a surface inquiry into the law concerning the matter.

10. The conditions for that have been established in this instance.

11. Please find, attached to this motion, the following exhibits:

(a) **Exhibit A**: Page 86 of a Motions Hearing held in this case on the date of October 21, 2013.

(b) **Exhibit B:** Pages 4-5 of a hearing in this case dated on April 2, 2014.

(c) **Exhibit C**: Rule 11 of the Arkansas Rules of Civil Procedure

(d) **Exhibit D**: Rule 7 of the Arkansas Rules of Civil Procedure

(e) **Exhibit E:** A print-out of the precedent of *Parker v. Perry*, 131 SW 3d 338 (2003),

937

with areas of interest highlighted for emphasis.

12. In addition, Plaintiff would like for the Court to view the following excerpts from the Docket in this case:

(a) Plaintiff's Motion to Strike Defendant's Motion for Restrictions on Court Access (filed on or around August 17, 2013, though Plaintiff does not remember the exact date).

(b) Plaintiff's Second Renewal of Motion to Compel Discovery (filed on or around October 24, 2013).

(c) Plaintiff's Second Motion to Compel Discovery (filed on or around January 9, 2014).

(d) Defendant's Answer to Second Motion to Compel Discovery (filed on or around January 14, 2014).

(e) Plaintiff's Motion for Contempt and for Sanctions (filed on or around April 15, 2014).

(f) Plaintiff's Reply to Answer to Motion for Contempt and for Sanctions (filed on or around May 5, 2014).

(g) Plaintiff's Answer to Motion to Strike Amended Complaint (filed on or around July 8, 2014).

13. A Brief in Support of this Motion is being filed alongside this Motion. The contents thereof are hereby incorporated by reference.

14. Wherefore, premises considered, Plaintiff requests that the Defendant be sanctioned so that he might be deterred from filing legal arguments at the drop of a hat in the future. So requested on this, the 7th day of November, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

938

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2014 NOV -6 AM 11:00
RHODA YOUNG
BOONE CIRCUIT CLERK
BY

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

BRIEF IN SUPPORT OF FOURTH MOTION FOR SANCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Brief in Support of his Third Motion for Sanctions.

BACKGROUND

1. On October 13, 2014, the Defendant in this case filed an Answer to Plaintiff's Motion for Writ of Mandamus, where he argued that the motion was barred on the grounds of *res judicata* and collateral estoppel.

2. Plaintiff received a copy of that Answer in the mail on October 15, 2014.

3. Instantly, Plaintiff was able to identify five (5) grounds upon which this argument was patently frivolous:

(a) The current motion concerns an issue entirely different from any which has been previously litigated.

(b) A proceeding can only have any preclusive effect on another proceeding if the first proceeding was filed before the second proceeding. Thus, there is no *res judicata* or collateral estoppel in the first instance, here.

(c) Plaintiff *could not have* previously litigated the issue in question in this case, seeing as how other rulings prevented him from ever getting that far. Thus, *res judicata* is not applicable anyway.

(d) The circumstances upon which the previous motion was denied were completely the

950

opposite of the circumstances in this case.

(e) The Defendant's argument is inconsistent with another one of ***his own arguments*** that an order denying a motion concerning the procurement of evidence is presumed to be without prejudice, anyway, unless specifically stated otherwise.

4. On October 16, 2014, Plaintiff filed his Reply to that Answer. The arguments and legal citations contained in that Reply are hereby incorporated by reference.

5. However, there is more to this than his Response simply lacking merit. His actions are manifest of a pattern he has exhibited the past year and a half to block a ruling on the merits in this case by resorting to collateral attacks, trying to prevent Plaintiff from having his day in court.

Previous actions which show a pattern.

6. As stated before, this is not the first time he has done this. His desire to block Plaintiff from having his day in court started around the time he had reviewed Plaintiff's "Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Partial Summary Judgment." The Defendant was unable to offer any counter-argument to Plaintiff's legal citations except for "the allegations are denied." This, in Plaintiff's opinion, is evidence that there simply are no counter-arguments he CAN make, because he knows that Plaintiff is in the right.

7. Of course, the Defendant simply cannot accept that there is somebody who he owes legal obligations to, and who does not bend to his every whim. To him, not having absolute control and dominance over every aspect of life for everyone in his immediate vicinity is simply unacceptable.

8. Thus, he has started launching multiple collateral attacks, not even *attempting* to litigate the merits of the action, but instead trying to prevent Plaintiff from even getting his day in court

in the first place.

9. Examples of these actions – listed in chronological order – are as follows:

(a) He files a motion to vacate Plaintiff's leave to proceed *in forma pauperis*, even though ...

i. ... the case had already been going *in forma pauperis* for a good, solid year before then, and he had known about the facts surrounding the motion since the case's inception, meaning he has no excuse for, only in that moment, choosing to file the motion.

ii. He completely ignores Plaintiff's argument that he does not have standing unless he can show an injury, and the only injury he can possibly show would in and of itself be patently in violation of Rule 11. Instead, he just says "And I ***do*** have standing to bring it to the Court's attention," (See Exhibit A, Lines 17-18) without ever giving any legal authority – no statute, no case law, no nothing – that actually *gives* him standing, despite Plaintiff's citations to the contrary.

iii. By his own admission, it is done with the intent of depriving Plaintiff of court access.

(b) He refuses to discuss the discovery disputes with Plaintiff, despite his insistence that Plaintiff make good faith, reasonable attempts to resolve the discovery dispute without court action.

i. On the currently-pending ***THIRD ATTEMPT*** to get a ruling on the merits on the first motion to compel discovery, the Defense Counsel refused to entertain Plaintiff's phone call to resolve the dispute (which he was not even required to make in the first place).

ii. So apparently, the Defense Counselor is of the opinion that A) when a person says

he is going to do something, that creates an affirmative legal obligation to actually do it, even without mutual contractual consideration, and B) the audience is given the right to decide what the speaker actually meant when the speaker said he would do something, and then arbitrarily hold the speaker to that specific interpretation.

iii. Then, he conveniently took the next day off entirely, so Plaintiff could not contact him via phone (See Paragraph #6 of Plaintiff's Second Renewal of Motion to Compel Discovery, a factual allegation the Defendant has not contested).

iv. Clearly, this was done in order to keep Plaintiff from being able to "resolve the discovery dispute without court action," so he could keep Plaintiff in a perpetual game of cat-and-mouse.

(c) He places objections to Plaintiff's legitimate discovery requests on the grounds that they are "not relevant."

i. He never once even ATTEMPTED to fulfill his obligation under the Arkansas Rules of Evidence to state the grounds for his objections with any degree of specificity.

ii. What's worse? He filed an Answer to Plaintiff's Motion to Compel Discovery, saying that the lack of merit was so obvious that it did not require an explanation.

iii. The problem here, however, is that, in the Motion to Compel Discovery which he was supposedly responding to, Plaintiff had already given the Court some conceivable relevance that these discovery requests had (See Paragraph #20 of Second Motion to Compel Discovery). Thus, even if that was what he was thinking at the time he made the objections, he has no excuse for raising that argument, even after evidence to refute it had been offered. Thus, it MUST have been patently frivolous.

(d) The Defense Attorney literally ***USURPED THE JUDICIARY*** when he decided to

completely disregard a previous judge's order.

i. Specifically, former Judge David Clinger ordered Goldie to prepare written orders based on what the first judge in this case had already ruled on.

ii. However, Clinger was very, very clear when he told the parties to work the matter out between themselves BEFORE filing the written order, and to only submit contradictory order schedules in the event that the parties could not agree. See Exhibit B.

iii. Instead, Goldie completely ignored the requirement for good-faith conference, and instead proceeded to arbitrarily file his own order schedule, without even *attempting* to work it out with Plaintiff first.

iv. In his Answer to Motion for Contempt and for Sanctions, he freely admitted that he believed that Judge Clinger had instructed him to act in a quasi-judicial capacity by sitting in review of the previous judge's orders. Despite this understanding of the order, he did not immediately object to what he believed was a patently unconstitutional instruction to, in effect, become a tribunal in a case where he was already counsel of record, despite having absolutely no grounds to argue that this was NOT a patent violation of Plaintiff's procedural due process rights (as well as a patent violation of Plaintiff's *absolute*[1] right to an impartial judiciary).

(e) In addition, he once again attempted to block Plaintiff's day in court because he knew that a proper ruling on the merits would result in his client being liable for millions of dollars.

i. He claimed that the Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Partial Summary Judgment was "not pending."

ii. His grounds for making this argument were that the new ruling never came within

1 As Plaintiff already pointed out in his Motion and Incorporated Brief in Support Thereof to Recuse (filed on or around September 3, 2013), the right to an impartial judiciary is one of the few rights in this nation that is truly absolute, without the slightest exception.

30 days.

iii. His argument is patently frivolous in at least three legal contexts, but Plaintiff will explain more when this case is set, once again, for oral argument.

(f) He asked the Court to strike an Amended Complaint, simply on the mere *POSSIBILITY* that an affirmative defense *COULD* create a bar to the action!

i. Specifically, he states that the Amended Complaint should be stricken simply on the grounds that "there is substantial reason to believe that the Statute of Limitations may provide an absolute bar to the current action." See the Defendant's Motion to Strike Amended Complaint.

ii. However, he never offered any evidence, whatsoever, to show that the Statute of Limitations is even applicable in the first instance.

10. As the newly-appointed Judge Russel Rogers can clearly see, this is more than a couple of random, isolated incidents. His desire to block Plaintiff's court access came after Plaintiff had revised his legal arguments to better articulate why he was legally entitled to relief against the Defendant. His inability to counter-argue those points, coupled with his sudden change in litigation strategy to "all collateral attacks and no merits," is overwhelming evidence of his desire to simply block the case.

11. Now, the Defendant is continuing his pattern of collateral attacks to block Plaintiff's court access. This time, he is attempting to use an order on a completely unrelated motion to block Plaintiff's current motion on the grounds of *res judicata*. There is simply no way he actually believes himself to be entitled to relief on this matter; he is simply attempting to needlessly delay the litigation in direct violation of Rule 11.

ARGUMENT

12. For the reasons set forth below, the Court must find that the Defendant and Counselor have engaged in a violation of Ark.R.Civ.P. 11, and sanction them acccordingly.

Applicable Law and Standards

13. "The signature of an attorney or party constitutes a certificate by him ... that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation ... If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction." See Ark.R.Civ.P. 11(a).

14. "When a trial court determines that a violation of Rule 11 has occurred, the Rule makes sanctions mandatory ... We review a trial court's determination of whether a violation of Rule 11 occurred under an abuse-of-discretion standard ... In exercising its discretion under Rule 11, the trial court is expected to avoid using the wisdom of hindsight and should test the lawyer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. The essential issue is whether the attorney who signed the pleading or other document fulfilled his or her duty of reasonable inquiry into the relevant law, and the *indicia* of reasonable inquiry into the law include the plausibility of the legal theory espoused in the pleading and the complexity of the issues raised. *The moving party establishes a violation of Rule 11 when it is patently clear that the nonmoving party's claim had no chance of success.*" See Exhibit C, Parker v. Perry, 131 SW 3d 338, 347 (2003)

956

15. Let's take a look at that last sentence, just for emphasis purposes:

> "The moving party establishes a violation of Rule 11 when it is patently clear that the nonmoving party's claim had no chance of success."

16. This means that, unless the Defendant can show even an arguable basis for Plaintiff's Motion for Writ of Mandamus being barred by *res judicata*, Plaintiff is entitled to have the Defense sanctioned. The Court's "discretion," in such a circumstance, is effectively reduced to the point of virtual non-existence.

17. Now, before the New Judge Russell gets angry, allow Plaintiff to make one thing perfectly clear: He is NOT insult the intelligence or authority of the Court. He is simply making an observation of the law. Sure, if Plaintiff can show that the Defendant's *res judicata* argument never had any chance of success to be begin with, yes, it is still, technically, the Court's call. However, binding precedent has unequivocally stated that, under these circumstances, any ruling to the contrary would automatically be an abuse of discretion.

18. Furthermore ...

(a) "Arkansas Rules of Professional Conduct emphasize that a lawyer may not ethically bring or defend a proceeding or an issue unless there is a basis for doing so that is not frivolous." See Exhibit C, Ark.R.Civ.P. 11 Reporter's Notes #4, ¶ 4.

(b) "The court is not required to grant a motion solely because no response or brief has been filed." See Exhibit D, Ark.R.Civ.P. 7(b)(2).

Persuasive Precedent

19. Along with this binding precedent, the Court can also turn to the following persuasive precedent to assist it in deciding this Motion. Considering that Rule 11 was designed to be modeled after the *Federal* Rules of Civil Procedure (see Rule 11 Reporter's Notes), it makes sense that the Court should seek guidance from federal precedents concerning the matter.

20. "An examination of the history behind the 1983 amendments to Rule 11 indicates that the rulemakers inserted the discretionary language in Rule 11 in response to concerns that mandatory sanctions would chill the adversarial process. The advisory committee notes expressly disclaim any intent to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. At the hearings on the 1983 amendments to Rule 11, Judge Mansfield, the Advisory Committee Chair, answered such concerns by stating that a judge would have discretion to impose a *de minimis* sanction. Thus, it can be inferred that the broad discretion given district courts in determining sanctions was intended as a "safety valve" to reduce the pressure of mandatory sanctions." See *Thomas v. Capital Sec. Services, Inc.*, 836 F. 2d 866, 877 (5th Cir. 1988) (internal citations and quotations omitted).

21. "[T]he discretion vested in the court is a judicial and not an arbitrary one. That is, when we say that a decision is discretionary, or that a district court has discretion to grant or deny a motion, we do not mean that the district court may do whatever pleases it. The phrase means instead that the court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law. An abuse of discretion, on the other hand, can occur in three principal ways: when a relevant factor that should have been given significant weight is not considered; when an irrelevant or improper factor is considered and given significant weight; and when all proper factors, and no improper ones, are considered, but the court, in weighing those factors, commits a clear error of judgment." See *Kern v. TXO Production Corp.*, 738 F. 2d 968, 970 (8th Cir. 1984).

22. In light of these precedents (both binding and persuasive), we are left with only one question: Did the Defendant have even an arguable basis for saying that the Motion for Writ of Mandamus was barred on the grounds of *res judicata*? The answer is, undeniably, no. In fact,

20. "An examination of the history behind the 1983 amendments to Rule 11 indicates that the rulemakers inserted the discretionary language in Rule 11 in response to concerns that mandatory sanctions would chill the adversarial process. The advisory committee notes expressly disclaim any intent to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. At the hearings on the 1983 amendments to Rule 11, Judge Mansfield, the Advisory Committee Chair, answered such concerns by stating that a judge would have discretion to impose a *de minimis* sanction. Thus, it can be inferred that the broad discretion given district courts in determining sanctions was intended as a "safety valve" to reduce the pressure of mandatory sanctions." See *Thomas v. Capital Sec. Services, Inc.*, 836 F. 2d 866, 877 (5th Cir. 1988) (internal citations and quotations omitted).

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22. In light of these precedents (both binding and persuasive), we are left with only one question: Did the Defendant have even an arguable basis for saying that the Motion for Writ of Mandamus was barred on the grounds of *res judicata*? The answer is, undeniably, no. In fact,

as Plaintiff explained in greater detail in ¶ 9 of this Brief.

30. It makes no sense that a party like the Defense, who is simply *obsessed* with preventing a ruling on the merits in the current action, would pass up on literally any opportunity to get the case thrown out if he believed his argument would last any longer than two seconds during oral argument. Thus, if he believed that the protective order case created *res judicata* in the current proceeding, he would have filed a Motion for Summary Judgment a long time ago, claiming that this current proceeding was now barred in its entirety. Instead, he waited until he had what he believed was a conviction in the criminal proceeding before seeking summary judgment on those grounds.

31. The only explanation for this particular course of action is ... he was well aware of the legal nuance that *res judicata* can only flow one direction: From an older case to a newer case.

32. Thus, he has absolutely no excuse for raising *res judicata* in response to the currently-pending Motion for Writ of Mandamus, because he plainly knew that it did not apply.

33. This constitutes a violation of Rule 11 of the Arkansas Rules of Civil Procedure. Remember, a Rule 11 violation is established "when it is patently clear that the nonmoving party's claim had no chance of success." Such is the case here.

34. Thus, sanctions become mandatory.

CONCLUSION

35. It is important to remember that this Motion may be granted or denied independently of the Motion for Writ of Mandamus. Even if this motion is denied, the five reasons Plaintiff gave on October 16, 2014 for the doctrines of *res judicata* and collateral estoppel being inapplicable in the Motion for Writ of Mandamus are still applicable full-force. The Motion for Writ of Mandamus still deserves to be granted, nonetheless.

960

36. However, ***in addition to*** the granting of the Motion for Writ of Mandamus, the Court is also bound, by binding precedent, to issue a *de minimus* sanction against the Defense for raising a patently frivolous legal argument which he already knows to lack merit.

37. Wherefore, premises considered, Plaintiff respectfully requests that the Defendant be issued an appropriate sanction to deter future frivolous conduct.

So requested on this, the 8th Day of November, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

CERTIFICATE OF SERVICE

I, *pro se* Plaintiff David Stebbins, do hereby certify, under penalty of perjury, that verbatim copies of the aformentioned "Fourth Motion for Sanctions," and "Brief in Support of Fourth Motion for Sanctions" have been served on Jim Goldie by emailing copies thereof to goldie@goldielawfirm.arcoxmail.com on the 17th Day of October, 2014 (in observance of the requirements of Ark.R.Civ.P. 11(b)) and again on the 8th Day of November, 2014.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

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FILED FOR RECORD
2014 NOV 10 AM 8:34
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO FOURTH MOTION FOR SANCTIONS

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer states:

1. Defendant denies each and every allegation of fact and law in paragraphs one (1) through fourteen (14) of the Motion except exhibits were attached.

WHEREFORE, PREMISES CONSIDERED, the failure of the Plaintiff to appeal the October 24, 2012 precludes any remedy sought by the Plaintiff in this Motion and the Motion should be dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendant prays the Motion be dismissed and Defendant have all other proper relief.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-743-3013

964

Russell Rogers
Circuit Judge
Retired on Assignment
P.O. Box 365
602 South College
Stuttgart, AR 72160

Phone: (870) 673-1162
Fax: (870) 673-2480

January 23, 2015

Mr. Jim Goldie
P.O. Box 5595
Harrison, AR 72602
Fax #:870-741-6897

via fax and mail

Mr. David A. Stebbins
123 W. Ridge St., Apt. D
Harrison, AR 72601

Re: David A. Stebbins v. David D. Stebbins
Boone County Circuit Court, Civil Division
Case No. CV-2012-85-4

Gentlemen:

After a long study, the issues in this case appear to be basically simple:

1. Was there a contract between the parties? If so, has it been breached; by whom; and if there was a breach, was there any damage?
2. Has there been a battery committed and if so, what are the damages?

The following motions are hereby ruled upon or reserved:

1. Motion to "Always read the Law...." filed October 23, 2013 is apparently directed to Judge Webb who is no longer in the case. It is therefore dismissed as moot.
2. Motion to Clarify filed November 6, 2014: The Court's letter and general admonitions were to both parties, and would apply in any case. All pleadings should express facts and law and refrain from snide comments.
3. Motion for Contempt and for Sanctions filed April 15, 2014: Whether the motions were dismissed with or without prejudice is not relevant as if they were dismissed they are not before the Court.

4. Plaintiff's Revised Motion for Partial Judgment on the Pleadings or in the alternative for Partial Summary Judgment is denied as it presumes facts to not be in dispute that actually are in dispute, and/or makes incorrect legal conclusions from facts which may or may not be in dispute.

5. Plaintiff's "Motion to Strike Amended Answer" is deemed withdrawn at Plaintiff's request.

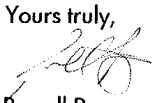
6. Plaintiff's "Second Renewal of First Motion to Compel Discovery (of October 23, 2013) is denied in that it is confusing at best and is very unlikely to result in any evidence relevant to or admissible in this case.

7. The Plaintiff's Motion for Protective Order and in Limine is noted. It is denied as a blanket order. Any and all evidence that is sought to be introduced by either party at trial will be subject to the usual tests for admissibility pursuant to the Rules of Civil Procedure.

8. Defendant's Motion to Strike Amended Complaint is probably moot as Defendant has answered the amended complaint, but I will grant it insofar as the actions of a third party are concerned.

I believe that this resolves the pending motions and I will cancel the hearing set for January 29, 2015. You may contact the Trial Court Assistant for available trial dates and advise whether a jury is still requested.

Yours truly,



Russell Rogers
RR/klw

cc: Ms. Polly Leimberg, Trial Court Assistant
P.O. Box 785
Harrison, AR 72602-0785

IN THE CIRCUIT COURT OF BOONE COUNTY. ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

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2015 JAN 26 AM 8:21
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

MOTION TO REINSTATE ORAL ARGUMENT

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion to Reinstate the Oral Argument scheduled for January 29, 2015.

1. The Court, in its January 23, 2015 letter, erroneously stated that his rulings resolved all motions.

2. Even assuming, for the sake of argument, that the existing rulings go unchallenged (which they do not; see Plaintiff's other motions), there are still three (3) motions which were set to be ruled on that have not yet been. They are ...

(a) Defendant's Motion for Protective Order (dated late December, 2013).

(b) Plaintiff's contradictory Motion to Compel Discovery (independent of the motion already denied).

(c) Plaintiff's Motion for Writ of Mandamus to force the court reporter to produce a relevant transcript.

3. Please set a hearing – preferably for January 29, so we don't have to wait even longer – to hear those motions as well as those filed today. So requested on this 23rd day of January, 2015.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS / PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Second Motion for Partial Summary Judgment.

1. On January 23, 2015, Plaintiff received, from the court, a letter stating, among other things, that the only questions of fact which remained were the following:

(a) Did a contract exist between the two parties?
(b) Was the contract breached?
(c) Who breached it?
(d) Was a battery committed?
(e) What was the damage?

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BOONE CO. CIRCUIT CLERK
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2. Plaintiff asserts that there is an overwhelming amount of evidence to show that every question is, in fact, undisputed in Plaintiff's favor.

(a) Yes, a contract existed between the parties.
(b) Yes, it was breached.
(c) The one who breached the contract was the Defendant.
(d) The Defendant indeed punched the Plaintiff.
(e) The damages have been admitted by the Defendant to be in the amount of $11 million. By their own admission, Plaintiff recovers either $11 million, or nothing at all.

3. Please find, attached to this motion, the following exhibits.

(a) **Exhibit A**: The contract between the two parties, signed by both parties on the date of September 26, 2011.

(b) **Exhibit B**: Defendant's Answer to Plaintiff's First Request for Admissions.

(c) **Exhibit C**: A page out of the arrest report, where the arresting agency admits that he observed a lump on Plaintiff's face, proving that he had been punched.

(d) **Exhibit D**: Pages 37-38 of the Oral Argument in the above-styled action taking place on October 21, 2013.

968

4. In addition, since Plaintiff does not currently have a copy of this filing on-hand (and thus, cannot attach it as an actual exhibit), he asks that the Court take judicial notice of the Defendant's "Amended Answer to Revised Motion for Partial Judgment on the Pleadings or in the Alternative for Partial Summary Judgment," on file in this case. Plaintiff withdrew his motion to strike that filing, and did so for a reason. The changes made to the Defendant's side of the story are imperative to Plaintiff's victory in this case.

5. Please also find, attached to this motion, the following case law:

(a) **Appendix A**: City of Dardanelle v. City of Russellville, 277 SW 3d 562 (2008).
(b) **Appendix B**: Price v. Willbanks, 374 SW 3d 28 (2009)
(c) **Appendix C**: Williams v. Williams, 2010 Ark. App. 349 (2010)
(d) **Appendix D**: Wooten v. McClendon, 612 SW 2d 105 (1981)
(e) **Appendix E**: Arkansas Rule of Civil Procedure 8.

6. Wherefore, premises considered, Plaintiff respectfully requests that this Motion for Summary Judgment be granted, and that judgment for the Plaintiff be entered in the amount of eleven million dollars, that costs incurred be awarded (including prejudgment interest), and any other relief to which the Plaintiff may be entitled.

7. So requested on this, the 26th day of January, 2015.

David Stebbins

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

969

To save stationary, Exhibits A and B will not be shown here, as they are exactly the same as Add 67 and Add 10, respectively.

Narrative

Date: 11/25/2011 Name: Jason Baethke

On 11/24/11 I, Dep. Baethke, was dispatched to 8527 Hopewell Rd. in reference to Domestic Battery.
Upon arrival I met with the complainant, David A. Stebbins. He advised his Father David D. Stebbins hit him in the face because he would not turn an internet connection back on. He then advised when he called the Sheriffs Department his father cut himself multiple times so he would not be arrested. He was unable to give any details on where his father cut himself at, and what type of knife he used. I observed a small knot above the complainants left eye where he had been hit.

I then spoke with the Father. He advised he turned his Sons internet connection off and they were involved in a verbal argument. His Son then came into his bedroom holding a knife and demanding for him to turn the internet connection back on. The Father said he was not going to turn it back on and asked his Son if he was going to stab him. The Son David A. Stebbins then proceeded to attack his Father with the knife cutting him multiple times on the head and causing his nose to bleed. The Father was able to use a pillow as a barrier and move to a different room in the house and lock himself in. When he was in the second room the Son was trying to get in. The Father attempted to contact 911 but was unable to because of cellular reception in the residence. The Father then acted like he was calling the police so his Son would leave the area. When his Son left he was able to exit the residence.
I observed multiple lacerations on the Fathers head and face, his eye was red from being hit, and his nose was bleeding. I also found blood on the pillow used for defense, and multiple blood drops in the room next to the door where the Father was keeping his son out.
I asked the Father what the knife looked like and he advised he believed it was a kitchen knife with a white handle. I located the knife I believed was used laying on the kitchen counter. I observed a small amount of red substance on the end on the knife which I believed to be blood. The knife was also bent at the handle. I then looked in the kitchen sink and located a green dish rag with a red substance on it which I also believed to be blood. The blood on the rag was marked in a way consistent with wiping it off of a knife.
I spoke with both of the parties involved outside of the residence. I located all of the evidence inside after speaking with both of them. The evidence located inside the residence was consistent with what the father told me. The complainant was unable to provide any details about what happened and his story was very inconsistent.
Eight pictures were taken of the incident including 4 of the Fathers injuries, 2 of the blood found inside the second room, 1 of the blood on the pillow used for self defense, and 1 of the complainants injury over his left eye.
The knife used and the dish rag used were collected, packaged, and placed in the evidence locker at the Boone Co. Sheriffs Office.
I arrested the complainant David A. Stebbins and transported him to the Boone Co. Sheriffs Office. Stebbins was placed on an investigative hold. I issued and explained a no contact order to Stebbins.
On 11/25/11 I, Dep. Baethke filed an affidavit on Stebbins for Domestic Battery 1st Degree.

PAGE 9

Report By: Approved By: Records Section Bx

Exh. C

981

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2015 JAN 26 AM 8:18
BOONE CO. CIRCUIT CLERK
RHONDA WATKINS
BC DC

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

BRIEF IN SUPPORT OF SECOND MOTION FOR SUMMARY JUDGMENT

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Brief in Support of his Second Motion for Summary Judgment.

STATEMENT OF UNDISPUTED FACTS

Plaintiff asserts that the following facts are undisputed in Plaintiff's favor:

UNDISPUTED FACT NO. 1: There was a contract between the two parties, allowing the Plaintiff to reside at the Defendant's residence on a week-to-week basis until he could secure a motor vehicle and living arrangements, in exchange for non-suiting the previous lawsuit Plaintiff had filed against the Defendant.

- **Exhibit A**, which states the following:
  - "I, David A. Stebbins, hereby agree to withdraw all Lawsuits I have Pending against my parents, David D. and Rita F. Stebbins within 48 Hours."
  - "In return for agreeing to the above listed conditions I will receive Room and Board at my parents residence, 8527 Hopewell Rd., on a WEEK TO WEEK Basis"
  - "Other ammenities included will be ... full access to the phone and/or Internet when not being used by either of my parents (this includes computer, game usage, and cell phone connection)."

UNDISPUTED FACT NO. 2: The Defendant wrote the contract, even though the contract is written out in the Plaintiff's first person.

997

- See the Defendant's "Amended Answer to Revised Motion for Partial Judgment on the Pleadings," which Plaintiff incorporated by reference in ¶ 4 of the Motion this Brief is meant to support.

UNDISPUTED FACT NO. 3: This contract did not have a meeting of the minds as to exactly what tasks the Plaintiff was supposed to perform. Instead, it purports to give the Defendant sole discretion to decide what tasks are required and retroactively apply the Plaintiff's signature to those tasks.

- **Exhibit A**: "... on a WEEK TO WEEK Basis Basised on 15 hours a week of work to be determined by my parents."

UNDISPUTED FACT NO. 4: The contract entitled the Plaintiff to "full access ... Internet ... whenever [the Defendant and his wife] were not using it."

- **Exhibit A**, Paragraph #3.
- **Exhibit B**, Answer to Requested Admission #8.

UNDISPUTED FACT NO. 5: On the Date of November 24, 2011, the Internet was slower than normal.

- **Exhibit B**, Answer to Requested Admission #14.

UNDISPUTED FACT NO. 6: The Defendant maintains the defense that he cannot control the Internet speed[1] (please pay attention to footnote).

- **Exhibit B**, Answer to Requested Admission #15.

UNDISPUTED FACT NO. 7: When Plaintiff exercised his axiomatic right to complain

1 Plaintiff is NOT conceding that the Internet speed was beyond the Defendant's control; the undisputed fact is that this is what the Defendant is using as his excuse. For example, it is "undisputed" that Barack Obama believes that marriage should not be restricted on the basis of gender composition (in other words; he believes same-sex marriage should be legal). It is far from undisputed, however, whether the U.S. Constitution forces state governments to issue same-sex marriage licenses. The holding of a belief is undisputed, even if the truth of that belief is not. That is what we have here: It is undisputed that this is the Defendant's excuse; this Motion asserts that this excuse is irrelevant as a matter of law.

- See the Defendant's "Amended Answer to Revised Motion for Partial Judgment on the Pleadings," which Plaintiff incorporated by reference in ¶ 4 of the Motion this Brief is meant to support.

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2. The only question of law that the Court's letter dated January 23, 2015 left open is "Who breached?" Though the case may have been complex before, the Court has simplified it down to that one question. Whoever wins that question, wins the whole thing.

3. By asking that question, the Court almost certainly means "Who breached ***first***?" Because once one party is shown to have breached, the other party is entitled to prevail, regardless of any breaches after that fact.

4. Plaintiff maintains that it was the Defendant who breached ***first***.

The "labor clause" is unenforceable for vagueness.

5. Plaintiff's alleged violation of the requirement to do work is unenforceable as a matter of law, for two reasons:

6. First, the law concerning "meeting of the minds" requires that there be a meeting of the minds ***at the time the contract is entered into***. Because the contract does not specify what tasks Plaintiff must perform, that provision is too vague for there to be a meeting of the minds. In fact, the very concept of "meeting of the minds" was created, at English common law, specifically to combat this precise type of abuse!

7. It is black letter law that a contract must have a meeting of the minds on all terms, using ***objective*** indicators. This provision, requiring the Plaintiff to do ... "stuff" ... purports, on its face, to be a ***subjective*** indicator. This is against public policy.

8. "Despite [Defendant]'s arguments to the contrary, the terms of the joint resolution are simply too vague to constitute a legally binding agreement. Specifically, the terms are not certain as to the parties' obligations. A contract ... that leaves it entirely optional with one of the parties as to whether or not he will perform his promise would not be binding on the other." See *City of Dardanelle v. City of Russellville*, 277 SW 3d 562, 566 (2008).

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9. Second, the Defendant wrote the contract. See "Undisputed Fact No. 2." Therefore, any ambiguities in the contract must be resolved in Plaintiff's favor. See *Price v. Willbanks*, 374 SW 3d 28 (2009) ("our laws require that if uncertainty or ambiguity exists within the terms of a contract, or if it is susceptible to more than one reasonable construction, then the courts must construe the contract most strongly against the party who drafted it"). Thus, no clarification as to the duties? No contract enforcement. Period.

10. Therefore, Plaintiff did not breach the contract, since there is no obligation for him to breach.

The contract is mutually enforceable, even if certain provisions are not.

11. At the October 21, 2013 hearing, the Defense Counselor gave the following legal argument against Plaintiff:

> "And what Mr. Stebbins is talking about in one sense he says we have admitted to the contract and there was and then he goes off on a tangent attacking the contract. It didn't say this that's mutuality then that's enforceability. It's like a person who wants both sides of the story of saying there is a contract by the way there's not a contract because look how terrible this writing is, it doesn't amount to a contract. He can't have it both ways so a material issue of fact is there."
> (See Exhibit C, Page 38, Lines 4-13).

12. What the Defense fails to realize is that, although the Labor Clause is not enforceable, that does NOT mean that the contract, in its entirety, is unenforceable. Plaintiff still had obligations which he had to perform. The Defendant had not one, but TWO peppercorns of consideration in exchange for giving Plaintiff these living arrangements.

13. First, Plaintiff was required "to withdraw all Lawsuits I have Pending against my parents, David D. and Rita F. Stebbins within 48 Hours." That provision is indeed reasonably certain, and thus, Plaintiff was bound by it. The Defendant has NOT alleged, in either his Answer to Complaint, or in any discovery, that Plaintiff has breached that provision. Even if he alleged that

Plaintiff failed in that obligation, the evidence to prove, or refute, that allegation would be a matter of public record, anyway.

14. Second, Plaintiff was required to obtain an attorney's endorsement that he had a colorable cause of action if, at any point in the future, he chose to sue the Defendant[3]. In the current action, the Defendant has not alleged (and has therefore waived his right to use it as a defense, under Ark.R.Civ.P. 8(c)(1)) that Plaintiff has initiated the current action fulfilling this obligation. However, the provision is reasonably certain, and thus, it offers the Defendant a peppercorn of consideration, if he wants to enforce it.

15. The Defendant has no contractual obligations unless Plaintiff has them too, but the consideration does not have to be equal. A peppercorn is all it takes; and Plaintiff has agreed to at least two peppercorns. Since Plaintiff already has given peppercorn consideration, he does not need the Labor Clause to be enforceable for him to legally bind the Defendant to uphold his end of the bargain.

The slower-than-normal Internet speed was against the inferred terms of the vague contract.

16. The Defendant breached the contract – even if he did so accidentally – when he failed to keep a constant Internet speed.

17. The contract does not clearly define what level of access to phone/Internet constitutes "full." However, according to the precedent of *Price v. Willbanks*, 374 SW 3d 28 (2009), in combination with Undisputed Fact No. 2, this means that the definition of "full" defaults to Plaintiff's favor, not the Defendant's. Therefore, the slower-than-normal Internet speed constituted "non-full" Internet, because that is the definition of *full* which is "most strongly

[3] It should be noted that, although the contract also requires the Plaintiff to refrain from suing the Defendant except for "justifiable cause," this provision is also unenforceable, except whereas many other provisions are unenforceable for vagueness, this provision is unenforceable under what jurists have dubbed the "pre-existing duty rule."

1002

against the party who drafted [the contract]."

18. The Defendant's excuse – recited in Undisputed Fact No. 6 (and please remember the footnote attached to the end of that fact) – is insufficient as a matter of law. To obtain a defense to his nonperformance, the Defendant must plead, not simply that he, personally, had no control over the Internet connection, but that no one – no matter how deep their pockets or how extensive their computer knowledge – could possibly have fulfilled those contractual obligations.

19. This is supported by the binding precedent of *Williams v. Williams*, 2010 Ark. App. 349 (2010), which states, in pertinent part, "Impossibility of performance of a contract sufficient to excuse the nonperformance upon the part of either party means an impossibility consisting in the nature of the thing to be done, and not in the inability of the party to do it."

20. Therefore, it was the Defendant who breached the contract, due to his failure to raise a sufficient legal defense to excuse his omissions. If he could not control the Internet speed, he should not have agreed, in writing, to allow Plaintiff "full" access to it (or, at the very least, made more of an effort to clearly define "full").

The Defendant has no study.

21. In the event that the Court determines that the slower-than-normal Internet speed was not a breach, the next event which is alleged to be a breach was that Plaintiff had entered the Defendant's "study."

22. This is the Defendant's last chance to show that Plaintiff breached the contract. After this, the Defendant admits that he took away the Internet router altogether (an act which unquestionably would constitute a "breach" if a breach has not already been established) for no other reason than simply for the sake of spite against Plaintiff, because he just did not like the way Plaintiff – a fully-grown adult – was behaving. See Undisputed Fact No. 7.

23. Again, because the Defendant wrote the contract, he holds the burden of showing parole evidence that there was a meeting of the minds ***at the time the contract was entered into*** as to precisely which room he was referring.

24. Unlike the similar provisions requiring Plaintiff to stay out of the master bedroom and the Defendant's private bathroom, this provision (the provision to stay out of the Defendant's study) is virtually impossible for Plaintiff to breach. Though enforceable as a matter of public policy, the fact of the matter is that, unlike the similar provisions concerning the master bedroom and private bathroom, Plaintiff simply *couldn't* violate the provision concerning the study, even if he *wanted* to!

25. You know why? Because it is extremely unlikely that the Defendant has a "study" in his house, by the traditional definition, in the first place!

26. A "study" is the sort of room that typically only appears in mansions, just like a "ball room" or a "balcony." According to the Merriam-Webster Dictionary (which is the definition most people would default to if a definition is not given in the contract), a "study" is defined as "a building or room devoted to study or literary pursuits." So, basically, it's a miniature library.

27. According to the version of events that are mutually agreed upon, Plaintiff was attempting to fix the Internet speed. This suggests that Plaintiff was not in the Defendant's "study," but rather, in the computer room!

28. If that is what the Defendant meant when he said "study," then he should have clarified that in the contract. A meeting of the minds is required at the time the contract is entered into. If it was only clarified, on the night of November 24, 2011, that the computer room *was* the study, then it was too late for their to be a meeting of the minds.

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The Defendant's folly.

29. As far as the contract claim is concerned, the Defendant's fallacies can be summed up in one single mistake of law: He assumed that, as long as the contract was as vague as possible, he could keep them as "flexible" as possible, and bend them to his will, on his terms.

30. Had he obtained the advise of counsel before forcing Plaintiff to sign this contract to avoid imminent homelessness, he would have been advised that the exact opposite is the truth. Nobody who is smart enough to pass the bar exam would advise him otherwise, since it is black letter law that vague contract terms are always enforced *against* the people who write them. The reason this black letter law exists is specifically for cases just like this: So that one person who holds a superior position over the other cannot abuse this position to the other's disadvantage.

31. The Defendant's folly, in this case, is one of hubris. He assumed that, as long his understanding of the law made sense in his own mind, there is no need to verify his intuition with legal research or the advice of counsel.

Battery

32. The last question the Court has determined to be relevant to the proceeding is "Was a battery committed?"

33. The answer is, unquestionably, yes. Though the Defendant denies punching Plaintiff, the fact of the matter is that Plaintiff, on the night of November 24, 2011, had the lump on his face to prove it. See Exhbit C.

34. The Defendant does NOT allege that the lump was self-inflicted. Therefore, the Court has no authority to make this assumption on the Defendant's part. See Ark.R.Civ.P. 8(c)(1).

35. In addition, he does not allege that the punch was done in self-defense. According to the Defendant's Answer to Requested Admission #17 (found on Page 3 of Exhibit C), his self-

defense actions – assuming he was erntitled to self-defense at all – were exclusively defensive, not counter-offensive, in nature. He only "wrestled" with the Plaintiff in an attempt to (allegedly) disarm him.

36. This, however, is inconsistent with the findings of the arresting agency. Therefore, the Defendant MUST be lying. This is not a matter of the Court making a credibility determination; this is a matter of the Defendant's version of events being simply impossible, given the evidence which is undisputed.

37. Therefore, it is proven beyond genuine dispute that the Defendant punched Plaintiff. The only way a punch could exist in wrestling is if the Defendant were referring to *professional* wrestling, at which point, the Defendant's accusation of a knife attack automatically fails, since the knife attack would have been staged and scripted for television purposes!

38. Because the Defendant has not alleged the punch to be made in self-defense, he has waived his right to raise this affirmative defense, under Ark. R. Civ. P. 8(c)(1).

Damages

39. After Plaintiff filed the previous, Revised Motion for Partial Judgment on the Pleadings, the Defendant has admitted that, if Plaintiff is to recover anything at all, he is to recover a full eleven million dollars. Unlike before, where Plaintiff requested partial damages, pro-rated for each claim, the Defendant's admission of an "all or nothing" damages award now means that Plaintiff is entitled to recover the full $11,000,000, even if he may not have proven that level of damages otherwise.

Prejudgment Interest

40. Because the damages are undisputed at $11,000,000, Plaintiff is entitled to recover prejudgment interest at a rate of 6% per annum, starting from the date of November 24, 2011,

1006

which is the date of loss.

41. Plaintiff's entitlement is governed by the precedent of *Wooten v. McClendon*, 612 SW 2d 105 (1981), which states, in pertinent part, the following:

> "Prejudgment interest is compensation for recoverable damages wrongfully withheld from the time of the loss until judgment. This interest must be allowed for any injury where, at the time of loss, damages are immediately ascertainable with reasonable certainty. Where prejudgment interest is collectible at all, the injured party is always entitled to it as a matter of law. Nothing is left for the jury's consideration ... The test in prejudgment interest cases is whether there is a method of determination of the value of the property at the time of the injury. If such method exists, prejudgment interest should be allowed.
> ...
> Ark.Const. art. 19, § 13 artifically regulates the price for the use of money and provides that, when no rate of interest is agreed upon, the rate shall be 6% per annum. Therefore, since the legislature has failed to prescribe a rate for prejudgment interest, it must be set at 6% as prescribed by the Constitution." (Internal citations and quotations omitted)

42. This, effectively, amounts to prejudgment interest of $660,000 per year. As of the time of this writing, at least three years have passed since the date of loss, since November 24, 2014 would mark the 3-year anniversary of the date of loss.

CONCLUSION

43. To wrap up this Brief, let us recap the points:

(a) This Court has determined that, if Plaintiff prevails on the contract and battery claims, he prevails on the whole thing.

(b) There was, indeed, a contract between the two parties, written by the Defendant. Plaintiff's entitlement to a residence for long enough to save up enough money to obtain a vehicle and independent living arrangements, in exchange for dismissal of a previous lawsuit filed against him and an agreement to not sue the Defendant without an attorney first advising him that he has a colorable cause of action. These considerations were reasonably certain and, thus, enforceable.

(c) The Defendant, however, in addition to the dismissal of lawsuits, attempted to hold the Plaintiff to a clearly-unenforceable labor clause, thinking (rather delusionally) that Arkansas contract law would allow him to unilaterally decide what the vague terms mean, when in fact, Arkansas contract law requires the complete opposite.

(d) The Defendant agreed to grant Plaintiff full Internet access, upon the satisfaction of a relatively objective circumstance: Whenever it was not in use by the Defendant or his wife.

(e) However, on November 24, 2011, the Defendant failed to honor this obligation, under the delusional belief that he was allowed to Interpret, for himself, what "full" meant, and retroactively apply Plaintiff's signature to his unilateral and arbitrary definition.

(f) He refused to correct the Internet speed, as per his own, self-imposed contractual obligations, under the delusional belief that the law would excuse his nonperformance if he simply was incapable of completing it. This delusional belief about the law has been refuted by the precedent of *Williams v. Williams*, and as such, Plaintiff is entitled to prevail as a matter of law on this matter.

(g) The Defendant also attempted to accuse the Plaintiff of breaching a provision in the contract that Plaintiff simply had no way of violating. Though enforceable as a matter of law, the simple bottom line is that Plaintiff cannot enter a room that physically does not exist.

(h) The evidence is overwhelming – and lacks a better explanation offered by the Defendant – that Plaintiff suffered a punch to the face when he attempted to reclaim the router.

(i) The damages have been admitted by the Defendant to be in the amount of $11,000,000.

44. This Court made the conscious choice to simply the case down to these questions of fact. All but one question of fact could be proven in Plaintiff's favor straight-away, and the other question of fact was proven by showing the Defendant's provision to be unenforceable and the Defendant's excuse for his own failure to honor his contractual obligations to be legally insufficient to excuse the failure.

45. It was the Court – not just the Plaintiff – who willingly simplified the matter to this degree. He didn't have to, but he did.

46. Because the Court chose to simply the case to this level, Plaintiff is now entitled to summary judgment, since at this point, the case is, as the Court put it, "basically simple."

47. WHEREFORE, premises considered, Plaintiff requests that judgment be entered in his favor in the amount of $11,000,000, costs and prejudgment interest incurred be awarded, and any

1008

other relief to which he may be entitled.

So requested on this, the 26th day of January, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1009

15CV00671

FILED FOR RECORD
2015 FEB -9 PM 1:32
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS **PLAINTIFF**

VS. **CASE NO. CV-2012-85-4**

DAVID D. STEBBINS **DEFENDANT**

ORDER

The Court finds and orders as follows:

1. Plaintiff's Second Motion for Summary Judgment (filed January 26,2015) is denied. The "facts" alleged to be undisputed, admitted or not denied by the Defendant are in fact disputed and denied. Plaintiff's statement that they are undisputed does not make them so.

2. Plaintiff's "Motion to Clarify" (filed January 26, 2015) is denied. The ruling that Plaintiff requests would be findings of relevance, fact and law that will be decided at trial.

3. Plaintiff's Motion for Rule 56(d) Compliance is denied as moot as the Court has stated the facts that are at issue.

4. Plaintiff's "Motion for Reconsideration" (filed January 26, 2015) is denied for the same reasons that the original motion was denied.

If Plaintiff does not understand why the Court is confused, it is suggested that he reexamine the first sentence of Paragraph 3 (c) of his Motion for Reconsideration and, further, identify the source of the quotation in the second sentence.

1023

6. The Plaintiff may within 7 days attempt to explain what is meant by "Plaintiff's contradictory Motion to Compel Discovery?"

7. Plaintiff's petition for Writ of Mandamus to "Force Court Reporter to produce a relevant transcript" is denied as having no basis in law or fact (insofar as it can be understood).

ORDERED this the 4 day of February, 2015.

Russell Rogers
Circuit Judge on Assignment

1024

TO: Mr. Jim Goldie
P.O. Box 5595
Harrison, Arkansas 72602

Mr. David A. Stebbins
123 W. Ridge St., Apt. D
Harrison, Arkansas 72601

Ms. Polly Leimberg, Trial Court Assistant
P.O. Box 785
Harrison, Arkansas 72602-0785

Ms. Rhonda Paul Watkins
Courthouse, 100 N. Main Street
Ste. 200
Harrison, Arkansas 72601-4228

FILED FOR RECORD
2015 MAR -3 AM 8:03
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

Re: ***David A. Stebbins vs David D. Stebbins***
Boone County Circuit Court Case No. CV-2012-85-4

NOTICE OF JURY TRIAL

You are hereby notified that a jury trial has been set at 9:00 a.m. on the 8th day of April, 2015, at the Boone County Courthouse, 100 North Main Street, Harrison, Arkansas.

DATED this 3 day of March, 2015.

Russell Rogers
Circuit Judge on Assignment

1029

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

FILED FOR RECORD
2015 MAR 31 PM 1:39
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: DC

MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Motion to Quash Subpoena seeking testimony of Chief U.S. District Court Judge, P.K. Holmes, III, states:

1. That the above referenced action was filed in the Circuit Court of Boone County, Arkansas. The complaint alleges facts around a dispute between the plaintiff and defendant, who, according to the complaint shared a residence. The Stebbins plaintiff seeks damages against the Stebbins defendant, alleging battery, malicious prosecution, and defamation.

2. The United States of America is not a party to the instant cause.

3. That on or about March 10, 2015, a Subpoena was delivered by a Sebastian County Deputy Sheriff to the Isaac C. Parker Federal Building located at 30 South 6th Street, Fort Smith, Arkansas. The Subpoena with Return of Service is attached as Exhibit 1 to this Motion.

4. The subpoena seeks the testimony of P.K. Holmes. Attached to this Motion as Exhibit 2 is the Declaration of John R. Stauffer, Chief Deputy Clerk for the U.S. District Court Western District of Arkansas. As stated within that Declaration, P.K. Holmes, III is the Chief United States District Court Judge, Western District of Arkansas.

1050

5. The subpoena should be quashed because federal judicial personnel may not provide testimony or produce records in legal proceedings unless authorized by regulations found in the *Guide to Judiciary Policy, Vol. 20. Ch. 8, § 820.*

6. The subpoena should be quashed because service of process is deficient pursuant to the Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 45. Personal service on Judge Holmes was not perfected.

7. There is no indication or reason to believe that Chief Judge Holmes has any relevant information to provide in this matter. His appearance would be unduly burdensome, against regulation and policy, and is not authorized under the procedures in place by federal regulation. For the reasons set out in the Brief in Support of this Motion, and legal authority, the Court is without jurisdiction to compel the testimony of Chief U.S. District Judge P.K. Holmes, III to testify under these facts, and the Motion to Quash should be granted.

WHEREFORE, premises considered, the United States of America respectfully prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY
By: Deborah Groom by Clerk's Hand ABN 77062
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

1051

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

FILED FOR RECORD
2015 MAR 31 PM 1:40
RHONDA K. STEVENS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

BRIEF IN SUPPORT OF MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Brief in Support of Motion to Quash Subpoena seeking testimony of Chief U.S. District Court Judge P.K. Holmes III, states:

FACTS

Plaintiff, David A. Stebbins filed his Complaint on April 10, 2012, against David D. Stebbins in the Circuit Court of Boone County, Arkansas. The complaint makes allegations centering around a dispute between the plaintiff and the defendant, who, based on the complaint were sharing a residence. The complaint alleges that an altercation between the two occurred, resulting in the plaintiff's arrest and detention in the Boone County Detention Center. Plaintiff alleges that the defendant committed battery, malicious prosecution, and defamation. Plaintiff seeks damages for the same. The United States of America is not a party in this case.

On or about March 10, 2015, a certain Subpoena was delivered by a Sebastian County Deputy Sheriff to the Isaac C. Parker Federal Building located at 30 South 6th Street, Fort Smith, Arkansas. (See Exhibit 1 attached to the Motion to Quash Subpoena) The subpoena seeks the testimony of P.K. Holmes, at a trial in the matter scheduled for April 8, 2015. P.K. Holmes, III, is

1058

employed as the Chief U.S. District Judge for the United States District Court, Western District of Arkansas. (See Exhibit 2 attached to the Motion) Chief Judge Holmes is not a party to the litigation, and there is no indication he has any information relevant to the facts set out in the plaintiff's complaint.

ARGUMENT

Federal judicial employees, such as Chief Judge Holmes, are prohibited from providing testimony or producing records in legal proceedings, unless authorized in accordance with regulations promulgated by authority of 28 U.S.C. Section 604, and found in the regulations in the *Guide to Judiciary Policy, Vol. 20.Adminstrative Claims and Litigation, Ch. 8: Testimony and Production of Records, § 820 found at:* http://www.uscourts.gov/RulesAndPolicies/SubpoenaRegulations.aspx. Here, such testimony is not authorized and the subpoena should be quashed.

According to the regulation, any request for testimony or production of records must set forth, or must be accompanied by an affidavit setting forth a written statement by the requestor explaining the nature of testimony sought. The statement must state the relevance of the testimony or records sought, and reasons why the testimony or records sought, are not readily available from another source or by other means. *Id. at § 830.* Here, the plaintiff has provided no statement of information or explanation of the nature of the testimony sought from Chief Judge Holmes. There is no indication whatsoever that Judge Holmes has any relevant testimony to offer concerning the allegations in plaintiff's complaint filed in this Court. The testimony is not authorized and the subpoena should be quashed.

Regulations such as those promulgated by the Administrative Office of the Courts, which prohibit federal court employees from providing testimony unless authorized through the procedures set out in the regulations, have been upheld by the United States Supreme Court. *United States ex rel. Touhy v. Ragen,* 340 U.S. 462, 468, 71 S.Ct. 416, 95 L. Ed. 417 (1951). *Also see*, *Schutterle v. United States,* 74 F.3d 846, 848 (8th Cir. 1996); *Boron Oil Co. v. Downie,* 873 F.2d 67 (4th Cir. 1989). Such regulations are constitutional and do not deprive the requester of a constitutional right to due process. *Touhy v. Ragen* at 468. The regulations establish policy and proscribe procedures with a purpose to conserve the time of federal judicial personnel for conducting official business and to minimize the involvement of the federal judiciary in issues unrelated to its mission. The regulations also have a purpose to maintain the impartiality of the federal judiciary in disputes between private litigants.

Here, there is no reason to believe that Chief Judge Holmes can offer any testimony relevant to the proceedings, and it would be unduly burdensome and unnecessary to cause him to travel and appear in these proceedings. Chief Judge Holmes may not be held in contempt, as sovereign immunity of the United States applies in this situation. *Touhy v. Ragen,* at 468; *Unprofessional Conduct Against 99-37 v. Stuart,* 249 F.3d 821, 825 (8th Cir.2001). Therefore, the subpoena should be quashed, as Judge Holmes is prohibited by regulation from testifying under these circumstances.

Finally, the subpoena should be quashed because the return of service on the subpoena indicates someone other than Chief Judge Holmes was given the subpoena. (Exhibit 1) Pursuant to the Arkansas Rules of Civil Procedure, "service shall be made by delivering a copy of the subpoena to the person named in therein". Ark. R. Civ. P. 45(c). Service of the subpoena is

defective, as it was not personally served on Judge Holmes, and therefore, the subpoena should be quashed.

WHEREFORE, premises considered, the United States of America prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By: Deborah Groom
by Charles Hart
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

113 N
77062

CERTIFICATE OF SERVICE

I, Deborah Groom, Assistant U.S. Attorney for the Western District of Arkansas, hereby certify that a true and correct copy of the foregoing Motion was mailed this 30th day of March, 2015 to:

David A. Stebbins
123 West Ridge, Apt. D
Harrison, AR 72601

Deborah Groom
by Charles Hart
Deborah Groom
Assistant U.S. Attorney

1061

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

FILED FOR RECORD
2015 MAR 31 PM 1:42
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Motion to Quash Subpoena seeking testimony of James R. Marschewski, states:

1. That the above referenced action was filed in the Circuit Court of Boone County, Arkansas. The complaint alleges facts around a dispute between the plaintiff and defendant, who are believed to be related and shared a residence. Plaintiff seeks damages alleging battery, malicious prosecution, and defamation.

2. The United States of America is not a party to the instant cause.

3. That on or about March 10, 2015, a Subpoena was delivered by a Sebastian County Deputy Sheriff to the Isaac C. Parker Federal Building located at 30 South 6th Street, Fort Smith, Arkansas. The Subpoena is attached as Exhibit 1 to this Motion.

4. The subpoena seeks the testimony of James R. Marschewski. Attached to this Motion as Exhibit 2 is the Declaration of John R. Stauffer, Chief Deputy Clerk for the U.S. District Court Western District of Arkansas. As stated within that Declaration, James R. Marschewski is a Magistrate Judge for the U.S. District Court, Western District of Arkansas.

1062

5. The subpoena should be quashed because federal judicial personnel may not provide testimony or produce records in legal proceedings unless authorized by regulations found in the *Guide to Judiciary Policy, Vol. 20. Ch. 8, § 820.*

6. The subpoena should be quashed because service of process is deficient pursuant to Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 45. Personal service on Magistrate Marschewski was not perfected.

7. There is no reason to believe Judge Marschewski has any relevant information to provide. His appearance would be unduly burdensome, against regulation and policy, and not authorized under the procedures in place by federal regulation. As set out in the Brief in Support of this Motion, the Court is without jurisdiction to compel the testimony of Magistrate Judge James R. Marschewski and/or his designees to testify under these facts.

WHEREFORE, premises considered, the United States of America prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY
By: Deborah Groom by Charles A Harrington ABN 77062
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

1063

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

FILED FOR RECORD
2015 MAR 31 PM 1:42
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

BRIEF IN SUPPORT OF MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Brief in Support of Motion to Quash Subpoena seeking testimony of James R. Marschewski, states:

FACTS

Plaintiff, David A. Stebbins filed his Complaint on April 10, 2012, against David D. Stebbins in the Circuit Court of Boone County, Arkansas. The complaint makes allegations centering around a dispute between the plaintiff and the defendant, who, based on the complaint were sharing a residence. The complaint alleges that an altercation between the two occurred, resulting in the plaintiff's arrest and detention in the Boone County Detention Center. The plaintiff Stebbins alleges that the defendant Stebbins committed battery, malicious prosecution, and defamation. Plaintiff seeks damages for the same. The United States of America is not a party to the lawsuit.

On or about March 10, 2015, a subpoena was delivered by a Sebastian County Deputy Sheriff to the Isaac C. Parker Federal Building located at 30 South 6th Street, Fort Smith, Arkansas. (See Exhibit 1 attached to the Motion to Quash Subpoena) The subpoena seeks the testimony of

1070

James R. Marschewski, at a trial in the matter scheduled for April 8, 2015. James R. Marschewski is employed as a Magistrate Judge for the United States District Court, Western District of Arkansas. (See Exhibit 2 attached to the Motion) Judge Marschewski is not a party to the litigation, and there is no indication he has any information relevant to the facts set out in Plaintiff's complaint. The return of service filed with the Court indicates that someone other than Judge Marschewski was served the subpoena. (Exhibit 1)

ARGUMENT

Federal judicial employees, such as Judge Marschewski, are prohibited from providing testimony or producing records in legal proceedings, unless authorized in accordance with regulations promulgated by authority of 28 U.S.C. Section 604, and found in the regulations in the *Guide to Judiciary Policy, Vol. 20: Administrative Claims and Litigation, Ch. 8: Testimony and Production of Records § 820* found at:

http://www.uscourts.gov/RulesAndPolicies/SubpoenaRegulations.aspx.

Here, such testimony is not authorized and the subpoena should be quashed.

According to the regulation, any request for testimony or production of records must set forth, or must be accompanied by an affidavit setting forth a written statement by the requestor explaining the nature of testimony sought. The statement must state the relevance of the testimony or records sought, and reasons why the testimony or records sought, are not readily available from another source or by other means. *Id. at § 830.* Here, the plaintiff has not provided a statement of information or explanation of the nature of the testimony sought from Judge Marschewski. There is no indication whatsoever that Judge Marschewski has any relevant

1071

testimony to offer concerning the allegations in the Complaint filed in this Court. The testimony is not authorized, and the subpoena should be quashed.

Regulations such as those promulgated by the Administrative Office of the Courts, which prohibit federal court employees from providing testimony unless authorized through the procedures set out in the regulations, have been upheld by the United States Supreme Court. *United States ex rel. Touhy v. Ragen,* 340 U.S. 462, 71 S. Ct. 416, 95 L. Ed 417 (1951); *also see*, *Schutterle v. United States,* 74 F.3d 846, 848 (8th Cir. 1996); *Boron Oil Co. v. Downie,* 873 F.2d 67 (4th Cir. 1989). Such regulations are constitutional and do not deprive the requester of a constitutional right to due process. *Toughy v. Ragen,* at 468. The regulations establish policy and proscribe procedures with a purpose to conserve the time of federal judicial personnel for conducting official business and to minimize the involvement of the federal judiciary in issues unrelated to its mission. The regulations also have a purpose to maintain the impartiality of the federal judiciary in disputes between private litigants.

There is no reason to believe that Judge Marschewski can offer any testimony relevant to the proceedings, and it would be unduly burdensome and unnecessary to cause him to travel and appear in these proceedings. Judge Marschewski may not be held in contempt, as sovereign immunity of the United States applies in this situation. *Touhy v. Ragen,* at 468; *Unprofessional Conduct Against 99-37 v. Stuart,* 249 F.3d 821, 825 (8th Cir. 2001). Therefore, the subpoena should be quashed, as Judge Marschewski is prohibited by regulation from testifying under these circumstances.

Secondly, the subpoena should be quashed because the return of service on the subpoena does not indicate personal service on Judge Marschewski. In fact another name appears in the

1072

space provided on the return of service. (Exhibit 1) Pursuant to the Arkansas Rules of Civil Procedure, "service shall be made by delivering a copy of the subpoena to the person named therein". Ark. R. Civ. P. 45(c). Service of the subpoena is defective, as it was not personally served on Judge Marschewski, and therefore, the subpoena should be quashed.

WHEREFORE, premises considered, for the reasons set out herein, the United States of America prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By: Deborah Groom by [illegible] ABN 77062
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

CERTIFICATE OF SERVICE

I, Deborah Groom, Assistant U.S. Attorney for the Western District of Arkansas, hereby certify that a true and correct copy of the foregoing Motion was mailed this 30th day of March, 2015 to:

David A. Stebbins
123 West Ridge, Apt. D
Harrison, AR 72601

Deborah Groom by [illegible] ABN 77062
Deborah Groom
Assistant U.S. Attorney

1073

space provided on the return of service. (Exhibit 1) Pursuant to the Arkansas Rules of Civil Procedure, "service shall be made by delivering a copy of the subpoena to the person named therein". Ark. R. Civ. P. 45(c). Service of the subpoena is defective, as it was not personally served on Judge Marschewski, and therefore, the subpoena should be quashed.

WHEREFORE, premises considered, for the reasons set out herein, the United States of America prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By: Deborah Groom by Clerk ABN 77062
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

CERTIFICATE OF SERVICE

I, Deborah Groom, Assistant U.S. Attorney for the Western District of Arkansas, hereby certify that a true and correct copy of the foregoing Motion was mailed this 30th day of March, 2015 to:

David A. Stebbins
123 West Ridge, Apt. D
Harrison, AR 72601

Deborah Groom by Clerk ABN 77062
Deborah Groom
Assistant U.S. Attorney

1073

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

FILED FOR RECORD
2015 APR -1 PM 3:12
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Motion to Quash Subpoena seeking testimony of United States District Court Judge, Timothy L. Brooks, states:

1. That the above referenced action was filed in the Circuit Court of Boone County, Arkansas. The complaint alleges facts around a dispute between the plaintiff and defendant, who, according to the complaint shared a residence. The Stebbins plaintiff seeks damages against the Stebbins defendant, alleging battery, malicious prosecution, and defamation.

2. The United States of America is not a party to the instant cause.

3. A subpoena has been delivered by a Washington County Deputy Sheriff to Judge Timothy L. Brooks at the John Paul Hamerscmidt Federal Building located at 35 East Mountain Street, Fayetteville, Arkansas. The subpoena is attached as Exhibit 1 to this Motion.

4. The subpoena seeks the testimony of Timothy Brooks. Attached to this Motion as Exhibit 2 is the Declaration of John R. Stauffer, Chief Deputy Clerk for the U.S. District Court Western District of Arkansas. As stated within that Declaration, Timothy L. Brooks a United States District Court Judge, Western District of Arkansas.

1085

5. The subpoena should be quashed because federal judicial personnel may not provide testimony or produce records in legal proceedings unless authorized by regulations found in the *Guide to Judiciary Policy, Vol. 20. Ch. 8, § 820.*

6. The subpoena should be quashed because service of process is deficient pursuant to the Arkansas Rules of Civil Procedure. Ark. R. Civ. P. 45.

7. There is no indication or reason to believe that Judge Brooks has any relevant information to provide in this matter. His appearance would be unduly burdensome, against regulation and policy, and is not authorized under the procedures in place by federal regulation. For the reasons set out in the Brief in Support of this Motion, and legal authority, the Court is without jurisdiction to compel the testimony of Judge Brooks to testify under these facts, and the Motion to Quash should be granted.

WHEREFORE, premises considered, the United States of America respectfully prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By: Deborah Groom
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

1086

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

FILED FOR RECORD
2015 APR -1 PM 3:12
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

DAVID A. STEBBINS,
Plaintiff

v. Case No. CV 2012-85-4

DAVID D. STEBBINS,
Defendant

BRIEF IN SUPPORT OF MOTION TO QUASH SUBPOENA

Comes now the United States of America, by and through the United States Attorney for the Western District of Arkansas, and for its Brief in Support of Motion to Quash Subpoena seeking testimony of U.S. District Court Judge Timothy L. Brooks, states:

FACTS

Plaintiff, David A. Stebbins filed his Complaint on April 10, 2012, against David D. Stebbins in the Circuit Court of Boone County, Arkansas. The complaint makes allegations centering around a dispute between the plaintiff and the defendant, who, based on the complaint were sharing a residence. The complaint alleges that an altercation between the two occurred, resulting in the plaintiff's arrest and detention in the Boone County Detention Center. Plaintiff alleges that the defendant committed battery, malicious prosecution, and defamation. Plaintiff seeks damages for the same. The United States of America is not a party in this case.

A subpoena has been delivered by a Washington County Deputy Sheriff to U.S. District Court Judge, Timothy L. Brooks at his chambers in the federal courts building located at 35 East Mountain Street, Fayetteville, Arkansas. (See Exhibit 1 attached to the Motion to Quash Subpoena) The subpoena seeks the testimony of Timothy L. Brooks, at a trial in the matter

1092

scheduled for April 8, 2015. Timothy L. Brooks is employed as a United States District Judge for the United States District Court, Western District of Arkansas. (See Exhibit 2 attached to the Motion) Judge Brooks is not a party to the litigation, and there is no indication he has any information relevant to the facts set out in the plaintiff's complaint.

ARGUMENT

Federal judicial employees, such as Judge Brooks, are prohibited from providing testimony or producing records in legal proceedings, unless authorized in accordance with regulations promulgated by authority of 28 U.S.C. Section 604, and found in the regulations in the *Guide to Judiciary Policy, Vol. 20.Adminstrative Claims and Litigation, Ch. 8: Testimony and Production of Records, § 820 found at:* http://www.uscourts.gov/RulesAndPolicies/SubpoenaRegulations.aspx. Here, such testimony is not authorized and the subpoena should be quashed.

According to the regulation, any request for testimony or production of records must set forth, or must be accompanied by an affidavit setting forth a written statement by the requestor explaining the nature of testimony sought. The statement must state the relevance of the testimony or records sought, and reasons why the testimony or records sought, are not readily available from another source or by other means. *Id. at § 830.* Here, the plaintiff has provided no statement of information or explanation of the nature of the testimony sought from Judge Brooks. There is no indication whatsoever that Judge Brooks has any relevant testimony to offer concerning the allegations in plaintiff's complaint filed in this Court. The testimony is not authorized and the subpoena should be quashed.

Regulations such as those promulgated by the Administrative Office of the Courts, which prohibit federal court employees from providing testimony unless authorized through the procedures set out in the regulations, have been upheld by the United States Supreme Court. *United States ex rel. Touhy v. Ragen,* 340 U.S. 462, 468, 71 S.Ct. 416, 95 L. Ed. 417 (1951). *Also see, Schutterle v. United States,* 74 F.3d 846, 848 (8th Cir. 1996); *Boron Oil Co. v. Downie,* 873 F.2d 67 (4th Cir. 1989). Such regulations are constitutional and do not deprive the requester of a constitutional right to due process. *Touhy v. Ragen* at 468. The regulations establish policy and proscribe procedures with a purpose to conserve the time of federal judicial personnel for conducting official business and to minimize the involvement of the federal judiciary in issues unrelated to its mission. The regulations also have a purpose to maintain the impartiality of the federal judiciary in disputes between private litigants.

Here, there is no reason to believe that Judge Brooks can offer any testimony relevant to the proceedings, and it would be unduly burdensome and unnecessary to cause him to travel and appear in these proceedings. Judge Brooks may not be held in contempt, as sovereign immunity of the United States applies in this situation. *Touhy v. Ragen,* at 468; *Unprofessional Conduct Against 99-37 v. Stuart,* 249 F.3d 821, 825 (8th Cir.2001). Therefore, the subpoena should be quashed, as Judge Brooks is prohibited by regulation from testifying under these circumstances.

It is noted that the subpoena was not accompanied by the tender of a witness fee for attendance and mileage as required by the Arkansas Rules of Civil Procedure. "The subpoena must be accompanied by a tender of a witness fee calculated at the rate of $30.00 per day for attendance and $0.25 per mile for travel from the witness' residence to the place of the trial or hearing." Ark. R. Civ. P. 45(d). Therefore, service is defective. It is also noted that On April 10, 2012, the

Court entered its Order granting Plaintiff Stebbins leave to proceed *In Forma Pauperis*. In any event, the subpoena should be quashed as Judge Brooks is prohibited by regulation from testifying under these circumstances, and sovereign immunity of the United States applies in this matter.

WHEREFORE, premises considered, the United States of America prays that its Motion be granted, that the Subpoena herein be quashed, and for all other just and proper relief whether or not specifically prayed for herein.

Respectfully submitted,

CONNER ELDRIDGE
UNITED STATES ATTORNEY

By:
Deborah Groom
Assistant U. S. Attorney
Bar No. 80054
414 Parker Avenue
Fort Smith, AR 72901
Phone: (479) 494-4074
Email: Debbie.Groom@usdoj.gov

CERTIFICATE OF SERVICE

I, Deborah Groom, Assistant U.S. Attorney for the Western District of Arkansas, hereby certify that a true and correct copy of the foregoing Motion was mailed this 31st day of March, 2015 to:

David A. Stebbins
123 West Ridge, Apt. D
Harrison, AR 72601

Deborah Groom
Assistant U.S. Attorney

1095

FILED FOR RECORD
2015 APR -3 PM 1:36
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS PLAINTIFF

v. No. CV2012-85

DAVID D. STEBBINS DEFENDANT

DEPUTY PROSECUTING ATTORNEY WES BRADFORD'S
MOTION FOR AN EXPEDITED ORDER QUASHING SUBPOENA

For his Motion for an Expedited Order Quashing Subpoena, Deputy Prosecuting Attorney Wes Bradford states:

1. Deputy Prosecuting Attorney Wes Bradford represented the State of Arkansas in a criminal case in which the plaintiff in the above-styled lawsuit, David A. Stebbins, was charged with committing one or more offenses.

2. The plaintiff's father and the defendant in this lawsuit, David D. Stebbins, was the alleged victim in that criminal case.

3. Mr. Bradford has no personal knowledge of the alleged events that gave rise to that case and which, in turn, appear to have also given rise to this one.

4. Accordingly, Mr. Bradford has no personal knowledge of a battery or any defamatory statements against the plaintiff and no reason to believe that the plaintiff's prosecution was malicious.

5. The plaintiff has nevertheless subpoenaed Mr. Bradford to testify at the trial of this matter, which is scheduled to begin on April 8, 2015.

6. The subpoena should be quashed because it places an undue burden on Mr. Bradford (and the citizens whom he serves) that far outweighs any benefit that his testimony might be to the plaintiff.

7. The subpoena should be quashed in an expedited manner. An expedited ruling on this motion would allow Mr. Bradford to arrange his schedule in accordance with the Court's Order.

8. To ensure that any future subpoenas in this matter will not disrupt Mr. Bradford as he carries out his official responsibilities, the Clerk should be ordered not issue any additional subpoenas to Mr. Bradford in this matter unless first ordered by the Court to do so.

9. Mr. Bradford's affidavit concerning this matter is attached hereto.

10. A brief has been filed in support of this motion that more fully explains why it should be granted.

WHEREFORE, Mr. Bradford respectfully requests that the subpoena be quashed, that it be quashed in an expedited manner, and that the Clerk be ordered not to issue any more subpoenas to Mr. Bradford in this matter unless first ordered by the Court to do so.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

By: _____

C. Joseph Cordi, Jr.
Arkansas Bar No. 91225
Assistant Attorney General
323 Center Street
200 Catlett-Prien Building
Little Rock, AR 72201-2610
(501) 682-1317
joe.cordi@arkansasag.gov

ATTORNEYS FOR DEPUTY PROSECUTING ATTORNEY WES BRADFORD

State of Arkansas

County of Boone

AFFIDAVIT OF WES BRADFORD

1. I, Wes Bradford, am over 18 years of age, am competent to testify, and have personal knowledge regarding the statements contained in this affidavit.

2. I am employed as a Deputy Prosecuting Attorney in the Fourteenth Judicial District of Arkansas. I prosecute cases in that Judicial District, which includes the Circuit Court of Boone County, Arkansas.

3. In my role as Deputy Prosecuting Attorney, I represented the State of Arkansas in a criminal case in which David A. Stebbins was charged with committing one or more offenses. His father, David D. Stebbins, was the alleged victim in that criminal case. I have no personal knowledge of the alleged events that gave rise to that case and which, in turn, appear to have also given rise to a civil lawsuit styled as *Stebbins v. Stebbins*, CV 2012-85-4 (Boone County Circuit, 4th Division).

4. The plaintiff in that civil lawsuit, David A. Stebbins, has subpoenaed me to testify in the trial of that case on April 8, 2015. A true and accurate copy of the subpoena is attached hereto as Exhibit A.

5. I have no personal knowledge of a battery or any defamatory statements against David A. Stebbins, and no reason to believe that his prosecution was malicious.

6. Among my many responsibilities is to serve as Office Manager for the Prosecuting Attorney's local office in Harrison, Arkansas. I supervise both administrative staffers and other Deputy Prosecuting Attorneys. I am oftentimes the only Deputy

1100

Prosecutor present in that office and thus the only attorney available to assist crime victims, other citizens, and law-enforcement officers.

7. I am scheduled to attend three days of training sessions sponsored by the Arkansas Supreme Court's Administrative Office of the Courts regarding an electronic-filing system that is being implemented for cases heard by the Circuit Court of Boone County, Arkansas. The training sessions are scheduled for April 6 - 8, 2015, in Harrison, Arkansas. I need to attend those training sessions so I will know how to electronically file documents in cases that I prosecute and how to assist my subordinates as they use the new electronic-filing system.

8. I am in the process of preparing to represent the State of Arkansas in an attempted-capital-murder and aggravated-robbery case, *State of Arkansas v. Phillip Engles*, CR 2012-268 (Boone County Circuit, 3rd Division), that is scheduled to be tried to a jury beginning April 20, 2015. That trial is expected to last approximately one week. My preparations are extensive because, among other things, the State has 27 individuals subpoenaed to testify at that trial.

9. In witness whereof, I hereunto set my hand this 2nd day of April, 2015.

Wes Bradford

Before the undersigned notary public, duly qualified and acting in and for said county and state, appeared Wes Bradford, who is to me well known to be or who has sufficiently proven to be the affiant herein, who signed this affidavit under oath.

Subscribed to and sworn to before me this 2nd day of April, 2015.

Notary Public

My Commission Expires: 7-16-2022

JODIE ROBERTS COMMISSION #12386860 NOTARY PUBLIC EXPIRES 7-16-2022 NEWTON COUNTY ARKANSAS

1101

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RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS

PLAINTIFF

v.

No. CV2012-85

DAVID D. STEBBINS

DEFENDANT

BRIEF IN SUPPORT OF DEPUTY PROSECUTING ATTORNEY WES BRADFORD'S MOTION FOR AN EXPEDITED ORDER QUASHING SUBPOENA

Deputy Prosecuting Attorney Wes Bradford represented the State of Arkansas in a criminal case in which the plaintiff in the above-styled lawsuit, David A. Stebbins, was charged with committing one or more offenses. The plaintiff's father and the defendant in this lawsuit, David D. Stebbins, was the alleged victim in that criminal case. Mr. Bradford has no personal knowledge of the alleged events that gave rise to that case and which, in turn, appear to have also given rise to this one. Accordingly, Mr. Bradford has no personal knowledge of a battery or any defamatory statements against the plaintiff and no reason to believe that the plaintiff's prosecution was malicious. The plaintiff has nevertheless subpoenaed Mr. Bradford to testify at the trial of this matter, which is scheduled to begin on April 8, 2015. The subpoena should be quashed because it places an undue burden on Mr. Bradford (and the citizens whom he serves) that far outweighs any benefit that his testimony might be to the plaintiff.

Mr. Bradford has been subpoenaed by the plaintiff in a civil action. Not even a defendant in a criminal action who faces the possibility of imprisonment and is thus shrouded by numerous procedural protections guaranteed by the Constitution has a right "to secure the attendance and testimony of any and all witnesses: [the Constitutional] guarantees him 'compulsory process for obtaining *witnesses in his favor.*'" *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (quoting U.S.Const., Amdt. 6, emphasis added by the Court)). In *Washington v. Texas*, the

1104

Supreme Court held that the Sixth Amendment is violated only when a defendant in a criminal case is arbitrarily deprived of "testimony [that] would have been *relevant* and *material*, and ... *vital* to the defense." *Id.*, 388 U.S. 14, 16 (1967) (emphasis added). So, before a defendant in even a capital case "is entitled to compulsory process . . . he must establish that the testimony of the witnesses whose presence he wishes to compel is favorable and material." *Perry v. Lockhart*, 871 F.2d 1384, 1386-87 (8th Cir. 1989), *cert. denied*, 493 U.S. 959 (1989). And, even in a capital case, the witness's burden of complying with the subpoena must be weighed against the benefit to the defendant. *See Ruiz v. State*, 265 Ark. 875, 888-89, 582 S.W.2d 915, 921 (1979).

These principles are particularly applicable where, as here, a plaintiff in a civil case seeks to compel a Deputy Prosecuting Attorney with supervisory responsibilities to set aside his official duties to offer testimony that would likely not be of any benefit to the plaintiff. It is well-settled that high-ranking government officials—like Deputy Prosecutors—should not be called away from their official duties to testify about matters that they know little or nothing about. *See e.g., Alberto v. Toyota Motor Corp.*, 289 Mich.App. 328, 336, 796 N.W.2d 490, 494 (2010) (holding "that the apex-deposition rule applies to high-ranking officials in the public sector[.]")

Among Mr. Bradford's many responsibilities is to serve as Office Manager for the Prosecuting Attorney's local office in Harrison, Arkansas. He supervises both administrative staffers and other Deputy Prosecuting Attorneys. He is oftentimes the only Deputy Prosecutor present in that office and thus the only attorney available to assist crime victims, other citizens, and law-enforcement officers. In addition to those responsibilities, Mr. Bradford is scheduled to attend three days' of training sessions sponsored by the Arkansas Supreme Court's Administrative Office of the Courts regarding an electronic-filing system that is being implemented for cases heard by the Circuit Court of Boone County, Arkansas. The training

sessions are scheduled for April 6-8, 2015, in Harrison, Arkansas. Mr. Bradford needs to attend those training sessions so he will know how to electronically file documents in cases that he prosecutes and how to assist his subordinates as they use the new electronic-filing system. On top of all that, Mr. Bradford is in the process of preparing to represent the State of Arkansas in an attempted-capital-murder and aggravated-robbery trial that is scheduled to begin April 20, 2015, and is expected to last approximately one week. The State has 27 potential witnesses subpoenaed for that trial, and Mr. Bradford's preparations are extensive. He should not be pulled away from these many important responsibilities to give testimony in this civil case that would be of little—if any—benefit to the plaintiff.

The subpoena should be quashed in an expedited manner. An expedited ruling on this motion would allow Mr. Bradford to arrange his schedule in accordance with the Court's Order.

Finally, to ensure that any future subpoenas in this matter will not disrupt Mr. Bradford as he carries out his official responsibilities, the Clerk should be ordered not issue any additional subpoenas to Mr. Bradford in this matter unless first ordered by the Court to do so.

Respectfully submitted,

LESLIE RUTLEDGE
ATTORNEY GENERAL

By: Joe Cordi

C. Joseph Cordi, Jr.
Arkansas Bar No. 91225
Assistant Attorney General
323 Center Street
200 Catlett-Prien Building
Little Rock, AR 72201-2610
(501) 682-1317
joe.cordi@arkansasag.gov

ATTORNEYS FOR DEPUTY PROSECUTING ATTORNEY WES BRADFORD

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FILED
2015 APR -6 PM 1:32
BOONE CO. CIRCUIT CLERK
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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS — PLAINTIFF

V. — CASE NO. CV2012-85-4

DAVID D. STEBBINS — DEFENDANT

ORDER GRANTING
MAGISTRATE JUDGE FOR THE UNITED STATES DISTRICT COURT, JAMES R. MARSCHEWSJKI'S MOTION
FOR AN ORDER QUASHING SUBPOENA

Now before the Court is James R. Marschewski, Magistrate Judge for the U.S. District Court, Western District of Arkansas, Motion for an Order Quashing Subpoena. The Motion is granted and accordingly, the subpoena issued to Judge James. R. Marschewski in this matter is quashed. Judge Marschewski need not attend the trial in this matter and need not comply with the subpoena in any manner whatsoever.

In addition, the Clerk shall not issue any additional subpoenas to Judge Marschewski in this matter unless first ordered by the Court to do so.

IT IS SO ORDERED, this 2 day of April, 2015.

Honorable Russell Rogers,
Circuit Judge on Assignment

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BOONE CO CIRCUIT CLERK

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS **PLAINTIFF**

V. **CASE NO. CV2012-85-4**

DAVID D. STEBBINS **DEFENDANT**

ORDER GRANTING
CHIEF UNITED STATES DISTRICT COURT JUDGE, P.K. HOLMES, III MOTION
FOR AN ORDER QUASHING SUBPOENA

Now before the Court is Judge P.K. Holmes, III's, a United States District Court Judge, Western District of Arkansas, Motion for an Order Quashing Subpoena. The Motion is granted and accordingly, the subpoena issued to Judge P.K. Holmes, III in this matter is quashed. Judge Holmes need not attend the trial in this matter and need not comply with the subpoena in any manner whatsoever.

In addition, the Clerk shall not issue any additional subpoenas to Judge Holmes in this matter unless first ordered by the Court to do so.

IT IS SO ORDERED, this 3 day of April, 2015.

Honorable Russell Rogers,
Circuit Judge on Assignment

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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS **PLAINTIFF**

V. **CASE NO. CV2012-85-4**

DAVID D. STEBBINS **DEFENDANT**

ORDER GRANTING
UNITED STATES DISTRICT COURT JUDGE, TIMOTHY L. BROOKS MOTION
FOR AN ORDER QUASHING SUBPOENA

Now before the Court is Judge Timothy L. Brooks', a United States District Court Judge, Western District of Arkansas, Motion for an Order Quashing Subpoena. The Motion is granted and accordingly, the subpoena issued to Judge Timothy L. Brooks in this matter is quashed. Judge Brooks need not attend the trial in this matter and need not comply with the subpoena in any manner whatsoever.

In addition, the Clerk shall not issue any additional subpoenas to Judge Brooks in this matter unless first ordered by the Court to do so.

IT IS SO ORDERED, this 2 day of April, 2015.

Honorable Russell Rogers,
Circuit Judge on Assignment

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BOONE CO. CIRCUIT CLERK
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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
FOURTH DIVISION

DAVID A. STEBBINS **PLAINTIFF**

v. **No. CV2012-85**

DAVID D. STEBBINS **DEFENDANT**

ORDER GRANTING
DEPUTY PROSECUTING ATTORNEY WES BRADFORD'S
MOTION FOR AN EXPEDITED ORDER QUASHING SUBPOENA

Now before the Court is Deputy Prosecuting Attorney Wes Bradford's Motion for an Expedited Order Quashing Subpoena. The motion is sufficiently supported by an affidavit attached thereto. For the reasons stated in the motion, which are more fully explained in the brief filed in its support, the motion is granted. Accordingly, the subpoena issued to Mr. Bradford in this matter is quashed. Mr. Bradford need not attend the trial in this matter and need not comply with the subpoena in any manner whatsoever.

In addition, the Clerk shall not issue any additional subpoenas to Mr. Bradford in this matter unless first ordered by the Court to do so.

IT IS SO ORDERED, this 3 day of April, 2015.

The Honorable Russell Rogers,
Circuit Judge

Prepared by:

C. Joseph Cordi, Jr.
Senior Assistant Attorney General
Counsel for Deputy Prosecuting Attorney Wes Bradford

1114

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS

CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

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MOTION AND INCORPORATED BRIEF IN SUPPORT THEREOF

FOR DECLARATORY RELIEF

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Motion for the Court to declare that the "Labor Clause" and "Respect Clause" of the underlying contract in this case are unconscionable.

1. On April 8, 2015, the Defendant came and testified partially, before his testimony was interrupted.

2. During his partial testimony, the Defendant admitted to the following things:

(a) Plaintiff had no meaningful alternative but to accept the Defendant's terms, because his options were to either accept his terms or "sleep on a park bench."

(b) He admits to taking advantage of Plaintiff when Plaintiff was at his most desperate, when Plaintiff was one day away from being evicted from Harp & Associates, he admits that Plaintiff (had to) say whatever it took to have a roof over his head.

(c) The terms and conditions were meant to be interpreted according to the Defendant's sole discretion.

(d) Whether or not either party had breached the contract was at the Defendant's sole discretion.

(e) The "Respect Clause" of the contract forbade the Plaintiff from even so much as

1115

hurting the Defendant's feelings. The Defendant freely admits that the contract – which was subject to his sole discretion – could be interpreted that way, if that was what the Defendant wanted it to be at any one point in time.

(f) The "Labor Clause" of the contract gave the Defendant sole discretion to determine what tasks Plaintiff was to perform, "no matter how humiliating or ***dangerous*** they are." The Defendant was present when Plaintiff gave his opening statement, where Plaintiff gave his personal ideas of the worst that could happen (e.g. "If he had some gay friends coming over, and he wanted me to do a striptease for them, then I'd better do it! If there wasn't anything for his friends to eat that night, and so, he told me to get in the oven, well then, I get in that blasted oven! Without a split second's hesitation or a word of complaint!"), and he still maintained that he had given himself absolute discretion to decide Plaintiff's tasks.

(g) The "Internet Clause" could be interpreted as providing for Internet access unhindered by anyone else's usage. Since he wrote the contract, this is the definition that should be applied against him. See *Maddox v. St. Paul School Dist.*, 697 SW 2d 130, 131 (1985) ("It is a well-settled rule that any ambiguity in a contract must be construed against the party who drafted it"). See also *Price v. Willbanks*, 374 SW 3d 28, 31 (2009) ("[O]ur laws require that if uncertainty or ambiguity exists within the terms of a contract, or if it is susceptible to more than one reasonable construction, then the courts must construe the contract most strongly against the party who drafted it").

(h) Despite intense questioning, the Defendant was unable to show, or even refer to, any evidence that maintaining a constant Internet speed was impossible.

3. These admissions entitle Plaintiff to judgment as a matter of law on the contract claim, with the exception of damages.

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4. The admissions contained in ¶¶ 2(a) – 2(d) show that the contract was clearly unconscionable. The "Labor Clause" and "Respect Clause" in the contracts are the unconscionable terms, as admitted by ¶ 2(e) and ¶ 2(f).

5. ¶¶ 2(c) – 2(e) also show that the Defendant attempted to the strip the contract of mutuality of obligation. "A contract, therefore, that leaves it entirely optional with one of the parties as to whether or not he will perform his promise would not be binding on the other." See *City of Dardanelle v. City of Russellville*, 277 SW 3d 562, 566 (2008)

6. "If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result." See Restatement (Second) of Contracts §208, as adopted by *Associated Press v. Southern Ark. Radio Co.*, 809 SW 2d 695, 696 (1991).

7. Plaintiff asks that this Court declare, as a matter of law, that the provisions of the contract that require the Plaintiff to "respect" the Defendant (an unconstitutional limitation on Plaintiff's free speech rights) and also requiring Plaintiff to perform work as determined by the Defendant are unenforceable due to unconscionability.

8. It would not be justice for the Court to simply declare the contract void. If the Court were to do that, then the Defendant would still be getting exactly what he wanted: Plaintiff's loss of recourse. Indeed, the Defense Attorney, at trial yesterday, tried to argue that that is what the Court *must* do, before Plaintiff gave his counter-argument and explained to the court that, no, the Court actually has a lot of discretion on how to handle unconscionable contracts.

9. If the Court were to declare the contract void, then it would be *encouraging* unconscionability, and unconscionability is illegal so it can be *discouraged*, which is the exact

opposite of what this Court would be doing if it held the contract in this case void. This Court has an obligation to apply the law in a way that complies with the spirit of its original purpose. See A.C.A. § 1-2-202 ("All general provisions, terms, phrases, and expressions used in any statute shall be liberally construed in order that the true intent and meaning of the General Assembly may be fully carried out"). See also *Thomas v. Hall*, 399 SW 3d 387, 390 (2012) ("The basic rule of statutory construction is to give effect to the intent of the General Assembly").

10. Thus, the Court should, in the interests of justice, either refuse to enforce the unconscionable terms, or enforce them so as to avoid an unconscionable result. An example of the latter would be … requiring that the "Respect Clause" only be violated if Plaintiff's words or conduct were objectively disrespectful, rather than simply hurting the Defendant's feelings, or requiring the labor clause to specify, in advance, exactly what Plaintiff is supposed to do.

11. In addition to that, Plaintiff asks the Court to instruct the jury in this case to interpret the "Internet Clause" as providing for "Internet access unhindered by anyone else's usage except for the Defendant and his wife." If *that* was not provided for Plaintiff, then the Defendant breached the contract. Because the contract is to be interpreted against the interests of the party who drafted it, and that is the Defendant.

12. Plaintiff asks that this Court grant this Motion in writing initially (because to do so may encourage the Defendant to enter settlement negotiations), but then instruct the jury on the Court's decision when court reconvenes.

13. Wherefore, premises considered, Plaintiff respectfully prays that the Court declare the contract unconscionable, and thus voidable (not void, but voidable), and that the jury be instructed to structure their verdict accordingly.

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14. So requested on this, the 9th day of April, 2015.

David A. Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1119

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. — NO. CV 2012-85-4

DAVID D. STEBBINS — DEFENDANT

ANSWER TO MOTION FOR DECLARATORY RELIEF

Comes now the Defendant, David D. Stebbins, by and through his attorney, James E. Goldie and for his Answer to Motion for Declaratory Relief states:

1. Defendant denies each and every matter of fact and the law as applied to the alleged facts created by the Plaintiff.

2. Said Motion is untimely, frivolous and should be sanctioned.

WHEREFORE, PREMISES CONSIDERED, the Motion should be denied.

DAVID D. STEBBINS

BY: James E. Goldie

James E. Goldie, ABA#81073
Attorney at Law
P. O. Box 1595
Harrison, Arkansas 72602-1595
870-743-3013

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2015 APR 13 AM 8:40
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

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2015 APR 23 AM 11:33
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BOONE CO. CIRCUIT CLERK
BY _____ DC

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

ORDER

Plaintiff's Motion for Declaratory Relief is hereby denied.

It is so ordered on this 20th day of April, 2015.

Russell Rogers, Judge on assignment

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IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

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RHONDA WATKINS
BOONE COUNTY CIRCUIT CLERK
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DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Proposed Jury Instructions, pursuant to the Court's order, dated April 13, 2015.

1. Most of Plaintiff's proposed jury instructions were directly inspired by the Model Civil Jury Instructions. However, a handful of them were pulled from legal authorities form other sources. In the email that this Proposed Jury Instructions are attached to, Plaintiff will be providing links to each of the legal authorities that he is using to formulate his proposed jury instructions.
2. In the email where Plaintiff serves the Court with a copy of the Model Civil Jury Instructions and case law that Plaintiff used to formulate his pitch, Plaintiff will be including weblinks to the various legal authorities which Plaintiff used to support his pitch.
3. As far as appearing on the record in this case is concerned, Plaintiff points out that the only proposed instructions which were not pulled from the Model Civil Jury Instructions are Instruction Nos. 611, and 12. Instruction No. 6 comes from Plaintiff's hope that the Court will grant Plaintiff's Motion for Declaratory Relief, and Instruction No. 11 comes from the case of Anderson's Taekwondo Ctr. Camp Positive v. Landers Auto, 2014 Ark. App. 399.
4. Paragraphs 2-4 of Jury Instruction No. 11 are pulled from the precedent of *Kuehl v.*

1150

Burtis, 173 F. 3d 646, 650-651 (8th Cir. 1999). Plaintiff will also be providing several links to that precedent (that way, the Defense cannot object on the grounds that he personally doesn't recognize Google Scholar as a legal research tool).

5. Jury Instruction No. 7 is based, not on the Model Instructions themselves, but on the *comment* of Model Civil Jury Instruction No. 2439, which states, in pertinent part, the following:

> "In Christy v. Pilkinton, the Arkansas Supreme Court distinguished between objective impossibility (i.e., the thing cannot be done) and subjective impossibility (i.e., I cannot do it). Subjective impossibility does not discharge a party's contractual duty. The distinction between objective and subjective impossibility is not incorporated into this instruction. Instead, where the trial court determines that the alleged impossibility is solely subjective, it should not submit the issue to the jury." (citations omitted)

6. Last but not least, Jury Instruction No. 17 is based on the statute A.C.A. § 16-90-902. When trial recommences, Plaintiff intends to introduce evidence to rebute the Defendant's cross-examination of Rabekah Kennedy in order to prove that Plaintiff was, indeed, "completely exonerated." Thus, this jury instruction will become relevant.

7. It should also be noted that Jury Instruction No. 6 (unconscionable contract) is wholly inconsistent with Jury Instructions Nos. 4 and 5. If Plaintiff's Motion for Declaratory Relief is denied, then Jury Instruction No. 6 becomes inappropriate, and Instructions Nos. 4 and 5 become necessary. If the Court grants the Motion for Declaratory Relief, then Instructions Nos. 4 and 5 become inappropriate, and Instruction No. 6 is required.

8. These Proposed Jury Instructions should adequately inform the jury of what burden of proof each party has.

Wherefore, premises considered, plaintiff requests that these Proposed Jury Instructions be adopted.

So proposed on this, the 16th day of April, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1152

Jury Instruction No. 1

The Plaintiff claims that the Defendant breached a contract and has the burden of proving each of four essential propositions:

- First, that the Plaintiff and the Defendant entered into a contract;
- Second, that the contract required the Defendant to perform or not to perform a certain act;
- Third, that the Defendant did not do what the contract required of him
- Fourth, that the Plaintiff did what the contract required of him before the Defendant's breach, or that the Plaintiff's breach was excused.

If you find that the the Plaintiff has proved each of these propositions, then your verdict should be for the Plaintiff, and then, you should fix an amount of damages that you believe will compensate the Plaintiff for the consideration that he was denied as a result of the Defendant's breach. If, however, the Plaintiff has failed to prove any one or more of these propositions, then your verdict should be for the Defendant.

Jury Instruction No. 2

The parties do not dispute that a contract existed between them. As a result, the first of those essential elements I automatically established in the Plaintiff's favor.

Jury Instruction No. 3

The parties dispute whether either party did what the contract required of him. A party's failure to do what the contract required of him is a "breach" of the contract.

A "material breach" is a failure to perform an essential term or condition that substantially defeats the purpose of the contract for the other party. A material breach excuses the performance of the other party (and allows that party to sue for damages on the whole contract).

1153

A breach that is not material does not excuse the performance of the other party (but does allow the party to seek damages for the partial breach).

A breach occurs when a party repudiates the contract before performance is due. Repudiation may consist of a statement reasonably interpreted to mean that the party will not or cannot perform the contract. It may also consist of a voluntary affirmative act that renders the party unable to perform.

Jury Instruction No. 4

The Plaintiff argues that any breach on his part, prior to the Defendant's breach of the clause entitling the Plaintiff to full Internet access, were waived by the Defendant. To prove this affirmative defense, the Plaintiff has the burden of proving the following essential elements:

1. First, that the Defendant knew, or should have known, that he had the contract rights,
2. Second, that the Defendant knew or, with reasonable diligence, would have known, of the Plaintiff's behavior which was inconsistent with his contract rights, and
3. Third, that the Defendant, despite this knowledge, made the conscious choice NOT to terminate the contract when he had the chance.

This third element – failure to terminate – is proven if the Defendant continued to accept behavior from the Plaintiff that was consistent with his contract rights.

If you decide that the Plaintiff has proven all of these elements, then you must find that the Plaintiff had not breached the contract, and incorporate that finding into your decision regarding the contract dispute.

Jury Instruction No. 5

The parties dispute whether [plaintiff/defendant] did what their contract required of him. A party may recover on a contract even if he did not do everything that the contract required of

him if his performance was substantial.

The Plaintiff contends and has the burden of proving that he substantially performed his contract with the Defendant. Substantial performance cannot be determined by a mathematical rule. In determining whether performance was substantial, you should consider the following factors:

- The extent to which the Defendant will be deprived of the benefit that he reasonably expected;
- The extent to which the Defendant can be adequately compensated for the benefit of which he will be deprived;
- The extent to which the Defendant will suffer forfeiture;
- The likelihood that Plaintiff will cure his failure, taking into account all circumstances, including any reasonable assurance that the failure will be cured; and
- The extent to which the behavior of parties are consistent with standards of good faith and fair dealing.

If you find, after taking into consideration all of these factors, that the Plaintiff's performance under the contract was substantial, then the Plaintiff still has the right to recover against the Defendant.

Jury Instruction No. 6

This Court has determined that the contract is unconscionable. As a result, the Court has decided that it is in the best interests of justice to not enforce the provision of the contract that require the Plaintiff to show respect to the Defendant, as well as the provision requiring the Plaintiff to do labor around the house as determined by the Defendant, at the Defendant's sole discretion. Those two provisions may not be considered when determining if the contract was

breached by the Plaintiff.

Jury Instruction No. 7

And finally, the Defendant has given the excuse that he has no control over the Internet speed. As a matter of law, this is an insufficient defense. To be excused from his performance, performance under the contract must be literally impossible. A party's personal inability to perform under the contract does not excuse his obligation to do so.

Thus, you must not take that into consideration when determining if the Defendant breached the contract.

Jury Instruction No. 8

The Plaintiff also seeks damages against the Defendant for the tort of conversion. That is, in essence, the civil equivalent to the crime of theft.

To prevail on a tort of conversion, the Plaintiff holds the burden of proving the following essential elements:

1. First, that the Plaintiff was entitled to possess and enjoy the Internet router, and
2. Second, that the Defendant intentionally took or exercised dominion or control over the router in violation of the Plaintiff's rights.

Ownership is not always an essential element in conversion actions; withholding goods from those entitled to possession constitutes conversion. For example, if a financer repossesses a vehicle against a driver who has not defaulted on his payments, then even though the creditor technically remains the owner until the debt is paid, the financer is still liable to the driver for conversion.

Jury Instruction No. 9

Next, the Plaintiff claims that the Defendant committed a battery against him, and has the

1156

burden of proving the following essential elements:

- First, that Defendant acted with intent to cause some harmful or offensive contact with a person, or acted with the intent to create the apprehension of some harmful or offensive contact with a person; and
- Second, that a harmful or offensive contact with Plaintiff resulted.

It is entirely viable that the Defendant may have acted with intent to hurt somebody else, and hit the Plaintiff as a bystander due to, for example, bad aim. As long as he acted with intent to harm somebody, or intent to create the fear of same, and the Plaintiff got hurt in the crossfire, then the Defendant committed a battery against the Plaintiff.

If the Plaintiff has proven both of these essential elements, then your verdict, on the claim of battery, should be for the Defendant.

Jury Instruction No. 10

The Plaintiff claims damages from Defendant for malicious prosecution and has the burden of proving each of the following six essential propositions:

- First, that he has sustained damages;
- Second, that the Defendant caused civil or criminal proceedings to be initiated or continued against the Plaintiff.
- Third, that the proceedings were terminated in favor of Plaintiff.
- Fourth, that Defendant did not have probable cause for initiating continuing the proceedings;
- Fifth, that Defendant acted with an improper or sinister motive in initiating or continuing the proceedings against the Plaintiff; and
- Sixth, that the Defendant's acts were a proximate cause of some or all of the Plaintiff's

damages.

If you find from the evidence in this case that each of these propositions has been proved, then your verdict should be for the Plaintiff, against the Defendant; but if, on the other hand, you find from the evidence that any of these propositions has not been proved, then your verdict should be for the Defendant.

Jury Instruction No. 11

Probable cause" means the existence of facts or credible information that would induce a person of ordinary caution to believe that the person to believe the Plaintiff was guilty of attacking somebody with a knife.

However, when considering probable cause, you must consider the totality of the circumstances that the Defendant and the arresting officer had at their disposal at the time of the arrest. Because the totality of the circumstances must be considered, evidence which tended to exonerate the Plaintiff must be considered, even if significant incriminating evidence, standing by itself, may suggest that probable cause exists. An officer contemplating an arrest, and a civilian seeking an arrest, are not free to disregard plainly exculpatory evidence. So, if you find that either the Defendant, in seeking this arrest, omitted some relevant evidence from his accusations, you must make the finding that the accusation lacked probable cause.

If you believe that the lacerations were self-inflicted by the Defendant himself, then that is relevant evidence that the Defendant should have included in his accusations; his accusations lose probable cause without it.

Second and relatedly, law enforcement officers have a duty to conduct a reasonably thorough investigation prior to arresting a suspect, at least in the absence of exigent circumstances and so long as law enforcement would not be unduly hampered if the agents wait

to obtain more facts before seeking to arrest. An officer need not conduct a "mini-trial" before making an arrest, but probable cause does not exist when a minimal further investigation would have exonerated the suspect.

Jury Instruction No. 12

The Plaintiff claims damages from the Defendant for abuse of process and has the burden of proving each of the following five essential propositions:

- First, that a legal procedure set in motion in proper form, even with probable cause and ultimate success;
- Second, that the procedure was perverted to accomplish an ulterior purpose for which it was not designed; and
- Third, a willful act was perpetrated in the use of process in order to accomplish that ulterior purpose.

If you find from the evidence in this case that each of these propositions has been proved, then your verdict should be for Plaintiff; but if, on the other hand, you find from the evidence that any of these propositions has not been proved, then your verdict should be for the Defendant.

Jury Instruction No. 13

Next, the Plaintiff claims damages for the tort of defamation, and has the burden of proving the following essential elements.

- First, that the Defendant published a false statement of fact concerning the Plaintiff;
- Second, that the statement was defamatory, meaning that it had a tendency to tarnish the reputation of the Plainitff.
- Third, that the statement was made to a third party, and not the defendant. A police officer

suffices as a third party.

- Fourth, that the Defendant either knew it was false or that the Defendant acted negligently in failing to determine the truth before giving the statement.
- And fifth, that the statement was a proximate cause of one or more of Plaintiff's damages.

Jury Instruction No. 14

Last but not least, the Plaintiff claims damages for the tort of Civil Conspiracy, and has the burden of proving each of the following essential elements:

- First, that the Defendant and one or more co-conspirators knowingly entered into a conspiracy against the Plaintiff.
- Second, that the Plaintiff has proved all of the essential elements necessary to obtain a verdict against the Defendant on at least one of the underlying claims of battery, malicious prosecution, abuse of process, or defamation;
- Third, that one or more of the co-conspirators committed one or more overt acts in furtherance of the alleged conspiracy;
- Fourth, that Defendant, in entering in to the conspiracy, had the specific intent to harm Plaintiff;
- And fifth, that the conspiracy was a proximate cause to some, or all, of the Plaintiff's damages.

If you find from the evidence in this case that each of these propositions has been proved, then your verdict should be for the Plaintiff; but if, on the other hand, you find from the evidence that any of these propositions has not been proved, then your verdict should be for Defendant.

Jury Instruction No. 15

Next, I'm going to discuss with you how you should view the evidence.

1160

First and foremost, what is the burden of proof, anyway?

A party who has the burden of proof on a proposition must establish it by a preponderance of the evidence, unless the proposition is so established by other proof in the case. "Preponderance of the evidence" means the greater weight of evidence. The greater weight of evidence is not necessarily established by the greater number of witnesses testifying to any fact or state of facts. It is the evidence which, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any issue in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party who has the burden of proving it.

Jury Instruction No. 16

You are the sole judges of the weight of the evidence and the credibility of the witnesses. In determining the credibility of any witness and the weight to be given the witness's testimony, you may take into consideration the witness's demeanor while on the witness stand, any prejudice for or against a party, the witness's means of acquiring knowledge concerning any matter to which *[he][or][she]* testified, any interest the witness may have in the outcome of the case, and the consistency or inconsistency of the witness's testimony, as well as its reasonableness or unreasonableness.

Jury Instruction No. 17

Although you are the sole judges of the weight of the evidence, it is important for you to understand that, if a person's criminal charges are sealed pursuant to Arkansas Code, Title 16, Chapter 90, Subchapter 9 is deemed, as a matter of law, never to have occurred. Now, you are the sole judges of the weight of evidence, but if you believe that the Plaintiff has proven that his criminal charges were sealed pursuant to that subchapter, then it would be the belief of the Court

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– to the extent it may be useful in persuading your opinion – that he did not attack anyone with any knife on November 24, 2011.

Jury Instruction No. 18

If you find that a party intentionally destroyed, lost, or suppressed any potentially relevant evidence, with knowledge that it, or its contents, may be material to a pending or potential claim, you may draw the inference that the evidence, or contents of the, or an examination thereof, would have been unfavorable to that party's claim or defense. When I use the term "material" I mean evidence that could be a substantial factor in evaluating the merit of a claim or defense in this case.

Where relevant evidence is within the control of the party in whose interest it would naturally be to produce it, and that party fails to do so without satisfactory explanation, you may draw the inference that such evidence would have been unfavorable to that party.

Jury Instruction No. 19

The Defendant contends that it was the Plaintiff who breached the contract before the events of November 24, 2011. The Defendant holds the burden of proof on this contention.

Jury Instruction No. 20

The law frequently uses the expression "proximate cause," with which you may not be familiar. When I use the expression "proximate cause," I mean a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred.

This does not mean that the law recognizes only one proximate cause of damage. To the contrary, if two or more causes work together to produce damage, then you may find that each of them was a proximate cause.

Jury Instruction No. 21

1162

The fact that an injury occurred is not, of itself, evidence of fault on the part of anyone.

Jury Instruction No. 22

A person is intoxicated when he is influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or combination thereof, to such a degree that his reactions, motor skills, and judgment are substantially altered and, as a result, he constitutes a clear and substantial danger of physical injury or death to himself and others.

Whether a person involved in the occurrence was intoxicated at the time is a proper question for you to consider together with other facts and circumstances in evidence in determining whether he was negligent. Intoxication is no excuse for failure to act as a reasonably careful person would act. An intoxicated person is held to the same standard of care as a sober person.

Jury Instruction No. 23

If you find in favor of the Plaintiff on at least one claim, then you must then fix the amount of money which will reasonably and fairly compensate him for any of the following elements of damage sustained:

- $2,500 as the estimated cost of obtaining a motor vehicle. The Plaintiff estimates this as the fair market value because he does not know how much a vehicle would cost until he commits to buying one. If you think that's fair, then that is what you should award him.
- $2,610.12 for the costs of obtaining living arrangements, which the Plaintiff claims he had to do from inside jail because he claims it was the Defendant's fault for him being arrested.
- Time spent incarcerated.
- Loss of earnings capacity, either due to time spent incarcerated, or, if you feel that the

Defendant should be liable for this particular injury, the Plaintiff's inability to obtain paid work while he was defending against the criminal charges and prosecuting these civil charges, if you believe the Defendant should be liable.

- The reasonable expenses, including attorney fees, incurred by (plaintiff) in connection with the defense of the prior civil and criminal proceedings.
- Any pain and suffering and mental anguish experienced in the past and reasonably certain to be experienced in the future, including mental anguish.

Whether any of these elements of damage have been proved by the evidence, and how much they are worth is for you to determine. It is entirely your perogative to determine if you believe that the Plaintiff's mental anguish is worth a million dollars, like the Plaintiff has asked for.

In assessing the damages of (plaintiff), do not reduce the amount of the damages by any benefits, (such as workers' compensation benefits, insurance payments, etc.) received or to be received by, or on behalf of the Plaintiff, other than those which have been paid by, or on behalf of the Defendant. Any other reduction required by law will be made by the Court.

Jury Instruction No. 24

In addition to compensatory damages for any actual loss that (plaintiff) may have sustained, he asks for punitive damages from the Defendant. Punitive damages may be imposed to punish a wrongdoer and to deter the wrongdoer and others from similar conduct. In order to recover punitive damages from the Defendant, the Plaintiff has the burden of proving by clear and convincing evidence either

That the Defendant intentionally pursued a course of conduct for the purpose of causing an injury to the Plaintiff, or

1164

That he knew or ought to have known, in the light of the surrounding circumstances, that his conduct would naturally and probably result in injury damage and that he continued such conduct in reckless disregard of the consequences.

Or both.

"Clear and convincing evidence" is proof that enables you without hesitation to reach a firm conviction that the allegation is true. The Plaintiff maintains that the Defendant's actions, if proven by preponderance of the evidence, are necessarily malicious and heinous. If you agree with him, it is your prerogative to award punitive damages.

You are not required to assess punitive damages against Defendant but you may do so if justified by the evidence.

You may consider an award of punitive damages only if you found that the Plaintiff is entitled to recover compensatory damages.

If you believe that the Defendant acted recklessly, as opposed to maliciously, then your punitive damages cannot exceed three times the actual damages, or a flat one million dollars, whichever is greater.

However, if you believe that the Defendant's actions are malicious, then you may award however many punitive damages you feel are necessary to punish the Defendant and deter such conduct in the future. If you believe, for example, that the Plaintiff should prevail on the claim of civil conspiracy, and so, you believe that an extremely large punitive damages award is necessary to send a message, not just to the Defendant, but to the government as a whole, then it is your right to issue a punitive damages award of ten million dollars like the Plaintiff asks, or even a billion dollars, if you think that is what it would take.

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

FILED FOR RECORD
2012 MAY 22 AM 8:02

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT NOV OR, IN THE ALTERNATIVE, FOR NEW TRIAL

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Brief in Support of his Motion for New Trial.

Section 1: No Explanation Means Automatic Abuse of Discretion

1. Before we discuss the merits of the motion, it is important that this Court understand the law concerning the granting or denial of this motion.

2. Overwhelming precedent here in the State of Arkansas – as well as from the U.S. Supreme Court – has repeatedly stated that this omission of any explanation constitutes an automatic abuse of discretion!

3. Please see the following Arkansas case law:

   (a) *Little Rock Wastewater Utility v. Larry Moyer Trucking, Inc.*, 902 SW 2d 760, 766 (1995): "we have remanded for reconsideration when the trial court's order gives no explanation that can be founded in the proper application of the law. Here, the court did not give an explanation, and we do not know whether the ruling was erroneously founded in law."

   (b) *Vereen v. Hargrove*, 96 SW 3d 762, 768 (2003): "Here, the trial judge did not provide an explanation for his failure to award attorney's fees to appellees. When the trial judge's order gives no explanation that can be founded in the proper application of the law, it is

1188

necessary to remand for reconsideration."

(c) *Crockett & Brown v. Wilson*, 321 Ark. 150, 901 S.W.2d 826, 830-831 (1995): "the trial court should explain the basis of the sanction so a reviewing court may have a basis to determine whether the chosen sanction is appropriate … Here, the Pulaski Chancery Court failed to specify in its order how it determined why the $15,000 amount was appropriate in these circumstances … again, the trial court did not explain how it reached the monetary award ordered … We therefore reverse and remand"

4. See also the U.S. Supreme Court case of *Foman v. Davis*, 371 US 178 (1962), which is binding on this Court by way of the precedent of *Cooper v. Aaron*, 358 U.S. 1 (1958). Foman v. Davis states, in pertinent part, the following: "Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion." See id at 182.

5. With that said, we now turn to the merits of this motion:

BACKGROUND

6. During the trial, the Defense Attorney committed the following actions, among others, which deprived Plaintiff of a fair trial.

Instance No. 1: Usurpation of Plaintiff's Counsel.

7. On numerous occasions, during Plaintiff's direct examination, the Defense Attorney attempted to usurp the position of Plaintiff's Counsel by offering what he believed Plaintiff's testimony should be, including, but not limited to, the following:

(a) Wanting to offer an "expedited" evidence of Plaintiff's litigation history, so that Plaintiff would be viewed as an abusive filer without Plaintiff getting the opportunity to tell

his side of the story.

(b) Trying to get the Plaintiff to testify to the things he wanted the Plaintiff to testify to, rather than waiting for his turn to offer evidence and bringing it up on cross examination. Two examples are …

i. His request for the Court to force the Plaintiff to testify to his schizoid nature when Plaintiff was discussing his forensics report. When Plaintiff attempted to move for a mistrial on this matter[1], the Defense Attorney made a half-baked attempt to excuse ONE INSTANCE of this conduct, but never even attempted to justify all the other times.

ii. Asking the Court to force the Plaintiff to testify to someone else's testimony

8. These attempts to suggest litigation strategy on the Plaintiff's behalf might have been harmless if the Defense Attorney had approached the bench and submitted these suggestions in a whisper. However, he did not do that. Instead, he made his suggestions, out loud, in front of the jury. This had the prejudicial effect of the jury hearing evidence that was not actually admitted. This is prejudicial, because by the Defendant's own admission (as evidenced by his own Proposed Jury Instructions), the jury is not supposed to consider "remarks during the trial[2]" made by attorneys. However, attorneys often will attempt to insert these comments anyway, in the hopes that the jury will consider them anyway.

9. By interrupting Plaintiff's testimony and giving evidence (even evidence that was not admitted on record) before it was his turn to do so, he unfairly denied Plaintiff the benefits of the "Primacy Effect." The Primacy Effect is an aspect of human behavior where people (in this case, jurors) tend to give more weight to evidence they hear first in a sequence. For example, people

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1 By the way, the Court denied Plaintiff's Motion for a Mistrial for absolutely no reason at all. Remember Section 1 of this Motion, showing how that automatically constitutes an abuse of discretion. If this Court does not correct its own error by granting this motion, then it's just going to be overturned anyway. You might as well save the taxpayers the money.

2 Pulled from Paragraph (e) of AMI 103 Respective Duties of Judge and Jury—Cautionary Instructions.

form a more positive impression of someone described as "intelligent, industrious, impulsive, critical, stubborn, envious" than when they are given the same words in reverse order.[3]

10. By improperly inserting his own evidence (regardless of whether it was admitted on the record or not) before it was his turn, he unfairly denied Plaintiff the benefits of the Primacy Effect. Thus, it is very easy to assume that, were it not for that improper insertion of evidence before it was his turn, the effect of the case might have been different.

Instance No. 2: The unlawful "remark made during trial" on Day 2.

11. Speaking of attempting to unlawfully instill thoughts in the jury's minds with extra-evidentiary comments, that happened again during Plaintiff's rebuttal evidence, and this time, he did not even try to thinly disguise it as an a suggestion of alternative litigation strategy; this time, he freely admitted that all he was doing was attempting to unlawfully influence the jury by giving them a statement to consider to counter-act Plaintiff's evidence.

12. Specifically, when Plaintiff was attempting to introduce a copy of his Order to Seal as evidence that Plaintiff was, indeed, exonerated, Goldie inserted his remark that "In order to seal a record, there has to be a record in the first place."

13. This was, undoubtedly, done for the purpose of causing the jury to consider it. Because what else could it possibly have been for? No other goal makes any sense.

14. But it was improperly inserted into the proceedings by an attorney who already admitted that the jury is not supposed to consider it, and, in doing so, stripped Plaintiff of his right to a fair trial.

Section 3: Numerous Rule 105 Violations

15. On numerous occasions during the trial, the Defense introduced evidence of prior things

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3 Pages 197–200 of "Thinking and Deciding (3rd ed.), written by Jonathan Baron and published in 2000 by Cambridge University Press. ISBNP: 0-521-65030-5."

that Plaintiff allegedly did, or about Plaintiff. Many of these things were clearly inadmissible under various rules of Evidence, including ARE Rule 402, ARE Rule 404(b), ARE Rule 701, and, most commonly, ARE Rule 802.

16. Perhaps the worst example of this came during Day 2 of the trial. When conducting direct examination of the Defendant himself, the Defense Attorney used the forensics report that Plaintiff introduced to show evidence that somebody – who wasn't even called as a witness at that trial – had told somebody else, over the phone, that Plaintiff had acted in a way that person considered to be excessively violent, and for that matter, did not even give any specific instances of conduct, only that Plaintiff was violent with that person. What was already heavily opinionated and conclusory was made even more inadmissible by the fact that it was not merely hearsay, but hearsay within hearsay.

17. Another good example came during Plaintiff's cross examination. When his attempts to get Plaintiff to testify to the University of Arkansas' hearsay accusations that Plaintiff had formulated some "grand scheme" to murder his father four years in the making, he brought it up on cross examination. Plaintiff objected to this evidence on the grounds that A) it was hearsay, and B) it was inadmissible under ARE Rule 404(b). At first, Goldie asked Plaintiff to simply admit that it was there, "whether it's true or not," suggesting that he had some other plans for this evidence, beyond simply to prove the truth of the matter asserted. However, later in that trial, when Plaintiff was trying to introduce some similar evidence, Goldie freely admitted that he introduced that evidence for the express purpose of showing that the Plaintiff held a vendetta against the Defendant, meaning that he introduced the hearsay evidence for the purpose of proving the truth of the matter asserted.

18. Other examples include, but are not limited to, the following:

(a) Attaching evidence of an order in a federal case that was hearsay, and for that matter, did not even solidly prove anything.

(b) Referencing testimony from a deposition transcript where the Defendant made references to some things Plaintiff allegedly did in the past. Instead of, you know, simply having the Defendant testify to those things all over again, he instead opted to have the Defendant read his own previous testimony.

19. There were plenty other instances, besides these, where the Defendant introduced prejudicial evidence. What this section discusses, however, is not so much the evidence itself, but the Defense Attorney's shallow attempts to justify the evidence.

20. In nearly every instance where he attempted to introduce evidence in violation of any of the above Rules of Evidence, his only grounds for saying that they are admissible was that … the Plaintiff himself produced the exhibits. On the issue spoken of in ¶ 16 of this Brief, his argument against Plaintiff's objection was literally reduced to a single sentence: "He brought it up!" The Defense Counsel spoke as if this was all that needed to be said on the matter, as if Plaintiff's introduction of evidence for one purpose instantaneously stripped Plaintiff of standing to object to the evidence's use for any other purpose, and that the Defense was then free to use that evidence for any purpose they desired, even if the evidence would not be admissible for that purpose if Plaintiff had not introduced it. Moreover, he spoke as if this was well-established law; like it was common knowledge among legal circles, and that anyone who had a legal education regarded this legal doctrine as second-nature.

21. This excuse is patently frivolous, and to support that, Plaintiff cites Arkansas Rule of Evidence #105. This Rule states "Whenever evidence which is admissible as to one [1] party or for one [1] purpose but not admissible as to another party or for another purpose is admitted, the

court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."

22. During these numerous objections, Plaintiff tried to explain to the Court that the evidence still has to be admissible for the purposes they using it for. But every time Plaintiff tried to explain that to the Court, Goldie just repeated his line "***He*** brought it up!" as if that was the bottom line.

23. Whether Plaintiff "brought it up" or not is of no consequence whatsoever, as ARE Rule 105 clearly shows. This Court clearly committed numerous reversible errors when it allowed these numerous pieces of prejudicial evidence to be admitted, simply because the Plaintiff had already produced an exhibit which may or may not have supported the Defendant's position.

Section 4: Judicial rulings on weight of evidence

24. This happened most often when Plaintiff was attempting to show evidence of the Defendant's inconsistencies, but it happened in other circumstances as well.

25. The Defense Attorney objected to numerous exhibits that Plaintiff attempted to introduce. However, he did not state any grounds for why the evidence should be inadmissible. Instead, he argued that the evidence did not prove what Plaintiff claimed it to prove. He then asked the Court – not the jury, but the Court – to decide which side the evidence favored.

26. This was a clear abuse of judicial authority. By the judge's own admission, when it was instructing the jury on the law, it is the JURY'S job, not the judge's, to determine the weight of the evidence.

27. Plaintiff was most heavily prejudiced on this matter when he attempted to introduce written threats made by the Defendant – either the Defendant himself, or through counsel – threatening to collaborate with the government to deny Plaintiff access to the courts. The

Defense Attorney offered his own take on the matter, and the Court simply decided that, since he personally did not believe that the letters proved what Plaintiff offered them to prove, the jury was not going to get the opportunity to disagree with it.

28. If a plaintiff or prosecutor introduces security camera footage to show that the Defendant did something, and the Defense Attorney argues that the person in the footage is "clearly not the Defendant," or that the footage is too blurry to make any solid determinations, that is for the jury to determine, not the judge. Camera footage of the alleged incident is relevant, and so the judge must admit it for the jury to evaluate it.

29. Likewise, if the letters threatening to deny Plaintiff access to the courts do not, in fact, show evidence of participation in a conspiracy, that is for the jury to decide.

30. If the Defendant wishes to counter the evidence, he may do so. But he must do so without making extra-evidentiary remarks, like what was complained in ¶¶ 15-23 of this Brief. He must produce actual *evidence*, meaning that he has to wait his turn to cross examine the witness, and then, and only then, can he cross examine the witnesses on what the evidence actually means. He can also introduce rebuttal evidence to impeach Plaintiff's exhibits, but his uncorroborated word is not rebuttal evidence, and even if it was, whether it actually succeeds at rebutting Plaintiff's evidence is for the jury to decide, not the judge.

31. If the Defense Attorney wants to offer his own word as to the true nature of the evidence presented, he must first be sworn in as a witness, give actual *testimony* that is subject to perjury, and become subject to cross examination.

32. That is actually allowed, believe it or not. ARE Rules 605 and 606 prohibit judges and jurors from testifying as witnesses, but there is no such rule against counselors of record testifying as witnesses. So, the Defense Attorney would absolutely be allowed to testify himself

if he wanted to. But in the previous trial, he did not do that; instead, he offered his uncorroborated, not-under-oath statements, and asked the judge to usurp the position of jury and decide the weight of those statements (which, to repeat, were not even under oath) on the jury's behalf.

Section 5: The Defendant's Testimony

33. When Plaintiff was questioning the Defendant himself, the Defendant gave the following testimony:

34. First, he admitted that he drafted the contract with terms that heavily favored him, simply because Plaintiff was in an economically disadvantaged position at the time.

35. He admitted that, in light of parole evidence and prior experiences, "Full" Internet access meant … Internet access that was unhampered by anyone else's usage. The contract provided a narrow exception for the Defendant and his wife, but no one else.

36. He admitted that, on November 24, 2011, Plaintiff was deprived of "Full" Internet access, as defined by the aforementioned parole evidence.

37. He admitted that he could not prove that it was impossible for anyone – not just him, but anyone at all – to fix the deficient Internet speed.

38. He was unable to give any specific incidents where he ordered Plaintiff to perform any tasks.

39. He admitted that he punched Plaintiff, but did so in self-defense. Although the Defense Attorney tried to sugarcoat his client's testimony by saying "he said he *might have* hit the Plaintiff when trying to defend himself," the fact of the matter is that the Plaintiff confirmed the Defendant's testimony before placing his objection. Specifically, what Plaintiff remembers is thus:

(a) He asked the Defendant how he got the lump on his eye. He expected the Defendant

to stick to the story given in the Interrogatories, where he said "Plaintiff self-injured himself." At that point, he was planning on using the Defendant's UA Deposition to impeach him, where the Defendant stated that he did not believe that any sane person would injure themselves.

(b) Instead, he said he believed he hit Plaintiff while defending himself.

(c) Half-shocked and half-pleased by the Defendant's testimony, Plaintiff proceeded to ask a clarification question: "Okay, but you admit that you punched me? In self-defense, or otherwise, your fist made contact with my skin, correct?"

(d) The Defendant responded in the affirmative.

(e) It was then, and only then, after the Defendant had locked himself into that version of events, that the Plaintiff placed his objection to the "self-defense" argument, on the grounds that it was being introduced for the first time that case in violation of Plaintiff's discovery rights.

40. So, we absolutely have a confession of *prima facie* battery on our hands.

LAW AND DISCUSSION

41. For the reasons set forth below, this Court should nullify the jury's verdict, and issue a judgment in Plaintiff's favor, or in the alternative, schedule a new trial.

Section 1: Judgment N.O.V.

42. The standard for granting a Motion for Judgment NOV is the same as that for granting a Motion for Directed Verdict. See Spink v. Mourton, 362 SW 2d 665, 667 (1962) ("as counsel for the Spinks rightly concedes in his brief, the motion for judgment n. o. v. was properly denied unless it can be said that the trial court should have directed a verdict in favor of the plaintiffs"). See also Satterfield v. Rebsamen Ford, Inc., 485 SW 2d 192, 195 (1972) ("It is now well settled

in Arkansas that the test for granting a motion for judgment n.o.v. is the same as the test for granting a motion for a directed verdict").

43. Although "a directed verdict [or judgment n.o.v.] for the plaintiff is a rarity," (see *Spink* at 667) there are a few instances where it is appropriate: where "such fact is admitted, or is established by the undisputed testimony of one or more disinterested witnesses and different minds cannot reasonably draw different conclusions from such testimony." See *id.*

44. When denying Plaintiff's numerous motions for directed verdict, the Court simply said "that's a fact question." But the simple bottom line is that the Defendant *admitted* to the underlying facts! That is one of the few times directed verdict in the Plaintiff's favor is appropriate.

45. Directed verdict – and, by proxy, judgment nov – is not discretionary. Either the movant is entitled to have it granted, or the non-movant is entitled to have it denied. In the instant case, the Defendant admitted to the matter, and therefore, Plaintiff was plainly entitled to directed verdict.

46. Since this Court violated the precedents spoken of in ¶¶ 3-4 of this Brief when it denied Plaintiff's motions for directed verdict for no reason, it can redeem itself by granting this Motion for Judgment NOV. If it wishes to deny the Motion for Judgment NOV, remember that a failure to give any explanation whatsoever constitutes an automatic reversible error; the Appellate Court is not going to sit there and try to read the trial court's mind and figure out why the trial court ruled the way it did; if the trial court does not explain itself, the Appellate and Supreme Courts have historically reversed and remanded just on that alone.

47. In the event that this court denies the Motion for Judgment NOV for whatever reason, Plaintiff moves, in the alternative, for a new trial.

1198

Section 2: New Trial

48. "A new trial may be granted to all or any of the parties and on all or part of the claim on the application of the party aggrieved, for any of the following grounds materially affecting the substantial rights of such party: (1) any irregularity in the proceedings or any order of court or abuse of discretion by which the party was prevented from having a fair trial." See Ark.R.Civ.P. 59(a).

49. In ¶¶ 7-32 of this Brief, Plaintiff pointed out three different types of violations that the Defense *repeatedly* subjected Plaintiff to.

50. The entire case was, essentially, a question of Plaintiff's credibility versus the Defendant's. Plaintiff attempted to discredit the Defendant by pointing to the numerous times the Defendant suppressed and destroyed potentially relevant evidence while Plaintiff attempted to obtain evidence that was not subject to witness credibility, but at the end of the day, because of the Defendants' destruction of evidence, it ultimately came down to a credibility contest.

51. This means that anything which affects – positively or negatively – the credibility of either party, or anything which has a tendency to "smear" either party's name, must be presumed to have had an effect on the outcome of the case.

52. In many cases, the Court of Appeals and the Supreme Court have affirmed verdicts in cases where evidence was wrongly admitted on the grounds of "harmless error," but in most of those cases, there was plenty of evidence to support the verdict, even without the prejudicial evidence. For example, in the case of Abernathy v. State, 925 SW 2d 380 (1996)[4], the Arkansas Supreme Court affirmed the defendant's conviction for domestic battery, despite acknowledging that evidence of prior actions was wrongfully admitted in violation of ARE Rule 404(b).

---

4 Although this is a criminal case, the Arkansas Rules of Evidence are the same for all types of courts, and so, it is still applicable here.

53. However, in that case, it was NOT an otherwise simple matter of the ex-girlfriend's word versus that of the Defendant. In that case, the State had plenty of direct evidence of the act itself to support the conviction, including, but not limited to …

- The disinterested testimony of one of the other party guests who saw the Defendant leave the party in a fit of rage when he heard that his girlfriend had done Action X, which angered him.
- The disinterested taxi records showing that the Defendant left the party for his apartment moments after that party guest testified that the Defendant left the party.
- The disinterested testimony of the Defendant's neighbor, who overheard the Defendant beating his girlfriend moments after the taxi records showed that he arrived at his home.

54. So, even without the prejudicial evidence of a prior bad act, it was still abundantly clear that Mr. Abernathy was guilty of domestic battery.

55. Here, without all of those alleged incidents from Plaintiff's past, and without all that hearsay evidence to smear Plaintiff's name, the Defendant is reduced, entirely, to his own, uncorroborated testimony … testimony which he went out of his way to make sure was unsupported by any evidence.

56. Without all that prejudicial and smearful evidence talked about and referenced in ¶¶ 7-32 of this Brief, the evidence on record is limited to the following:

- Defendant claims that Plaintiff attacked him with a knife. There were no witnesses.
- The Defendant destroyed several pieces of evidence, including the blood patterns on the pillow.
- The Defendant outright refused to go to the hospital. He *claims* that it was because he did not know that a doctor could look at the laceration patterns and tell if they were self-

inflicted or not, but he has no evidence of that besides his word.

- The Defendant has lied several times in this case, tarnishing his credibility in ways the Defense never placed any objections to.
- Plaintiff asked for fingerprint evidence, proving that he is either innocent or insane, and a forensics evaluation proved that Plaintiff was sane.
- Plaintiff's mother testifies that Plaintiff is honest and tells the truth … testimony the Defense never placed any objections to.
- The government has a motive to persecute Plaintiff: Plaintiff has filed some lawsuits that they don't like.
- Plaintiff's former apartment eviction showed evidence of corruption: Inconsistent court rulings.
- Plaintiff's criminal charges showed evidence that the prosecutor only cared about getting Plaintiff to stop filing lawsuits: Specifically, the plea offer submitted to Plaintiff.
- Plaintiff had testimony – testimony which Rita Stebbins says is honest – that he had received two written threats from the Defendant, threatening to collaborate with the government to deny Plaintiff access to the courts. Although the exhibits were not admitted, Plaintiff's testimony (endorsed by Rita Stebbins) was allowed without objection.
- David Upton testifies that Plaintiff was arrested before the police even laid eyes on the crime scene in the house. Thus, their collection of evidence could very easily have been tainted by confirmation bias.

57. In light of the evidence that remains if you get rid of all the evidence complained about in ¶¶ 7-32, it is very reasonable to assume that a jury would side with Plaintiff instead of the

Defendant. Therefore, Plaintiff has, indeed, shown prejudice in this motion.

58. Additionally, the case of *Abernathy v. State* also sets some ground rules regarding when evidence of prior bad acts is to be allowed. Specifically, Pages 381 to 382, where the precedent states, in pertinent part: "We have interpreted this rule as permitting introduction of testimony of other criminal activity if it is "independently relevant to the main issue — relevant in the sense of tending to prove some material point rather than merely to prove that the defendant is a criminal — then evidence of that conduct may be admissible with a proper cautionary instruction by the court."

59. The precedent then goes on to state the following:

> "Although the courts have been receptive to uncharged misconduct offered to disprove accident, there are restrictions on the introduction of evidence for this purpose. As is generally true under Wigmore's theory, the uncharged act must be similar to the charged act. Wigmore's theory rests on the doctrine of chances, and the evidence does not trigger the doctrine unless the charged and uncharged acts are similar."

60. Thus, in order to be admissible under Rule 403, the Defendant must introduce acts in which …

(a) The Plaintiff attacked somebody

(b) with a knife

(c) for entirely selfish purposes (because remember: If you're trying to prove motive, then the motive of the prior act is important).

61. If the Defense cannot show evidence of any such incidents, then the evidence is unfairly prejudicial. Instead, the closest the Defense came to showing such a prior incident was some alleged conversation with a University of Arkansas agent, where we do not even have the original declarant testifying. But even then, by that written document's own admission, did not even reslt in an actual knife attack, let alone do we know the motive behind it?

1202

62. As a result, Plaintiff is entitled to vacation of the jury verdict.

Section 3: Cumulative Error doctrine

63. Even if the Court were to determine that any one of these deficiencies were not enough to deprive the Plaintiff of a fair trial, the fact is that the Defense Attorney engaged in numerous acts of misconduct.

64. These acts, collectively, deprived Plaintiff of a fair trial, even in the unlikely event that any one of them did not. Therefore, Plaintiff is still entitled to a new trial, by reason of the "cumulative error" doctrine.

65. See *Dillon v. State*, 844 SW 2d 944, 949 (1993)[5]:

> "As in Soares, the [attorney]'s accumulated remarks in this case combined to deny [the opposing party] a fair trial. One comment built on the next until the jury could readily have believed that [the opposing party] had … repeatedly [engaged in bad acts in the past]. Yet the [attorney] offered no evidence that any one of these accusations was true. The net result was guilt by insinuation.
>
> We cannot say that the [attorney]'s comments, overly zealous as they were, did not taint the jury's decision and, indeed, we conclude exactly to the contrary. Our system of … justice is founded on the twin cornerstones of fairness and proof … Here, the appellant was subjected to an onslaught of accusations which he had no way of defending against because the accusations were unsubstantiated. The prejudice to his case was palpable."

66. The circumstances in that case are greatly similar to those in this case, as Plaintiff has demonstrated when he simply substituted names for their role in the case, to show how that case is almost completely interchangeable with this one, especially the part where it says that he "offered no evidence that any one of these accusations was true." This makes it directly binding in the current action.

67. See also See also *Howard v. State*, 238 SW 3d 24, 51 (2006): "We have before us a case where a combination of errors by the court, by counsel, and by the State have deprived Howard

5 Again, since the rules of evidence are the same for all types of courts, it is of no consequence that this case is a criminal case; it is still binding precedent on the current matter.

of a fair trial." See also *Smith v. State*, 2011 Ark. App. 110: "[W]e reverse where an accumulation of errors, though each one individually insignificant, would warrant a finding that the [prevailing party] made no effort to comply with the rules."

68. Therefore, Plaintiff is entitled to a new trial, since the Defense Counsel's repeated conduct deprived Plaintiff of a fair trial.

CONCLUSION

69. WHEREFORE, premises considered, Plaintiff respectfully prays that the Motion for Judghment NOV or in the Alternative for New Trial be granted, that the Defense be made to pay for the costs of the new trial, and any other relief to which Plaintiff may be entitled.

So requested on this 22th day of May, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1204

Russell Rogers
Circuit Judge
Retired on Assignment
P.O. Box 365
602 South College
Stuttgart, AR 72160

Phone: (870) 673-1162
Fax: (870) 673-2480

June 2, 2015

Mr. Jim Goldie
P.O. Box 5595
Harrison, AR 72602

Mr. David A. Stebbins
123 W. Ridge St., Apt. D
Harrison, AR 72601

Re: David A. Stebbins v. David D. Stebbins
Boone County Circuit Court, Civil Division
Case No. CV-2012-85-4

Gentlemen:

The following is a letter opinion and ruling as to the post trial motions.

The plaintiff, David A. Stebbins, has filed a post trial Motion for Judgment NOV or in the Alternative for New Trial.

The plaintiff exhibits remarkable tenacity in his arguments despite each one containing only a faint glimmer of the truth. He also is rather adept at finding and arguing rules of law which have no application to or basis in the facts of this case.

As to not giving reasons for granting or denying motions, just as in the past three or four hundred trials I have conducted, the majority of the objections made at this trial were in the form of "objection, hearsay"; "objection, not relevant", "objection, asked and answered", therefore any further explanation would be of little use. As to some objections, I inquired as to the basis and then granted or denied. Some objections were granted or denied without comment, but neither party inquired as to the reason at the time. Only later on the second day of trial did plaintiff ask for an explanation as to the basis of a ruling and it was given.

1219

Insofar as I can determine from his motions, the Plaintiff is complaining about the Defendant's attorney representing his client and trying his case in a usual and competent manner.

The question of juror and court reporter fees is one I hope can be reserved and treated as a prayer for an advisory opinion.

Witness and attorney's fees were awarded by the jury. The Defendant's attorney and the witnesses are not county or state employees; therefore pauper's status is no shield against judgment being entered, as requested by the jury.

Mr. Stebbins uses his medical condition, if such truly exists, as a weapon, and reacts to the very edge of a total loss of self control whenever he perceives that anyone might dare disagree with him.

Plaintiff has abused his rights to due process to a degree this court has never before seen. I cannot see any rational basis for his numerous suits. I believe him to be not just a nuisance but, far more importantly, a danger to himself and to others.

Plaintiff's motions are accordingly denied.

Yours truly,

Russell Rogers
RR/klw

1220

FILED FOR RECORD
2015 JUN 11 AM 8:41
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

PLAINTIFF'S SECOND MOTION AND INCORPORATED BRIEF IN SUPPORT THEREOF FOR NEW TRIAL AND TO RECUSE

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Second Motion for New Trial, and also, for the Court to recuse himself.

1. When denying the Plaintiff's First Motion for New Trial, the Court made the following remark: "I believe [the Plaintiff] to be not only a nuisance but, far more importantly, a danger to himself and to others." In other words, the Court has now freely admitted that he holds a personal bias against the Plaintiff, for whatever reason.

2. "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: The judge has a personal bias or prejudice concerning a party or a party's lawyer." See Rule 2.11 of the Arkansas Code of Judicial Conduct.

3. Plaintiff has already moved to recuse Circuit Judge Gordon Webb on this matter, when his Court manager had admitted to holding a personal bias against the Plaintiff. Webb declined to do so, but only on the grounds that his court manager performed purely ministerial tasks that did not impact the merits of the case in any way, shape, or form. See the transcript of the motions hearing in the above-styled action, dated September 23, 2013.

4. That excuse cannot be used here. Judge Rogers has admitted to holding a bias against the Plaintiff, and therefore, Plaintiff's *absolute right*[1] to an impartial judiciary has been taken from

1 Tumey v. Ohio, 273 US 510 (1927) ("No matter what the evidence was against him, he had the right to have an

1221

him.

5. Plaintiff asks this Court to do what is necessary to avoid a JDDC sanction (see *Huffman v. Judicial Disc. & Disability*, 42 SW 3d 386 (2001) (where the AR Supreme Court declined to overturn a JDDC sanction because "failure to recuse when required" was a sanctionable offense) and recuse himself from the case where he, himself, freely admitted he was incapable of rendering an impartial ruling.

6. The Court should also nullify every ruling he made in the case which was entered by him, since he has now admitted that it is tainted by bias (after all, since the case is now over, if the judge recuses but the rulings stay, then what is the point?). This should be true, even if the Court were to assure us that its rulings were still fair and impartial despite his self-confessed bias; see *Perroni v. State*, 186 SW 3d 206, 219 (2004) ("The Supreme Court has explained that 'when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from view, and we must presume the process was impaired'").

So requested on this, the 10th day of June, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

impartial judge"). Aetna Life Ins. Co. v. Lavoie, 475 U. S. 813, 822-825 (1986) (same); Ward v. Monroeville. 409 U. S. 57, 58-62 (1972) (same); Johnson v. Mississippi, 403 U. S. 212, 215-216 (1971); Bracy v. Gramley, 520 U. S. 899, 905 (1997); In re Murchison, 349 U. S. 133, 137-139 (1955)

1222

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2015 JUN 29 PM 1:49
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY

DAVID A. STEBBINS PLAINTIFF

VS CASE NO.2012-85-4

DAVID D. STEBBINS DEFENDANT

RESPONSE TO ORDER TO SHOW CAUSE IN CONNECTION WITH PLAINTIFF'S SECOND MOTION FOR NEW TRIAL AND TO RECUSE

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Response to the Court's Advisory Letter dated June 26, 2015, ordering the parties to "explain, advise, and comment" on the ex parte communications between Jim Goldie and Kristie Williams that have been happening throughout the course of the proceeding.

FACTUAL BACKGROUND

1. Because the discussion of the ex parte communications has, for the most part, taken place off the record, Plaintiff will include a brief background of the matter, so that it will appear on-the-record for purposes of preserving it for appellate review.

2. On June 15, 2015, Defense Counselor, Jim Goldie, filed his "Answer to Second Motion for New Trial and to Recuse." In this Answer, at the beginning of Paragraph #3, Golie states "The Court was well awsare that after the jury verdict the Plaintiff within twenty four (24) hours drank a substantial amount of bleach as a suicide attempt over the jury verdict and Plaintiff was in the hospital."

3. Plaintiff quickly reasoned the following things:

(a) There are any number of ways that Rogers could have heard this rumor.

(b) However, at no point, on the record, did Rogers ever state that he knew of this event.

(c) Thus, even if Goldie may have known of the event, also, how could Goldie possibly

1230

have known that Rogers also knew of the event?

(d) Since there was never any communication, on the record, where Rogers announced that he knew of the event then the two had to have had the conversation OFF THE RECORD!

(e) They live and work 180 miles apart from each other. As a result, it is extremely unlikely that they were just friends, and therefore, their conversation was, almost certainly, not a "social call." Instead, it was much, much more likely that the two were discussing case-related materials.

(f) The odds that they were discussing case-related materials is made even more probable by the fact that my actions, after the jury verdict, somehow became relevant in their conversation. After all, regular people are not going to have a conversation about your job at the bank, and then, for no reason whatsoever, just randomly ask "Anyway, how's your sex life?" If they're going to discuss something I may or may not have done after the jury verdict, they were, in all likelihood, already talking about me to begin with.

4. Plaintiff then sent an email to both Rogers and Goldie, explaining his logic. A copy of that email is heretofor attached as **Exhibit A**.

5. On Saturday, June 20, 2015, Plaintiff received, in the mail, a letter from Goldie, ostensibly dated June 19, where he freely-admitted to having communications with Judge Rogers' *secretary*, Kristie Williams. A copy of this letter is hereby attached as **Exhibit B**.

6. Plaintiff proceeded to issue several more emails (all of which are hereby included as **Exhibits C, D, and E**) further explaining how these communications are still illegal, and that it does not matter whether Goldie used a liaison for them.

7. On June 26, 2015, at 4:29PM, Kristie Williams emailed Plaintiff and Goldie with a copy

of an advisory letter from Russel Rogers, where he attached all the emails he was able to get his hands on, and ordered the parties to "explain, advise, and comment" on them by Tuesday (June 30, 2015) by 4:00PM. A copy of this advisory letter and all the emails attached thereto are being attached as **Exhibit F**.

8. It is in response to this advisory letter that Plaintiff now submits the current pleading.

ANALYSIS OF EMAILS

9. Let's get the stuff the Judge actually *wants* to hear out of the way first: Plaintiff has received copies of NONE of these emails! Every one of them that has been attached by the Judge's advisory letter are new to Plaintiff. Regarding the emails with attachments, Plaintiff has, indeed, received copies of the attachments (or at least, he has received copies of documents with the same title, and so he has no evidence that they are not the same), but not the bodies of those emails.

10. Now on with the stuff that Judge Rogers didn't expressly ask for: The advisory letter that is attached as **Exhibit F** shows Goldie initiating communication with Kristie Williams on numerous occassions, for the express purpose of DISCUSSING THE THE UNDERLYING CIVIL ACTION! What's worse, he discusses the *merits* of the matter, rather than it being purely administrative discussion.

11. Indeed, judging from what Goldie is actually saying in these emails, it is apparent that he is not contacting Williams for the sake of contacting Williams; to the contrary, the content of these emails clearly suggests that he was sending them for the express purpose of having Williams relay them to Rogers.

12. Examples of things said in these emails that suggest that include, but are not limited to, the following:

(a) "I just got the letter yesterday. I then contacted the Clerk as to the jury costs. The clerk was not available both yesterday and today. I cannot do the impossible." Offered as an excuse as to why he did not fulfill his obligations in a timely manner. Thus, it is merits-related.

(b) "Unfortunately, the Plaintiff does not realize that the judge is not an 'officer' under the terms of the Webb Order and the statute that allows attorney fees in contract cas4s' cannot be waived in advance by Judge Webb." Clearly providing a counter-argument to the merits of Plaintiff's "Response To Motion And Brief On Juror Compensation And Court Reporter Charge," filed on May 28, 2015 at 1:03PM.

(c) "Of course that means police officers and not the Judge. Also, Judge Webb cannot in advance waive any attorney fees that the statute on contracts allows." Again, arguing against the merits of Plaintiff's on-record response.

13. Even if the communications were exclusively administrative in nature, they would only be lawful if Plaintiff were served with a copy of them. See Rule 2.9(A)(1)(b) of the Arkansas Code of Judicial Conduct. But when the communications are directly addressing the *merits of the case*, there is no excuse.

14. Before, Plaintiff was merely speculating that the communications were likely case-related. Now we KNOW they were case-related, and thus constituted unlawful ex parte communications.

15. Next, Russel Rogers claims that he did not realize that Goldie's emails were not seconded to Plaintiff. However, even if Rogers were telling the truth (which he is most likely not), Kristie Williams can NOT give that same excuse. To prove this, please find attached **Exhibit G**, where

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1 On a side note. Goldie complains about an alleged lack of professionalism, yet he doesn't think to spell-check his messages before he publishes them?

Kristie Williams sent Plaintiff an *ex parte* email, but only because Plaintiff had expressly asked about it.

16. She obviously noticed that Plaintiff was not CC'd the email, but if Plaintiff had no expressly asked about it, she would not have sent a copy thereof to Plaintiff. It is, therefore, reasonable to assume that every other email she received from Goldie was received by her with the same "because you didn't ask" attitude. So, even if Rogers could convince the JDDC that he did not do this on purpose, Williams has no such excuse.

17. Now let's talk about the statement Rogers made in his advisory letter, where he said "I have not seen the email from Ms. Williams referring to 'Mr. Stebbins doing something foolish' and it is not available." Judge Rogers seems to be of the opinion that, if Plaintiff does not see the email, Plaintiff will be unable to prove that the communication was prejudicial. Kind of like how, when an inmate sues his jail or prison for abusing him, they can simply delete the camera footage, and the inmate/plaintiff will be unable to prove that the jail guards did anything illegal in the first instance. While that may be true in cases of incarceration, in the current case, the boot is going to be on the other foot.

18. See, Goldie (and now, Judge Rogers) has *admitted* to holding ex parte communications with Kristie Williams. Plaintiff does not have to prove that; it is confessed.

19. Rule 2.9 of the Arkansas Code of Judicial Conduct states "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, ***except*** as follows." The key word, here, is "except." This means that ex parte communications, of any variety, no matter how big or small, are prohibited under a blanket proscription, and those few, narrowly-defined exceptions are "affirmative defenses." What that

means is … the Respondent is presumed guilty of the offense, and it is the respondents' burden of proof to show that one of the affirmative defenses exists. Because that's why it is called an *affirmative **defense***: Because the *defendant* holds the burden of proof (it's one of those "Why is the US capitol building called 'the White House'" kind of things … or "Why is Mars called 'the Red Planet'" … or "the chemical that protects my couch from scotch spills is called 'Scotch Guard'").

20. So, by destroying the evidence[2], the three of you have shot *yourselves* in the foot, not Plaintiff.

21. Besides, even if Plaintiff holds the burden of proof, here, he still has evidence that the statement about Plaintiff doing "something foolish" was case-related and merits-related. Why? Well, aside from how ridiculous and implausible the Defendant's version of events was (as Plaintiff explains in **Exhibit C**, the contents of which are hereby incorporated by reference), there is also the fact that every single email that Rogers has provided thus far has been directly addressing the merits of the case; it is, therefore, reasonable to assume that every other communication between Williams and Goldie followed that same pattern.

22. Next, Judge Rogers says, near the end of his letter, that "These are the only ones I have seen that cause me any degree of concern." What Judge Rogers fails to understand is that it is not relevant whether he, personally, is concerned about them, but rather, whether they amount to case-related discussions of any variety. Judge Rogers does not get to pick and choose which *ex parte* communications are unlawful; the JDDC does that. Them, and the federal courts (if Plaintiff chooses to sue Goldie for these *ex parte* communications, as a violation of Plaintiff's 14th Amendment right to Due Process of Law).

23. By Rogers' own admission, there are other communications between Williams and

2 And yes, Plaintiff is thoroughly convinced that it was intentionally deleted.

Goldie, and yet, Plaintiff is not being given the opportunity to see, review, or place objections to these communications, or the propriety thereof. This is a direct, blatant violation of Plaintiff's rights under the adversarial system, which is the whole reason that *ex parte* communications are proscribed in the first place.

24. In short, Plaintiff should not even have to address these ex parte communications, because their illegality speaks for itself. The Court invites explanations, advice, and comments, but honestly, what is Goldie supposed to say? "These ex parte communications should be tolerated because the Plaintiff deserves them;" is that it? Or maybe "these ex parte communications should be tolerated because there is not a 100% guarantee that the Plaintiff would have one his case if it weren't for this?"

25. There is NEVER a time when unlawful ex parte communications should be tolerated! EVER! The only time ex parte communications should be tolerated is if they are lawful; if they are unlawful, they should not be tolerated. Period.

26. In conclusion, the three of you have deprived Plaintiff of his right to due process of law, and the absolute right to an impartial judiciary (and yes, it is an ABSOLUTE right[3]) by holding a judicial bias against Plaintiff and having ex parte communications with each other concerning the merits of the case. The three of you are going to be in big trouble if you do not clean up your mess. A good place to start would be to vacate any/all orders and judgments from January to the present, unless you can PROVE that they were not tainted by bias or ex parte communications (and good luck doing that, since you destroyed the evidence under the false hope that it would cover your tracks, rather than strip you of your defense), and recuse from the case, since the integrity of the judiciary has been heavily tarnished. This will not immediately right all wrongs,

3 See Tumey v. Ohio, supra: "***No matter what the evidence was against him***, he had the right to have an impartial judge."

but it would be a good place to start.

Wherefore, premises considered, Plaintiff prays that the "Second Motion for New Trial and to Recuse" be granted.

So requested on this, the 29th day of June, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1237

Print - Close Window

Subject:	Evidence of ex parte communications
From:	David Stebbins (stebbinsd@yahoo.com)
To:	frogers11e@yahoo.com; goldie@goldielawfirm.arcoxmail.com;
Date:	Thursday, June 18, 2015 5:37 AM

Dear Russell Rogers,

I am in receipt of Goldie's "Answer to Second Motion for New Trial and to Recuse." I am working on my Reply to that Answer, and I should have it filed and filemarked by Monday (I have five days after the Answer is filed to file my Reply, and that does *NOT* include weekends. Thus, Monday should be plenty of time).

However, in the meantime, there is something I feel the need to address, under-the-table. There is a statement in Goldie's Answer that makes me think that the two of you are engaging in ex parte communications to my detriment.

Goldie made the statement "The Court was well aware that after the jury verdict the Plaintiff within twenty-four (24) hours drank a substantial amount of bleach as a suicide attempt."

Now, there are any number of ways you could have acquired the knowledge of that event, but how does Goldie know that you know this? I don't recall seeing any portion, on the record, where you advised the parties that you knew about that event, nor do I see anything on the record showing that Goldie advised you of the event.

This means that ... the only way Goldie could possibly know that you had this knowledge is ... if the two of you had this conversation ***off the record***!!

In your advisory opinion when ruling on my Motion to Recuse, you had BETTER give a good explanation for how Goldie could possibly know that you have this knowledge. Because if you cannot refute the presumption that the two of you ha ex parte communications, then three things will happen:

1. You will suffer JDDC and bar sanctions (the bar sanctions are because, since retiring from the bench, you have returned to the private practice of law, meaning you still have a career to lose).
2. Goldie will be held liable for conspiring with you to rig the outcome of my case (after all, if you've has ex parte communications, it's safe to assume that these communications were done for the purpose of influencing the case; otherwise, the communications served no purpose).
3. Goldie will also suffer bar sanctions for his inappropriate conduct that was prejudicial to the interests of justice. Sure, he's about to retire, but he won't be able to retire if he has to pay the $11,000,000 he cost me in the aforementioned "corruption" lawsuit. So, he'll be right back to having to work for a living to re-save all those retirement savings. But he's not going to be a practicing attorney when doing so; that way, he won't be able to hurt anyone else with his corruption.

Thank you.
David A. Stebbins



1238

James E. Goldie
Attorney at Law
P.O. Box 1595
Harrison, AR 72602-1595
Telephone: (870) 743-3013
e-mail: goldie@goldielawfirm.arcoxmail.com

June 18, 2015

Judge Russell Rogers
P.O. Box 365
Stuttgart, AR 72160

RE: David A. Stebbins vs. David D. Stebbins
Boone County Circuit Court, Civil Division No. CV 2012-85-4

Dear Judge Rogers:

I have received and reviewed an email letter from David A. Stebbins to you that threatens all manner of punishment due to false allegations of "crimes" you have committed.

Let me say that everything in the email is false. I have never had an ex parte communication with you about anything to do with this case. As to your knowledge of the attempted suicide by Stebbins, that was mentioned to me by Kristie as a general and nonspecific comment that Stebbins did something foolish after the trial. I then learned that Stebbins had attempted suicide from his parents who provided me the information. Shortly after I learned that information everyone in the courthouse knew of the suicide attempt so it was common knowledge. I then believe that I sent an email to Kristie after I learned of the suicide attempt and mentioned it in the email to Kristie. It is from that that I assumed that you were made aware of the post trial suicide attempt by Stebbins.

What is sad is that Stebbins can make the slanderous statements about everyone and the statements are false so that he can continue to believe that he is a victim. No one had to "rig" the outcome of the case because the case had no merit and had no facts to support the claims for damages. That was easy for the jury to see and did not require any conspiracy to "rig" the outcome.

Due to the nature of this communication with the Court, I certify that I am sending a copy of this letter to the *pro se* Plaintiff at his respective address.

Respectfully,

James E. Goldie

JEG
cc: David A. Stebbins

EXHIBIT
B

1239

Print - Close Window

Subject: Goldie's Response to Accusations of Ex Parte Communications
From: David Stebbins (stebbinsd@yahoo.com)
To: frogers11e@yahoo.com; goldie@goldielawfirm.arcoxmail.com;
Date: Sunday, June 21, 2015 6:42 PM

Dear Judge Rogers,

I am in receipt of the letter from Goldie (heretofor attached to this email) where he gives a ludicrious, half-baked attempt to explain his previous slip-up.

When I caught him with his foot in his mouth, he obviously had to come up with SOMETHING to explain himself. But what he came up with is entirely ludicrous.

Where do I even begin?

He says he learned that I had done something "foolish" from Kristie Williams, of all people. Not his client (who probably learned about the incident from his wife), but YOUR secretary ... a woman who was more than 180 miles away, in Stuttgart, at the time.

First of all, what was his purpose for having any communications with Williams? The 180-mile gap between them makes it very unlikely that they were just friends, and therefore, it is extremely unlikely that they were just chatting.

If it were case-related, then that falls squarely in the "ex parte communications" mentioned earlier. Especially when we beg the question "What kind of case-related material were they talking about?"

Second, how in God's holy name did Kristie Williams, of all people, know about it? I would have expected Goldie to have gotten this intelligence from his *client*, but even if he got it from the other court staff, it still doesn't explain how 180-mile-away Kristie Williams got news of this event. It's not like it made the headlines in the AR Democrat Gazette (the only newspaper that covers Harrison, that also circulates in Stuttgart). Even if it made headlines in the Harrison Daily Times (which it did not), Kristie Williams would not have read about it.

Next, Goldie says that, after he learned the details of what happened, he went out of his way to send an email to Kristie Williams for the express purpose of telling her that he figured out exactly what happened. Seriously?! That's the story he's going with!

Why would he feel the need to tell Williams this? Why would he think she CARED that he figured it out? Second, if it were a side note in an email sent for other purposes, then that renews the previous question: What were they talking about that didn't constitute "ex parte communication?"

Previously, I demanded that you explain yourself. Now, you've got even MORE explaining to do! Goldie previous attempt to explain himself has only put his foot even deeper in his mouth.

Sincerely,
David Stebbins



1240

Print - Close Window

Subject: Goldie's Response to Accusations of Ex Parte Communications
From: David Stebbins (stebbinsd@yahoo.com)
To: frogers11e@yahoo.com; goldie@goldielawfirm.arcoxmail.com;
Date: Sunday, June 21, 2015 6:42 PM

Dear Judge Rogers,

I am in receipt of the letter from Goldie (heretofor attached to this email) where he gives a ludicrious, half-baked attempt to explain his previous slip-up.

When I caught him with his foot in his mouth, he obviously had to come up with SOMETHING to explain himself. But what he came up with is entirely ludicrous.

Where do I even begin?

He says he learned that I had done something "foolish" from Kristie Williams, of all people. Not his client (who probably learned about the incident from his wife), but YOUR secretary ... a woman who was more than 180 miles away, in Stuttgart, at the time.

First of all, what was his purpose for having any communications with Williams? The 180-mile gap between them makes it very unlikely that they were just friends, and therefore, it is extremely unlikely that they were just chatting.

If it were case-related, then that falls squarely in the "ex parte communications" mentioned earlier. Especially when we beg the question "What kind of case-related material were they talking about?"

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Next, Goldie says that, after he learned the details of what happened, he went out of his way to send an email to Kristie Williams for the express purpose of telling her that he figured out exactly what happened. Seriously?! That's the story he's going with!

Why would he feel the need to tell Williams this? Why would he think she CARED that he figured it out? Second, if it were a side note in an email sent for other purposes, then that renews the previous question: What were they talking about that didn't constitute "ex parte communication?"

Previously, I demanded that you explain yourself. Now, you've got even MORE explaining to do! Goldie previous attempt to explain himself has only put his foot even deeper in his mouth.

Sincerely,
David Stebbins



1240

Print - Close Window

Subject:	Reply to Answer to Second Motion for New Trial and to Recuse
From:	David Stebbins (stebbinsd@yahoo.com)
To:	goldie@goldielawfirm.arcoxmail.com; frogers11e@yahoo.com;
Date:	Monday, June 22, 2015 9:37 AM

Dear Judge Rogers,

Please find, attached to this motion, my Reply to the Defendant's Answer to my Second Motion for new Trial and to Recuse.

Also, please remember (because this is very important): If the email conversations that Goldie and Williams were having (which Goldie ADMITS to having) were even slightly case-related, then that qualifies as an *ex parte* communication that necessitates your recusal.

Even if the communication was purely administrative in nature, that is only a defense when "the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond." See Rule 2.9(A)(1)(b) of the Arkansas Code of Judicial Conduct. In other words, that is only a legitimate "ex parte" communication, if it does not ***stay*** "ex parte," a criterion which is not satisfies right here.

Please remember that while you are reviewing this attached Reply.

Sincerely,
David Stebbins

EXHIBIT

1242

Russell Rogers
Circuit Judge
Retired on Assignment
P.O. Box 365
602 South College
Stuttgart, AR 72160

Phone: (870) 673-1162
Fax: (870) 673-2480

June 26, 2015

Mr. Jim Goldie
P.O. Box 1595
Harrison, AR 72602

via email

Mr. David A. Stebbins
123 W. Ridge St., Apt. D
Harrison, AR 72601

Re: David A. Stebbins v. David D. Stebbins
Boone County Circuit Court, Civil Division, Case No. CV-2012-85-4

Gentlemen:

In preparing an opinion and order on the latest motions, I went through all the pleadings and correspondence, including emails (despite having directed from the beginning that I wanted nothing via e-mail, it is my fault that I allowed both of you to slip into the use of e-mail. I am using it here because of time).

I found emails from Mr. Goldie that were directed to my secretary that I had either not seen or failed to notice that a copy to Mr. Stebbins was not noted. I have not seen the email from Ms. Williams referring to "Mr. Stebbins doing something foolish" and it is not available. Mr. Stebbins chooses to forget that he sent me a draft of a complaint, that he said he was going to file, in which he mentioned that he tried to kill himself by drinking bleach and that he was not sending a copy to Mr. Goldie as "it had nothing to do with the case with him." Ms. Williams was aware of it as she printed the email (from Mr. Stebbins) for me and I told her about it.

Next is an email dated May 4, 2015 to Ms. Williams advising that a motion and brief was attached and that it was being sent to Mr. Stebbins by regular mail. If it was sent there is no ex parte contact. The third is an email dated May 7, 2015 from Mr. Goldie



1243

"venting" to Ms. Williams over an insulting e-mail from Mr. Stebbins concerning preparation of an order. I do recall this one, but did not notice that it was not copied to Mr. Stebbins.

Third, an email dated May 8, 2015 attaching a proposed judgment that does not show that it was sent to Mr. Stebbins. It does state that a copy was being sent to Mr. Stebbins by regular mail.

Fourth, there are two emails dated May 11, 2015, responding to an email from Mr. Stebbins concerning costs and fees. It does not state that a copy was sent to Mr. Stebbins. I don't know if they were or not, nor do I recall ever reading. I was out of town May 11th thru the 18th. These are the only ones I have seen that cause me any degree of concern.

Copies of the emails I have are enclosed.

If either of you wish to explain, advise or comment on this please do so by Tuesday at 4:00 p.m.

Yours truly,

Russell Rogers
RR/klw

1244

Gmail by Google

Kristie Williams <kristie.rcclaw@gmail.com>

stebbins - Boone County - Motion For Costs and Fees

1 message

goldie@goldielawfirm.arcoxmail.com <goldie@goldielawfirm.arcoxmail.com> Mon, May 4, 2015 at 10:21 AM
To: kristie.rcclaw@gmail.com

Dear Kriustie, At the end of the jury trial in this case the jury recommended that the Plaintiff pay the court costs and 1/2 attorney feesto the Defendant. Judge Rogers requested that the Plaintiff and I, as the attorney for the Defndnat brief the issue in the next 10 days. This is the tenth day. Attached is the Motion and Brief of the Defendant that has been filed. Please provide the attached copy to Judge rogers. I have sent a copy of the Motion and Brief to the Plaintiff by regular mail. Thank you. Jamed E. Goldie

Motion for Costs and Fees3.pdf
814K

1245

Gmail by Google

Kristie Williams <kristie.rcclaw@gmail.com>

Stebbins trial - Boone County

3 messages

goldie@goldielawfirm.arcoxmail.com <goldie@goldielawfirm.arcoxmail.com> Thu, May 7, 2015 at 12:31 PM
To: kristie.rcclaw@gmail.com

Kristie, I just received a copy of the e-mail sent by David Stebbins claiming that I had not done in a timely manner what the Jdge asked in preparing a Judgment. I just got the letter yesterday. I then contacted the clerk as to the jury costs. The clerk was not available both yesterday and today. I cannot do the impossible. I do the best I can. David Stebbins has no sense of professionalism, no sense of courtsey, no sense of manners and is on a massive campaign to hurt and attempt to destroy all those who come in contact with him. Sorry to spout off like that but after 3 years of this stuff it can get to someone. I will get the Judgment to the Judge as soon as I can. Thanks. James E. Goldie

Kristie Williams <kristie.rcclaw@gmail.com> Thu, May 7, 2015 at 1:30 PM
To: "goldie@goldielawfirm.arcoxmail.com" <goldie@goldielawfirm.arcoxmail.com>

Yes sir, I will forward your message.

Thank you

Kristie

On Thu, May 7, 2015 at 12:31 PM, <goldie@goldielawfirm.arcoxmail.com> wrote:

> Kristie, I just received a copy of the e-mail sent by David Stebbins claiming that I had not done in a timely manner what the Jdge asked in preparing a Judgment. I just got the letter yesterday. I then contacted the clerk as to the jury costs. The clerk was not available both yesterday and today. I cannot do the impossible. I do the best I can. David Stebbins has no sense of professionalism, no sense of courtsey, no sense of manners and is on a massive campaign to hurt and attempt to destroy all those who come in contact with him. Sorry to spout off like that but after 3 years of this stuff it can get to someone. I will get the Judgment to the Judge as soon as I can. Thanks. James E. Goldie

--
Kristie Williams
Rogers, Carter & Calhoun
PO Box 365
Stuttgart, AR 72160
870-673-1132
870-673-2480 (fax)

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[redacted]

by Google

Stebbins - proposed Jury Verdict Judgment

1 message

goldie@goldielawfirm.arcoxmail.com <goldie@goldielawfirm.arcoxmail.com> Fri, May 8, 2015 at 11:26 AM
To: kristie.rcclaw@gmail.com

Kristie, As Judge Rogers requested I am attaching the proposed Judgmenyn regarding this jury trial. The jury costs were received by me from the court clerk earlier this morning.I have sent a copy of this proposed Judgment to the Plaintiff by regular mail. Thank yiou. James E. Golddie

Stebbins - Judgment On Jury Verdict.pdf
508K

1247

Gmail by Google

Kristie Williams <kristie.rcclaw@gmail.com>

STEBBINS TRIAL - BOONE COUNTY, ARKANSAS

2 messages

goldie@goldielawfirm.arcoxmail.com <goldie@goldielawfirm.arcoxmail.com> Mon, May 11, 2015 at 3:48 PM
To: kristie.rcclaw@gmail.com

Dear Kristie, I have just reviewed the copy of the e-mail from the Plaintiff claiming that he cannot be charged any cost and fees by an "officer". Unfortunatly the Plaintiff does not realize that the Judge is not an "officer" under the terms of the Webb Order and the statute that allows attorney fees in contract cas4s cannot be waived in advance by Judge Webb. May I suggest that Judge Russell Rogers sign the Judgment and let the Plaintiff do his yelling and complaining to the Arkansas Supreme Court if he is able to complete the necessary paper work for an appeal. The decision is that of the Judge and I will abide by whatever the Judge decides. Thank you. James E. Gol;die

Kristie Williams <kristie.rcclaw@gmail.com> Mon, May 11, 2015 at 4:04 PM
To: Russell <jfrogers11e@yahoo.com>

I have received this by email from Goldie
[Quoted text hidden]
--
Kristie Williams
Rogers, Carter & Calhoun
PO Box 365
Stuttgart, AR 72160
870-673-1132
870-673-2480 (fax)

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify us by reply email or by telephone at 870-673-1162.

1248

Gmail by Google

Kristie Williams <kristie.rcclaw@gmail.com>

Stebbins - Boone County

1 message

goldie@goldielawfirm.arcoxmail.com <goldie@goldielawfirm.arcoxmail.com> Mon, May 11, 2015 at 3:58 PM
To: kristie.rcclaw@gmail.com

Dear Kristie, I just received a copy fo the e-mail from the Plaintiff claiming that Judge Webb made him immune from all costs charged by "officers". Of course that means police officers and not the Judge. Also, Judge Webb cannot in advance waive any attorney fees that the statute on contracts allows. I will abide by whatever Judge Rogers decides. I just say that let the Plaintiff complalin and whine to the Arkansas Supreme Court in his appeal. The Clerk has already said they will not waive his copy costs and no printer will do all the copies for the Plaintiff for free. I will be interested in seeing how the Plaintiff prepares the abstract and his appeal arguments. Jim Goldie

Print - Close Window

Subject:	Re: Stebbins Jury Instructions
From:	Kristie Williams (kristie.rcclaw@gmail.com)
To:	stebbinsd@yahoo.com;
Date:	Thursday, April 16, 2015 11:06 AM

I have received this email from Mr. Goldie and its my understanding you have a copy of his jury instructions.

On Thu, Apr 16, 2015 at 10:30 AM, <goldie@goldielawfirm.arcoxmail.com> wrote:

> Kristie, I just received a copy of an email from David Stebbins regarding the jury instructions which implied I was going to mail him a copy of the Defendant's Jury Instructions. I do not plan to do so since I provided him a copy at the same time I provided the Judge a copy at the first day of the trial. Thank you. James E. Goldie

--
Kristie Williams
Rogers, Carter & Calhoun
PO Box 365
Stuttgart, AR 72160
870-673-1132
870-673-2480 (fax)

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by the attorney-client privilege. If you are not the intended recipient or the person responsible for delivering the email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please immediately notify us by reply email or by telephone at 870-673-1162.



1250

Russell Rogers

Circuit Judge
Retired on Assignment
P.O. Box 365
602 South College
Stuttgart, AR 72160

Phone: (870) 673-1162
Fax: (870) 673-2480

July 2, 2015

Mr. Jim Goldie
P.O. Box 1595
Harrison, AR 72602

Mr. David A. Stebbins
123 W. Ridge St., Apt. D
Harrison, AR 72601

FILED FOR RECORD
2015 JUL -6 PM 2:54
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: _____ DC

Re: David A. Stebbins v. David D. Stebbins
Boone County Circuit Court, Civil Division, Case No. CV-2012-85-4

Gentlemen:

The only issues pending before the Court are a second motion for a new trial and second motion for me to recuse:

As background, and in summation of the numerous exhibits and attachments:

1. Exhibit A is my letter dated June 26, 2015 to the parties regarding ex parte contacts. The first email referred to is the letter concerning Mr. Stebbins's attempted suicide: My secretary, in an email transmitting something to Mr. Goldie, referred to Mr. Stebbins doing "something foolish". She did not tell Mr. Goldie what and he found out on his own about the suicide attempt. My secretary, who is not a trained trial court assistant, is the secretary for a three lawyer firm. I send her emails I receive to be printed as I dislike email

and cannot write notes on them. She had the opportunity to and did read the document plus I had already told her about it. I did not immediately divulge it to Mr. Goldie and sought an answer as to what to do about it. Mr. Stebbins said it had nothing to do with the instant case but I soon realized that it did as it was Mr. Stebbin's attempt to extort a decision favorable to him. Exhibit B is that email and a draft of a lawsuit Mr. Stebbins said he was going to file (and has since repeated that he would do so) unless I granted his motion for a new trial. This attempted extortion contains, along with numerous ridiculous and libelous statements, Paragraphs 27 and 28 in which he states that after the trial he was so unhappy that he drank a bottle of bleach, was hospitalized and diagnosed with clinical depression.

2. Mr. Goldie, who did not know that my secretary printed all emails and gave them to me, sent a couple of emails to her about the status of pleadings and two in partial responses to Mr. Stebbins pleadings. I recall the one about preparation of an Order but did not notice that it was not copied to Mr. Stebbins (Exhibit C). Exhibit D, dated May 7th, is about preparing a draft of judgment plus venting a bit about Mr. Stebbin's customary rudeness. I do not recall seeing this one but find nothing in it that is untrue or that has anything to do with the motion for a new trial: Exhibit E is a simple transmittal (May 8th) that was not copied to Mr. Stebbins but notes that the proposed judgment was sent to him by regular mail. Exhibit F of May 11th is one that I do not recall. It was not copied to Mr. Stebbins and contains what I will refer to as an angry response to an email from Mr. Stebbins as is Exhibit G (ten minutes later). I do not recall seeing either of these. I slightly redrafted and signed the judgment (Exhibit H).

1259

3. Mr. Stebbins sent a motion to set aside the judgment and I denied it (Exhibit I).

4. Exhibit J is Mr. Stebbins' Second Motion for a new trial and Exhibit K is a collection of paranoid, vulgar, threatening and derogatory emails from Mr. Stebbins regarding that Motion and what all he is going to do if it is not granted. Many of these are quite offensive and disturbing, but I could not however help but chuckle at his statement that the delay of the emails were "damaging his reputation."

As to the threatening demands that something be done to punish Mr. Goldie, I will not do so for the following reasons:

1. Mr. Goldie is an experienced, capable attorney who represented the Plaintiff's father ably, for very little pay, out of compassion for a father who was apparently the victim of a knife attack by his son, who then sued his father for cutting himself with a knife to "frame" his son at the behest of Wal-Mart and other members of some nefarious conspiracy to silence the Plaintiff and end his "crusade" against them. Mr. Goldie in no way deserved this abuse and cannot be faulted for his anger.

2. The Plaintiff is suffering from a condition that I believe (from over 40 years of dealing with disturbed people) is more serious than Aspergers alone. He is most likely homicidal, is definitely suicidal, as well as paranoid and delusional. I believe that he is a danger to himself and to others, as evidenced by recent overt acts. I am therefore sending a copy of this to the prosecuting attorney and to the Department of Human Services. I have been tempted to declare Mr. Stebbins incompetent on my own notion but believe that it is best to refer it to the proper authorities in Boone County. Plus, I am recusing from this case

by separate order to follow. The second motion for a new trial is at this point the only pending matter and it will remain pending until a new judge can act upon it.

The Plaintiff has repeatedly threatened me and demanded that I recuse, or suffer one his usual lawsuits, mainly because he believes that I am prejudiced against him. Mr. Stebbins constantly confuses prejudice and judgment. An opinion formed of a person over many months of threats, plus three days of personal observation is not prejudice; it is an opinion and judgment based upon the evidence.

I absolutely despise the thought of recusing in this matter as 1) I do not want to dump it on someone else 2) I do not run from threats 3) I do not want to encourage Mr. Stebbins in his belief that he can continue to threaten and attempt to bully others. However, the existence of the emails that were not copied to him could possibly be construed as, however remotely, affecting my judgment in this case. They did not in any fashion nor would the ones that were not read have had any effect if read, as there is other ample evidence to support every decision made. It is, however, necessary to avoid any appearance of a conflict.

With regrets,

Russell Rogers

cc: Mr. David L. Ethredge, Boone Co. Prosecuting Attorney
Boone Co. Dept. of Human Services
Boone County Circuit Court Clerk

1261

FILED FOR RECORD
2015 JUN -1 PM 4:23
BOONE CO. CIRCUIT CLERK
BY _____ DC

J15C00259

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS. — CASE NO. CV-2012-85-4

DAVID D. STEBBINS — DEFENDANT

JUDGMENT ON JURY VERDICT AGAINST PLAINTIFF

This action was tried before a Boone County Jury on April 8, 2015 and April 23, 2015. The Honorable Russell Rogers, Circuit Judge on Assignment, presided. The issues were duly tried.. The Jury rendered its verdict on April 23, 2015, finding for the Defendant on all issues and requesting that the Plaintiff pay jury costs and one-half of the Defendant's attorney's fees. The Court enters this Judgment pursuant to the Jury's verdict:

IT IS SO ORDERED AND ADJUDGED that the Plaintiff takes nothing on his Complaint against the Defendant and the Complaint herein is hereby dismissed with prejudice.

IT IS ALSO ORDERED AND ADJUDGED pursuant to A.C.A. 16-22-308 the Defendant is awarded a judgment against the Plaintiff for one-half of the Defendant's attorney's fees, being $3,500.00 of a total fee of $7,000.00 incurred by the Defendant, for which the Defendant and Mr. Goldie shall be and hereby are awarded judgment. Also, the Plaintiff shall

1216

pay witness appearance fees in the sum of $30.00 each to the Plaintiff's witnesses, Jason Jones, Rebekka Kennedy, Rita Stebbins and Kimberly Bitts f/k/a Kimberly Klutts. Said witnesses are each awarded a judgment for the sum of $30.00 against the Plaintiff. Plaintiff is ordered to prepare a Schedule of Assets within forty five (45) days of the entry of this Judgment pursuant to A.C.A. 16-66-221 and cause the Schedule of Assets to be filed with the Clerk of the Court with a file marked copy to be sent to the attorney for the Defendant.

IT IS SO ORDERED this 1st day of June, 2015.

Russell Rogers, Judge on Assignment

1217

15CO3107

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

FILED FOR RECORD
2015 JUL -1 AM 8:17
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY: [signature] DC

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

NOTICE OF APPEAL

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Notice of Appeal in the above-styled action, of the judgment entered in the above-styled action pursuant to jury verdict.

Rule 3(e) Compliance

This appeal is being taken to the Arkansas Court of Appeals. Plaintiff has ordered a copy of the transcript for the jury trial. Since Plaintiff is proceeding in forma pauperis, there are no financial obligations to meet.

Plaintiff has a "Second Motion for New Trial and to Recuse" pending. This motion is NOT being abandoned. Rather, pursuant to his rights under Rule 4(b)(2) of the Arkansas Rules of Appellate Procedure – Civil[1], this Motion is being filed, just in case the Second Motion for New Trial gets denied. If the motion is granted, Plaintiff will file an Amended Notice of Appeal as appropriate[2].

Other than that, however, the jury verdict being appealed disposed of the contract and battery claims, but Plaintiff is also appealing the Circuit Court's *sua sponte* dismissal of all other claims. Therefore, with the exception of the Second Motion for New Trial and to Recuse, there

1 "A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order."

2 Supra, "A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e)."

1251

is nothing to abandon.

Contents of the Record

It is unclear what it means to "designate the record on appeal," but based on Plaintiff's research, he thinks he has an idea. Please be forgiving if this is inaccurate, because Plaintiff only has what he has researched online to go off of.

Out of an abundance of caution, Plaintiff believes that certified copies of the entire docket will be needed for this appeal. He also believes that transcripts of every motions hearing, as well as the jury trial in this case, will be needed.

Plaintiff highly doubts that every single page will be needed, but it is better safe than sorry.

As a result of a combination of Ark.R.Civ.P. 72 and A.C.A. § 16-13-506(b)[3], Plaintiff should not have to pay for any of this.

Reversible Errors

The Circuit Court committed the following reversible errors:

1. Special Judge Russel Rogers committed reversible error when he denied Plaintiff's Motion to Recuse, despite having admitted, himself, to holding a bias against Plaintiff and to engaging in *ex parte* communications with the Defense Counsel through the Court's secretary.
2. The jury verdict was against the clear preponderance of the evidence.
3. The Circuit Court acted outside its jurisdiction by dismissing, without grounds, all but two causes of action that were properly filed and before the court, including, but not

3 This statute entitles an "*in forma pauperis*" Plaintiff to "an original and two (2) copies" of every transcript without costs. Thus far, Plaintiff has received originals of every transcript up to, but not including, the jury trial. Thus, he should still have two (2) copies of every transcript to exhaust. After this, he will have one (1) copy remaining under the IFP order. With the jury trial, he still has not even exhausted his original, let alone the two (2) copies.

limited to, abuse of process, malicious prosecution, and defamation.

4. The Circuit Court erred in denying Plaintiff's Motion for Summary Judgment.
5. During trial, the Circuit Court abused its discretion when it prohibited the Plaintiff from introducing evidence of the Defendant's prior actions, which was admissible under Ark.R.Evid. 404(b).
6. The Circuit Court committed reversible error when it ruled that two of the Defendant's written confessions, threatening to participate in a conspiracy to have Plaintiff arrested in an attempt to deprive Plaintiff of access to the courts was "not relevant."
7. The Circuit Court committed reversible error when it allowed the Defense Attorney – without calling any witness, presenting evidence, or even going under oath himself – to offer counter-arguments to the Plaintiff's evidence, despite the Court's jury instruction (which was even offered by the Defendant himself) said that the jury was not allowed to consider extra-testimonial statements made by the attorneys.
8. The Court abused his discretion in allowing the defense to admit inadmissible hearsay evidence against Plaintiff.
9. The Circuit Court abused its discretion when it stated that normally admissible hearsay requires a transcript to be admissible, even when no transcript is possible.
10. The Circuit Court abused its discretion in not allowing Plaintiff to introduce admissible hearsay evidence.
11. The Circuit Court abused its discretion when it refused to grant Plaintiff's mid-trial Motion for Declaratory Relief.
12. The Circuit Court abused its discretion in refusing to issue a warrant to collect a witness who had not appeared for trial, despite never moving to quash.

13. The Circuit Court abused its discretion in granting a Motion to Quash before Plaintiff had even been served with a copy thereof, let alone had enough time to respond, simply because that witness CLAIMED to lack knowledge of any malicious prosecution.
14. The Circuit Court abused its discretion by refusing to admit evidence that the Defense never suggested was not admissible, simply on the grounds that the Defense Attorney (who was not even sworn in and thus ineligible to give testimony) affirmed to the Court that the evidence did not actually incriminate him or his client. Plaintiff's right to a fair trail was unfairly prejudiced when Plaintiff was not allowed to give rebuttal evidence to the Defense Attorneys self-serving statements.
15. The Circuit Court abused its discretion when it denied Plaintiff's motion for a mistrial when the Defense Attorney consistently attempted to interrupt Plaintiff's testimony, not because Plaintiff's evidence was inadmissible, but rather, to insert what he believed Plaintiff's testimony should be, effectively usurping the position of "Counsel for Plaintiff." This happened on at least three different occasions, depriving Plaintiff of his right to devise his own litigation strategies and present his own evidence.
16. The Circuit Court erred in denying Plaintiff's First, Second, and Third Motions for Directed Verdict made during the trial, after the Defense rested.
17. The Circuit Court abused it discretion when it refused to give any instruction to the jury on the proper standard of "impossibility" as a defense to a contract obligation.
18. The Circuit Court abused its discretion when it rejected ALL of the Plaintiff's proposed jury instructions on the grounds that SOME of the proposed instructions "commented on the evidence," while at the same time adopting, verbatim, the Defendant's proposed instructions, even though some of them "commented on the evidence" as well.

19. The Circuit Court abused its discretion in refusing to admit evidence of two instances where the Defendant issued written threats to engage in a conspiracy to have Plaintiff arrested.

20. The Circuit Court abused its discretion in arbitrarily blocking Plaintiff from producing all the evidence he had that his arrest was made pursuant to a conspiracy, for no other reason than, he was just tired.

21. The court abused its discretion in denying the Plaintiff's Motion in Limine when the Defendant, during trial, admitted to battering Plaintiff, but raised for the first time in the entire case, the affirmative defense of self-defense, in complete disregard to Plaintiff's discovery rights.

22. The Circuit Court abused its discretion when it refused to allow Plaintiff to give his own answers to cross examination questions, while at the same time refusing to permit the Plaintiff to demand straight answers from his own hostile witnesses (both on cross-examination, and directly examining the hostile witnesses).

23. The Circuit Court committed reversible error when it ruled the Defense Counselor's written statements and admissions as inadmissible to incriminate and/or discredit the Defendant, even though it is black letter law that statements made in a representative capacity are just as probative as statements made in a personal capacity, and that a client is held responsible for the actions of his freely and voluntarily retained counsel.

24. The Circuit Court abused its discretion when it denied Plaintiff's Motion to Compel Discovery, cutting Plaintiff off from potentially powerful evidence.

25. The Circuit Court erred when it denied Plaintiff's Motion for Writ of Mandamus, as this prevent Plaintiff from obtainin valuable evidence.

26. The Circuit Court erred when it refused to grant Plaintiff's Second Motion to Compel Discovery, even though the requested evidence was clearly admissible under Rule of Evidence 404(b).

27. The Circuit Court abused its discretion in refusing to entertain any Motions in Limine, instead opting to make all admissibility determinations during trial, right in front of the jury (the very people who's ignorance of the inadmissible evidence is the very point of having a motion in limine).

28. The Circuit Court abused its discretion on numerous occasions when it denied (both affirmatively, and implicitly in its failure to rule on the motions) Plaintiff's numerous Motions for Sanctions and Motions for Contempt.

Plaintiff reserves the right to brief an issue on appeal, even if not expressly raised in this Notice.

Plaintiff will need a copy of the trial transcript for a majority of the points of appeal listed in this Notice.

So notified on this, the 30th day of June, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

1256

IN THE CIRCUIT COURT OF BOONE COUNTY, ARKANSAS
CIVIL DIVISION

DAVID A. STEBBINS — PLAINTIFF

VS — CASE NO.2012-85-4

DAVID D. STEBBINS — DEFENDANT

AMENDED NOTICE OF APPEAL

Comes now, *pro se* Plaintiff David Stebbins, who hereby submits the following Amended Notice of Appeal in the above-styled action.

Special Judge Russel Rogers recused himself on grounds of *ex parte* communications; however, he did not undo the damage his biased rulings had caused by granting Plaintiff's Second Motion for New Trial.

The Motion is now deemed denied, as of the 30th day. Therefore, Plaintiff will appeal this denial, as well as everything else in his previous Notice of Appeal (the contents of which are hereby incorporated by reference).

So notified on this, the 10th day of July, 2015.

David Stebbins
123 W. Ridge St.,
APT D
Harrison, AR 72601
870-204-6516
stebbinsd@yahoo.com

FILED FOR RECORD
2015 JUL 10 AM 9:07
RHONDA WATKINS
BOONE CO. CIRCUIT CLERK
BY _____ DC

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