Not Intended for Print Publication

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

BAHMAN PAYMAN, M.D.,	)	
	)	
Plaintiff,	)	Case No. 2:04CV00017
	)	
v.	)	**OPINION**
	)	
LEE COUNTY COMMUNITY HOSPITAL, ET AL.,	)	By: James P. Jones
	)	Chief United States District Judge
	)	
Defendants.	)	

Bahman Payman, M.D., Plaintiff Pro Se; Matthew P. Pritts, Woods Rogers PLC, Roanoke, Virginia, for Defendants Kaye Smith, R.N., Hossein Faiz, M.D., Patton Speak, C.R.N.A., and Gary Saylor, C.R.N.A.; Wm. W. Eskridge and Cameron S. Bell, Penn, Stuart & Eskridge, Abingdon, Virginia, for Defendants Ghullam Joyo, M.D., Faryal Sheikh, M.D., Saira Ahsan, M.D., Roy Shelburne, D.D.S., Gabor Laufer, M.D., and Chanda Varandani, M.D.

The successful defendants in this civil case seek sanctions against the pro se plaintiff. Finding that the plaintiff's pleadings were factually insupportable, I will grant such sanctions, including a permanent injunction against the plaintiff precluding him from suing any of the defendants in this or any court without prior permission of this court. The plaintiff's Motions for Sanctions will be denied.

I

On June 25, 2004, the plaintiff, a physician, filed a pro se Amended Complaint in this court against his former employer, Lee County Community Hospital, as well as fourteen additional defendants. The background of the case is set forth in earlier opinions of the court. *See Payman v. Lee County Cmty. Hosp.*, No. 2:04CV00017, 2005 U.S. Dist. LEXIS 2923 (W.D. Va. Feb. 28, 2005); *Payman v. Lee County Cmty. Hosp.*, No. 2:04CV00017, 2005 U.S. Dist. LEXIS 2009 (W.D. Va. Feb. 14, 2005); *Payman v. Lee County Cmty. Hosp.*, 338 F. Supp. 2d 679 (W.D. Va. 2004).

In his Amended Complaint, Payman claimed that the defendants had conspired in "early" 2000 to "interfere with [his] contractual [Lee County Community Hospital] relationship and [his] reasonable professional opportunities with other hospitals, and to injure [him] in his PROFESSIONAL REPUTATION, IN BAD FAITH AND MALICIOUS INTENT." (Am. Compl. ¶ 3.) Certain of the defendants moved for summary judgment, and, after briefing, I granted these motions because the plaintiff failed to show that he had a viable claim of conspiracy.

In addition, the defendants served motions for a permanent injunction against the plaintiff, as well as sanctions pursuant to Federal Rule of Civil Procedure 11(c)(1)(A). The motions have been briefed and are ripe for decision.

II

Rule 11 provides that by presenting a pleading to the court, an attorney or unrepresented party certifies

> that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—
>
> (1) [the pleading] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims . . . and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; [and]
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Fed. R. Civ. P. 11(b). The defendants contend that the pleadings filed by the plaintiff violated this rule. In response, the plaintiff contends that his pleadings do not violate the rule, and that the motions for sanctions are inappropriate because he has little income and a lack of experience and knowledge of law.

A

In determining whether sanctions are appropriate, I must first address whether the procedural requirements of Rule 11 have been met as to each of the defendants

who filed motions for sanctions. Under the "safe harbor" provision of Rule 11, the party seeking sanctions must first serve, but not file, the motion on the party to be sanctioned. If the challenged pleading is not withdrawn or corrected within twenty-one days of service, the motion for sanctions may be filed for determination by the court. *See* Fed. R. Civ. P. 11(c)(1)(A).

In accordance with Rule 11, defendant Roy Shelburne, D.D.S., served a Motion for Sanctions on Payman on March 10, 2004, which was subsequently filed on June 22, 2004. In a document filed on April 23, 2004, Payman withdrew his claims against Shelburne, but failed to do so within twenty-one days from the service of Shelburne's Motion for Sanctions on him. The procedural steps required by Rule 11 have been met as to Shelburne's Motion for Sanctions.[1]

In accordance with Rule 11, Wm. W. Eskridge, counsel for Shelburne, served Payman with a Motion for Sanctions on April 1, 2004, which was subsequently filed on June 22, 2004. This motion was in response to Payman's motion seeking a "default judgment" filed in state court against Eskridge personally. Payman did not

[1] Payman's suit was originally filed in the Circuit Court of Lee County, Virginia. Defendant Shelburne removed the action to this court pursuant to 28 U.S.C.A. § 1441(a) (West 1994). Although Payman originally filed his suit against Shelburne in state court, he may be sanctioned for this filing because he advocated the removed motion in this court. Moreover, this court may enforce the Virginia sanctions provision contained in Va. Code Ann. § 8.01-271.1 (Michie 2000). *See Payman v. Mirza*, No. 2:02CV00023, 2003 WL 751010, at *2 n.1 (W.D. Va. Mar. 3, 2003).

withdraw his pleading, and the motion was denied by order of the state court. Although non-parties have been held to lack standing to receive an award of Rule 11 sanctions, Eskridge is not precluded from receiving sanctions in this case because "non-parties who are brought in or are attempted to be brought into litigation involuntarily by one process or another have standing" to move for and receive an award of sanctions. *Hochen v. Bobst Group, Inc.*, 198 F.R.D. 11, 15 (D. Mass. 2000). The procedural steps required by Rule 11 have been met as to Eskridge's Motion for Sanctions.

On June 25, 2004, Payman filed an Amended Complaint. In accordance with Rule 11, defendants Ghullam Joyo, M.D., and Saira Ahsan, M.D. served Payman with a Second Motion for Sanctions on July 1, 2004, which was subsequently filed on February 16, 2005. Payman did not withdraw or correct his Amended Complaint, and thus the procedural steps required by Rule 11 have been met as to Joyo and Ahsan's Second Motion for Sanctions.[2]

Faryal Sheikh, M.D., became a defendant in this case when Payman served him with the Amended Complaint. In accordance with Rule 11, Sheikh served Payman with a Motion for Sanctions on September 23, 2004, which was subsequently

[2] Joyo and Ahsan served earlier motions seeking sanctions, but those motions have only recently been filed and are not considered herein.

filed on November 1, 2004. Payman did not withdraw or correct his Amended Complaint, and thus the procedural steps required by Rule 11 have been met as to Sheikh's Motion for Sanctions.

Defendants Kaye Smith, R.N., Hossein Faiz, M.D., Patton Speak, C.R.N.A., and Gary Saylor, C.R.N.A., have filed two Motions for Sanctions against the plaintiff in this case. The first Motion for Sanctions regarded Payman's Amended Complaint. In accordance with Rule 11, this motion was served on Payman on July 9, 2004, and was subsequently filed on August 6, 2004. The second Motion for Sanctions regarded Payman's motion to disqualify the law firm of Woods Rogers PLC as legal counsel for these defendants. In accordance with Rule 11, this motion was served on Payman on October 1, 2004, and was subsequently filed on October 29, 2004. Payman did not withdraw or correct his pleadings, and thus the procedural steps required by Rule 11 have been met as to the Motions for Sanctions by Smith, Faiz, Speak, and Saylor.

In accordance with Rule 11, defendant Chanda Varandani, M.D., served Payman with a Motion for Sanctions on February 16, 2005, which was subsequently filed on March 11, 2005. Payman did not withdraw or correct his Amended Complaint, and thus the procedural steps required by Rule 11 have been met as to Varandani's Motion for Sanctions.

B

Having determined that the defendants met the procedural requirements of Rule 11, I now address whether the plaintiff's pleadings are sanctionable. As to the defendants seeking sanctions based on the plaintiff's Amended Complaint,[3] I find that this pleading did violate Rule 11 because the allegations did not have evidentiary support. While the fact that the plaintiff's claims did not survive summary judgment is alone insufficient to justify sanctions, *see Miltier v. Downes*, 935 F.2d 660, 664 (4th Cir. 1991), it is clear that the plaintiff had no objectively reasonable evidence to support his assertion that the defendants who were served with the Amended Complaint acted in "bad faith" and "malicious[ly]" toward him. (Am. Compl. ¶ 3.) In fact, the only supporting basis ever presented for these allegations are the plaintiff's claims of discrimination against his Bahá'í Faith, which he "supports" by submitting newspaper articles and other reports of discrimination against the Bahá'í in Iran.[4] In his Response to Motions for Sanctions (by Eskridge, Shelburne, Joyo,

[3] These defendants are Ghullam Joyo, M.D.; Saira Ahsan, M.D.; Faryal Sheikh, M.D.; Kaye Smith, R.N.; Hossein Faiz, M.D.; Patton Speak, C.R.N.A.; Gary Saylor, C.R.N.A, and Chanda Varandani, M.D.

[4] These unsupported claims are similar to those dismissed by this court in previous cases. *See Payman v. Joyo,* No. 2:01CV00128, 2002 WL 1821635 (W.D. Va. Aug. 8, 2002) (dismissing defamation action on basis of statute of limitations); *Payman v. Abdrabbo,* No. 2:02CV00035, 2002 WL 31443212 (W.D. Va. Nov. 1, 2002) (granting summary judgment in conspiracy claim); *Payman,* 2003 WL 751010, at *1 (imposing sanctions on plaintiff after granting summary judgment in conspiracy claim).

Ahsan, and Sheikh), the plaintiff makes the sweeping accusation that "[w]hen it comes to the Baha'is all Moslem groups regardless of their sect or country of origin, they become united against the Baha'is. This group of [defendant] Moslem doctors with manipulative power abused the system and changed the minds of others to join them in a conspiracy to eradicate Dr. Payman practice in this area and neighboring counties . . . ." The plaintiff has never provided objectively reasonable evidence to support this assertion.

In addition to the Amended Complaint, I find that certain other pleadings by the plaintiff violated Rule 11. Although Payman withdrew his Motion for Judgment against Shelburne, he did not do so within twenty-one days of being served with Shelburne's Motion for Sanctions. Therefore, this pleading violated Rule 11 because Payman never produced any objectively reasonable evidence to support his RICO and state law conspiracy claims against Shelburne.

As for Payman's motion seeking a judgment against Eskridge personally, there was no basis upon which to file this motion because Eskridge is not a party to the case. Payman claims that he "mistakenly put Mr. Eskridge's name instead of Dr. Shelburne['s]" name on the motion. (Resp. to Mot. for Sanctions of Eskridge, Shelburne, Joyo, Ahsan, and Sheikh.) This assertion is preposterous, in light of the motion itself, which referred to Eskridge as "Defendant's counsel." The pleading

violated Rule 11 because Payman never produced any objectively reasonable evidence to support his claim against Eskridge.

As for Payman's Motion to Disqualify the law firm for defendants Smith, Faiz, Speak, and Saylor, there was no basis to file this motion because no conflict of interest existed. Payman argues that the firm should be disqualified because certain attorneys from that firm (John T. Jessee and Eleanor A. Lasky) represented him in a prior medical malpractice case. However, before this prior case was even filed, Jessee and Lasky departed from Woods Rogers PLC, and all pleadings in that case were filed by Jessee and Lasky as members of their new firm. In any event, the subject matter of the prior case were completely unrelated to the subject matter of the present case. Therefore, Payman's Motion to Disqualify violated Rule 11 because he knew or should have known that no conflict of interest existed at the time he filed his motion.

Finally, the plaintiff should not be afforded any special leniency because he was proceeding pro se. He is an educated person who had researched the issues sufficiently to know and cite case law and statutes, and he has filed other cases pro se in this and other courts. Moreover, the plaintiff should not be afforded special leniency because of his financial situation. Although the plaintiff asserts that he currently has little income, he is a physician who is board certified in obstetrics and

gynecology. His prior contract with the hospital provided for annual compensation of $250,000 plus payment of professional liability insurance coverage, health insurance, and professional memberships. Presumably that contract is a fair measure of the plaintiff's earning ability. Moreover, Payman has stated that he paid $31,000 "in cash" for attorneys' fees in the past year, despite his claim that he has received less than $4,000 in income from his medical practice and social security payments. (Resp. to Mot. for Sanctions of Eskridge, Shelburne, Joyo, Ahsan, and Sheikh.) Payman has been able to afford his own attorneys' fees, and has not met his burden of showing that his financial status prevents him from being able to pay sanctions. *See In re Kunstler*, 914 F.2d 505, 524 (4th Cir. 1990).

C

Having held that sanctions are proper in this case, the next task is to determine the nature of such sanctions. Rule 11 allows directives of a nonmonetary nature, a monetary penalty payable into court, or reimbursement of some or all of the movant's reasonable attorneys' fees and other expenses "incurred as a direct result of the violation." Fed. R. Civ. P. 11(c)(2).

Because the offending party here is a nonlawyer, a nonmonetary sanction such as a reprimand, suspension from practice, or a requirement of additional continuing legal education, is inapplicable. Therefore, taking into account the purpose of Rule

11, the first sanction I will impose is reimbursement of attorneys' fees. In considering such a monetary sanction, I must take into account "(1) the reasonableness of the opposing party's attorney's fees; (2) the minimum to deter; (3) the ability to pay; and (4) factors related to the severity of the Rule 11 violation." *In re Kunstler*, 914 F.2d at 523.

The defendants have submitted itemized statements of their attorneys' fees and expenses, which total $25,481.67 for Joyo, $2,381 for Ahsan, $1,744.50 for Sheikh, $4,572.64 for Shelburne, $2,931.50 for Varandani, and $8,098.92 each for Smith, Speak, Saylor, and Faiz.[5] Not only do I find these fees and expenses to be reasonable, but also necessary to satisfy "[t]he primary purpose of Rule 11[,] [which] is . . . deterrence of future litigation abuse." *Brubaker v. City of Richmond*, 943 F.2d 1363, 1370 n.7 (4th Cir. 1991). Thus, considering all of the relevant factors, I find that an appropriate sanction is to require the plaintiff to pay each of the defendants, with the exception of Eskridge,[6] their full amount of attorneys' fees.

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[5] Smith, Speak, Saylor, and Faiz each equally share fees and expenses of $32,395.68, because they have the same counsel and the issues raised have been common to all four parties.

[6] Eskridge states that he expended only a nominal amount of time responding to Payman's motion that was filed personally against him, and so does not seek to be paid for his effort. However, he still seeks monetary sanctions against Payman on his behalf as a deterrent. He requests that such sanctions be paid to the court, or, if he is awarded sanctions personally, he states that he will transfer them to a charitable organization. Rather than imposing monetary sanctions against Payman for his frivolous motion against Eskridge, I

In addition to these monetary sanctions, I find that a nonmonetary sanction in the form of a permanent injunction is particularly appropriate in this case. *See* Fed. R. Civ. P. 11(c)(2) (stating that sanctions may include "directives of a nonmonetary nature"). Therefore, the second sanction I will impose is an injunction preventing Payman from filing any actions against the defendants in any court, without first obtaining leave of this court.[7] The plaintiff's conduct was egregious, especially because of his history of repeatedly filing frivolous law suits against physicians and other professionals. As a physician, the plaintiff should know the likely professional complications to medical providers engendered by a lawsuit, regardless of its lack of merit. Moreover, this is not the first time the plaintiff has been sanctioned by this court.

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find that a permanent injunction will be a sufficient deterrent.

[7] Although Rule 11 clearly provides for such nonmonetary sanctions, the appropriateness of this sanction will be discussed in greater depth in part III of this opinion. relating to a separate motion for a permanent injunction filed by an additional defendant, Gabor Laufer, M.D. While Laufer's motion was not under Rule 11, the basis of his request is the same as that of the defendants who requested sanctions under Rule 11, and the discussion of the appropriateness of a permanent injunction will apply to all of the defendants. Indeed, the defendants who moved for Rule 11 sanctions requested the same permanent injunction in their briefs supporting their motions for Rule 11 sanctions. Defendant Varandani has filed a motion for Rule 11 sanctions, as well as a separate motion for a permanent injunction.

III

An additional defendant, Gabor Laufer, M.D., has filed a separate motion for a permanent injunction against the plaintiff to prevent the plaintiff from suing him in this or any court without prior permission of this court.

A

The All Writs Act, 28 U.S.C.A § 1651(a) (West 1994), grants federal courts the power to "limit access to the courts by vexatious and repetitive litigants . . . ." *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 817 (4th Cir. 2004). Despite this power, such injunctive relief is an "extreme remedy" that should not be routinely granted. *Simmons v. Poe*, 47 F.3d 1370, 1382 (4th Cir. 1995). Moreover, such relief is inappropriate unless there is a real and immediate threat of future injury, in addition to objectionable past conduct. *See Rizzo v. Goode*, 423 U.S. 362, 372 (1976). If an injunction is granted, the order granting the injunction "shall set forth the reasons for its issuance[,] . . . be specific in its terms[,] . . . [and] describe in reasonable detail . . . the act or acts sought to be restrained . . . ." Fed. R. Civ. P. 65(d).

If the injunction is intended to include state court proceedings, the injunctive relief must not be granted unless it falls within one of the three exceptions listed in the Anti-Injunction Act, 28 U.S.C.A. § 2283 (West 1994), which must be narrowly interpreted. *See Bluefield Cmty. Hosp., Inc. v. Anziulewicz*, 737 F.2d 405, 408 (4th

Cir. 1984). The third exception to the Anti-Injunction Act is where an injunction is necessary to "protect or effectuate [the court's] judgments." 28 U.S.C.A. § 2283 (West 1994). This exception "was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court[s]. It is founded in the well-recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 147 (1988).

In the present case, an injunction that includes state court proceedings is appropriate in order to protect this court's judgment. The claims at issue in this case are similar to those that the plaintiff has previously initiated. As another judge of this court recently held, "[e]ven though the exceptions to the Anti-Injunction Act should be narrowly interpreted, the claim that Payman has raised in this case was initially raised in this court several years ago." *Payman v. Wellmont Health Sys.*, No. 2:04CV00089, 2005 U.S. Dist. LEXIS 784, at *19 (W.D. Va. Jan. 20, 2005). Accordingly, this court may issue an injunction that includes state court proceedings for the purpose of protecting the defendants from further litigating issues already decided by the court.

B

Because the court has the power to issue the injunction, the next step is to determine whether a prefiling injunction is substantively warranted. In deciding

whether to grant the injunction, this court must weigh all the relevant circumstances, including:

> (1) the party's history of litigation, in particular whether he has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions.

Cromer, 390 F.3d at 818. Payman has filed claims making similar or identical allegations on numerous occasions, and has already been sanctioned twice by this court. It is clear that the issues have been litigated several times over and there is no basis for this lawsuit other than to harass the defendants. Moreover, Payman has substantially burdened this court and the Virginia state courts by his meritless litigation.

As pointed out in *Wellmont*, "alternative sanctions are unlikely to work in this case [because] Payman has been a 'frequent litigator' in the Western District of Virginia." *Payman*, 2005 U.S. Dist. LEXIS 784, at *21 (quoting *Payman*, 338 F. Supp.2d at 680 n.1 (noting that defendant Lee County Community Hospital alleged that Payman had filed "'at least' twenty-two lawsuits in state and federal courts, either pro se or represented by nine different attorneys," and listing four other cases that Payman had filed in that court)). This court previously sanctioned Payman $5,000 for filing two lawsuits without evidentiary support. *See Payman*, 2003 WL 751010,

at *1 (sanctioning Payman for violations of Rule 11 because his allegations lacked evidentiary support). Even though Payman was sanctioned in that case he continued to litigate, and was therefore sanctioned $7,553.39. *Payman*, 2005 U.S. Dist. LEXIS 784, at *35.

As previously held, Payman's allegations in the present case lack any objectively reasonable evidence. Accordingly, because Payman has a pattern of filing frivolous lawsuits, does not have a good faith basis for continuing to prosecute this legal action, has burdened the legal system with other lawsuits concerning the same issues raised in this case, and alternative sanctions have not worked in the past, I find that the requirements for a prefiling injunction have been met.

C

The final issue that I must decide is the scope of the injunction. The defendants have asked the court to enter a permanent injunction against Payman that would bar him from filing any future lawsuits in any court against any of the defendants, and that would prohibit him from acting in concert with anyone else for the purpose of having another person, firm or corporation initiate any legal process against the defendants, without prior permission of this court.

In determining the scope of the injunction, it is necessary that "[t]he injunction not . . . effectively deny access to the courts, and the district court must give the

litigant notice and the opportunity to be heard prior to granting the injunction." *Whitehead v. Viacom,* 233 F. Supp. 2d 715, 726 (D. Md. 2002). Because Payman had a chance to argue against the injunction in his briefs responding to the motions, the notice requirement has been met. *See also Cromer*, 390 F.3d at 818-20 (discussing the notice requirement for prefiling injunctions). Moreover, because injunctions must be "narrowly tailored to fit the specific circumstances at issue," *Cromer,* 390 F.3d at 818, I will not enjoin Payman from filing any actions anywhere against the defendants or parties in privity with the defendants, as that would deny Payman access to the courts for potentially meritorious claims in the future. I will, however, grant an injunction preventing Payman from filing any actions against the defendants in any court, without first obtaining leave of this court. While the scope of this injunction is broad in that it covers filings in state court as well as in other federal courts, it is clearly necessary based on Payman's litigation history. Therefore, because of the specific circumstances of this case, such an injunction is narrowly tailored.

IV

The plaintiff has filed motions for Rule 11 sanctions against defendants Joyo, Sheikh, and Ahsan, as well as their attorney, Eskridge. The defendants responded by

arguing that sanctions are inappropriate because the motions are without merit, and the plaintiff has failed to meet the procedural requirements of Rule 11.

As already discussed, a party seeking Rule 11 sanctions must first serve, but not file, the motion on the party sought to be sanctioned. If the challenged pleading is not withdrawn or corrected within twenty-one days of service, the motion for sanctions may be filed for determination by the court. *See* Fed. R. Civ. P. 11(c)(1)(A). Here, Payman filed his motions for sanctions against the defendants without first serving the defendants with the motions. Therefore, it would be inappropriate for me to consider these motions because the procedural requirements were not met.

V

For the foregoing reasons, the Motions for Sanctions by the defendants will be granted and sanctions awarded, the Motions for Permanent Injunction by the defendants will be granted, and the Motions for Sanctions by the plaintiff will be denied. A separate order consistent with this opinion will be entered forthwith.

DATED: March 31, 2005

/s/ JAMES P. JONES
Chief United States District Judge