

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Action N^o 05-cv-01858-EWN-MJW

SEAN HARRINGTON

Plaintiff,

v.

MADELINE WILSON, *et al.*

Defendants

EMERGENCY FORTHWITH MOTION FOR PRELIMINARY INJUNCTION AND FOR SANCTIONS

COMES NOW, the Plaintiff, pursuant to 28 U.S.C. § 2283, for the purpose of filing the within Emergency Forthwith Motion. As grounds therefor, Plaintiff states as follows:

1. This suit, as it pertains to Defendant Madeline Wilson, raises claims for relief in the nature of abuse of process (Eighth Claim for Relief) and malicious prosecution (Ninth Claim for Relief). 1st Amd. Compl. At pp. 42 – 48. These claims were based primarily upon Wilson’s pattern of filing of four (4) duplicative fraudulent civil restraining orders in an effort to harass Plaintiff, to financially drain Plaintiff and to retaliate against and stifle Plaintiff’s First Amendment protected information gathering activities (relative to pre-filing discovery). See 1st Amd. Apdx. B at ¶¶ [1-3], 8, 10, [28-31], [35-43].

2. It has come to Plaintiff’s attention that, on December 6, 2005, the day prior to a motions hearing to be held at the Alfred Arraj U.S. Courthouse, Defendant Wilson has taken out a fifth temporary restraining order, Denver County case captioned 05W1747, against Plaintiff and that she intends to use the December 7, 2005 motions hearing and planning/scheduling conference as an opportunity to serve Plaintiff with another of her vexatious, frivolous and duplicative suits (thereby requiring him to return to Denver at considerable expense to defend against the same). Plaintiff does

not live in Colorado and has no occasion to injure, molest or stalk Wilson. Plaintiff has not threatened to injure, molest or stalk Wilson. In fact, Plaintiff has had no contact, whatever, with Wilson since counsel entered his appearance on her behalf. The lack of probable cause of Wilson's attempts to obtain permanent restraining orders and induce criminal prosecution are so obvious that an inference of malice is warranted. 1st Amd. Compl. At ¶ 214. *See also Beecy v. Pucciarelli*, 387 Mass. 589, 594 (1982); *Seelig v. Harvard Coop. Soc'y*, 355 Mass. 532, 537 (1969); *Pihl v. Morris*, 319 Mass. 577, 580 (1946).

3. The September 2001 findings and recommendations of the court-appointed Special Advocate, Natalie Van Note (in the State domestic proceedings), stated:

It is this advocate's observation that the restraining order has been used as a tool to effectively eliminate contact between father and daughter. The restraining order has been relied upon by Ms. Ryan **and her attorney** [Ms. Wilson] to create the illusion that Mr. Harrington is somehow dangerous to Shelby, when, in fact, this is not the case. . . restraining orders . . . have been used as a political tool to eliminate Mr. Harrington from his daughter's life . . . [and they] . . . are a guise to retaliate against Mr. Harrington.

Id. at para. F, p. 7. [emphasis added]

4. Wilson's purpose in doing this is to retaliate against Plaintiff for filing the instant suit, to harass him, in spite of this suit (with conduct that is actually the substance of this suit) and to prevent Plaintiff from engaging in any further First Amendment protected information gathering activities.

5. Further, though Plaintiff has already alleged that the State proceedings are defective, Wilson is trying to create a *Younger* abstention bar to preclude recovery on the abuse of process and malicious prosecution claims against her. "It is easy to see when, under the guise and pretense of setting out privilege and necessary matters, circumstances are detailed, and scandalous and insulting charges and innuendos are made and insinuated upon pretended 'information and belief' in manner that bears the unmistakable earmarks of malice." *Hughes v. People*, 5 Colo. 436 (1880).

6. In the past, Wilson has used fraudulently-obtained restraining orders for theatrical effect in court, by asking the Bailiff to shadow her throughout the courtroom, which conduct is tantamount to having a criminal defendant wear prison garb to his trial (to the extent that it unfairly prejudices the bench or jury). In the instant case, when and if Wilson does obtain a temporary or permanent protective order, she will use said protective order to foreclose Plaintiff from deposing her, in violation of his *Faretta* right to prosecute this case *pro se*, and also to prejudiced the jury in her favor.

7. The Anti-injunction Act (28 U.S.C. § 2283) constitutes an express authorization of injunctions for three particular situations.¹ *Mitchum v. Foster*, 407 U.S. 225 (1972). One of those is, termed “relitigation,” permits a federal court to enjoin State proceedings that threaten to undermine a previous federal judgment or harass litigants in federal court proceedings. *See, e.g., Sovereign Camp Woodmen of the World v. O’Neill*, 266 U.S. 292 (1924); *Supreme Tribe of Ben-Hur v. Cauble*, 255 U.S. 356 (1921).

8. A second exception is injunctions in aid of jurisdiction. *Capital Services, Inc. v. National Labor Relations Board*, 347 U.S. 501 (1954). This court’s rightful exercise of jurisdiction may be threatened by Wilson’s sham petitioning activities.

9. In addition, the Anti-injunction Act provides this Court with the authority to issue an injunction to maintain the *status quo* while considering the instant motion to determine if the set of facts meets one of the three exceptions articulated in the Act.

10. Plaintiff also requests that this Court sanction Defendant Wilson for abusing the proceedings of this tribunal to further her own vendettas of harassment. Plaintiff further request that opposing counsel Huff be sanctioned for the same, if he was aware of or facilitated this undertaking.

¹ In any event, the preclusive effect of the Act does not apply until the State proceedings exists. *Atlantic Coast Line R.R. v. Brotherhood of Locomotive Engrs.*, 398 U.S. 281, 286 (1970). Because the Court has not yet exercised personal jurisdiction over Plaintiff, the State proceedings do not yet exist.

11. Finally, the outrageous conduct described hereinabove has been committed by a licensed Colorado attorney (Defendant Wilson). Plaintiff respectfully requests that this Court refer this matter to the Attorney Regulation Counsel pursuant to Disciplinary Rule 251.4 and 251.9(a)(2).

12. If the State civil restraining order proceedings are not enjoined and if Defendant Wilson is not sanctioned, irreparable harm will be visited upon Plaintiff and these proceedings will be needlessly marred by acrimony and hostility.

13. Finally, Plaintiff respectfully requests this Court to grant any other relief that is appropriate, under the immediate circumstances. *In re Legislative Reapportionment*, 150 Colo. 380, 374 P.2d 66 (1962) (" If the allegations of the petition are such as to invoke both the jurisdiction of the court and to entitle the petitioner, on the face thereof, to some relief, the mere fact that one misconceives his remedy will not deprive the court of jurisdiction to act."); *Regennitter v. Fowler*, 132 Colo. 489, 290 P.2d 223 (1955) ("The question, therefore, is not whether a party has asked for the proper remedy, but whether under his pleadings he is entitled to any remedy").

WHEREFORE, for the reasons more fully set forth hereinabove, Plaintiff respectfully requests an emergency injunction enjoining the Denver County Court from exercising personal jurisdiction over Plaintiff and from exercising subject matter jurisdiction over claims that are already before this Court. Plaintiff further requests sanctions to be entered against Defendant Wilson, to include opposing counsel Huff, to whatever extent he facilitated or acquiesced to this undertaking. Plaintiff also asks for any other relief that this Court deems proper in the premises.

Respectfully submitted this 6th day of December, 2005:

/s/ Sean Harrington
197m Boston Post Rd., West #151
Marlborough, MA 01752
facsimile: (508) 630-9004
esoxlucios@msn.com

CERTIFICATE OF SERVICE

I hereby certify that on December 6th 2005, I served the foregoing *Emergency Forthwith Motion for Injunction and Sanctions* by electronic mail to the following ECF participants.

David H. Yun
JAUDON & AVERY LLP
dyun@jalegal.com

Randolph S. Dement
rdement@dementlaw.com

Christine K. Wilkinson
Ass't Attorney General
ck.wilkinson@state.co.us

Brett N. Huff
WHITE & STEELE, P.C.
bhuff@wsteele.com

/s/ Sean Harrington