

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

JOHN B. THOMPSON,

Plaintiff,

v.

Case No. 07-21256 (Judge Adalberto Jordan)

THE FLORIDA BAR and
DAVA J. TUNIS,

Defendants.

**PLAINTIFF'S VERIFIED REPLY TO DEFENDANT TUNIS' MEMORANDUM
IN OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

COMES NOW plaintiff, John B. Thompson, hereinafter Thompson, as an attorney on his own behalf, and replies to defendant Tunis' memorandum in opposition to the granting of a preliminary injunction, stating:

DAVA TUNIS' LATEST VERIFIABLE MISSTEP

1. First, a housekeeping matter which may illustrate to this federal court the lengths to which defendant Dava Tunis has been willing to go to frustrate Thompson's mere efforts to secure some modicum of due process in the state "disciplinary" proceeding:

2. Judge Tunis has directed her attorney, a senior assistant attorney general to the state of Florida no less, to file with this court Exhibits A, B, and C, to her opposition memorandum.

3. In doing so, Judge Tunis and her counsel have purposed, intentionally, to mislead this court on a very important matter, which may not seem so important at first blush. The impression given, falsely, by the exhibits is that Judge Tunis granted

Thompson a continuance of a status conference scheduled for August 9 at 1 pm, in response to his emergency motion for continuance filed on August 7. Thompson had so moved because his wife, Patricia Thompson, a law partner at Carlton Fields, was then hospitalized with a bowel obstruction resulting from ovarian cancer surgery, unable to eat, unable to drink, a tube stuck down her throat. She was, on August 7 and August 8, after days of hospitalization, facing possible corrective additional abdominal surgery, which occurs, according to her doctors, 50% of the time when such an obstruction presents. Such surgery would result in resection of her bowel and reattachment. She had seen her father go through that debilitating surgery in his fight with lymphoma.

Plaintiff Thompson, since the prior Friday evening when she was admitted through the ER, been shuttling to and from the hospital to comfort his wife, wash her face, help her go to the bathroom, walk her up and down the hospital halls, all while taking care of their minor son and performing his other duties, which include trying to hold at bay not only The Bar but also a certain SLAPP Bar complainant who was threatening Thompson with motions to seize his home computer and “out” Thompson as a closeted homosexual addicted to gay porn. This SLAPP Bar complainant made the latter threat in the context of how embarrassed his wife would be by such a revelation. This is the type of stuff that Thompson deals with on a regular basis because The Florida Bar encourages it, at Thompson’s expense.

This same SLAPP Bar complainant is the one who helped secure the 1992 order requiring Thompson to be publicly humiliated with the unsuccessful attempt to pathologize his Christian activism.

4. Be that as it may, Judge Tunis and her lawyer apparently want to hide from this court, in an effort to show how “unreasonable” Thompson is and how thoughtful, courteous, and reasonable Judge Tunis is, the *fact* that Judge Tunis granted a continuance of the August 9 status conference only *after* she received Thompson’s *verified* writ of mandamus filing, dated August 8, filed with the Florida Supreme Court and attached hereto as Exhibit A. Thompson had moved for the continuance on August 7.

5. The court will note, if it can follow this “soap opera” of The Bar’s and the judge’s making, that Judge Tunis’ able assistant, Ana, called Thompson at Doctors Hospital on his cell phone (305-588-3005) at approximately 11 am August 8 *to tell Thompson that there would be no continuance of the August 9 hearing, and that “You can attend the status conference/hearing by cell phone!”* Thompson calmly pointed out to the judge’s assistant the fact that Thompson’s wife, at that moment, was facing possible major surgery to resect and reattach her bowel, possibly the next day, maybe that day. Thompson asked Ana to tell Judge Tunis that he would not be attending any status conference by phone or by another other means, given his wife’s current condition and his need to attend to her physical, psychological, and spiritual needs. What a quaint thought, that a husband might need to be with and focused on his wife at a time like this.

6. In a panic and only after Judge Tunis received the attached Exhibit A, Judge Tunis granted Thompson’s motion for a continuance of the August 9 status conference. Cell phone records and fax records should prove who did what when. Further, the court is asked to note that his attached Exhibit A, recounting Judge Tunis’ refusal to grant a continuance despite Thompson’s wife being in dire straits, is *verified*. This is a filing with the Florida Supreme Court in his writ of mandamus action, which The Florida

Supreme Court is ignoring, refusing to give Thompson any relief, which rebuts, as an aside, The Bar's almost comical assertion that he has a real state remedy.

Thompson welcomes Judge Tunis and Ana to state under oath that she granted the continuance *before* Thompson said he could not be there in the aforementioned cell call to him midday on August 8. Thompson can also produce witnesses whom he called after Judge Tunis' assistant informed him the motion to continue was denied.

What is extremely troubling is that defendant Tunis and her lawyer intentionally failed to file Exhibit A, attached hereto, which is verified and which proves the order of what happened when. This is not zealous advocacy. It is deception. This is judicial and lawyer misconduct that cries out for review.

7. Finally, on this housekeeping matter as to whether Judge Tunis is the reasonable one and whether Thompson is so unreasonable that he may be mentally incapacitated (see The Bar's demands in that regard), what is corroborative of both Judge Tunis' prevarication as to when she granted the motion for continuance and her unwillingness to extend Thompson even the slightest modicum of due process is this irrefutable fact: Judge Tunis did this *before*.

When Thompson moved for a continuance months earlier because of his wife's ovarian cancer surgery and rigorous chemotherapy, Thompson asked Judge Tunis for a continuance. ***Judge Tunis refused to grant the continuance.*** U.S. District Court Judge Patricia Seitz had no difficulty extending such a judicial courtesy to Patricia Thompson. Surely this court is aware, as Judge Tunis pretends not to be, of the burden such a medical situation puts upon the person being treated but also to the spouse/parent who must try to hold a household together in such a situation. Patricia Thompson's friends,

some of them fine lawyers in this community, graciously brought over meals to the Thompson family not only during the initial cancer treatment but also during this latest medical emergency. All Judge Tunis brought over was a demand that Thompson attend a status conference on August 9 with his wife facing possible abdominal surgery. This is how intent both The Bar and this judge/referee are to get Thompson, come Hell or high water.

8. Colin Powell, in writing of the pop culture pollution against which Thompson has labored and which effort has resulted in these SLAPP Bar complaints by the purveyors of it to our children, has written that “America has lost a sense of shame.” Indeed. That loss extends to some in the judiciary, it seems. When a sitting Miami-Dade court judge is willing to file deceptive pleadings in a federal court to cover her tracks as to her own misconduct, then we have come to a sorry juncture.

9. It is outrageous that Dava Tunis’ lawyer would now represent to this court (see page 6 of her memorandum) that Thompson thinks that he “may ignore the orders of the referees in such proceedings with impunity by filing a federal action against The Florida Bar.” Thompson did not, when he became a lawyer, give up his access to the federal courts. The Bar’s position is that he did, as the above quotation states.

Further, Thompson did not give up his duties to his wife when The Bar decided to come after him upon the insistence of the porn-to-kids industry. Thompson told the referee of his pressing duties, and he told her that she was free to conduct the status conference without him. *Thompson did not violate an order of the court by stating he could not attend a hearing. He told the court she could proceed without him.* Then

and only then did the thoughtful, courteous, compassionate judge cancel the status conference, which never occurred.

Thompson, in fact, attended these *faux* Tunis hearings called “status conferences” during his wife’s chemo treatments. He hasn’t violated a Tunis order yet. He even attended a mediation when his lawyer was medically incapacitated, ordered to do so by Judge Tunis. Nobody, certainly not Thompson, is thumbing his nose at The Bar or this referee, but they surely are thumbing their noses at the U.S. Constitution, Amendment One and Amendment Five.

DEFENDANT’S OPPOSITION TO THE PRELIMINARY INJUNCTION

10. On to more lawyerly issues. Defendant Tunis has, with good reason, not addressed the facts, including additional ones, in plaintiff’s verified second amended complaint, as well as the authority of *Pulliam v. Allen* to which the defendants seem to have no rejoinder.

11. As to the four-pronged burden of proof that must be met by the plaintiff, as correctly assert by Tunis, the court is asked to consider:

i. “*Substantial likelihood of success on the merits.*” The court is asked to consider that The Bar’s remarkable denial of due process, even to the point of not telling him what he failed to disclose about his disciplinary history to the Alabama State Bar and the Alabama trial court, and he asks, then, if any court anywhere would consider that and the other unrebutted factual assertions in Thompson’s second amended complaint *not* a remediable denial of due process.

ii. “*Irreparable injury will be suffered unless the injunction issues.*” Judge Tunis and The Bar have no rebuttal to the argument that within The Bar’s disciplinary regime,

the “designated reviewer” is there to assure that the disciplinary process is certified “fair” every step of the way, not just at the end of the process. Why so? Because The Bar and any lawyer knows that discipline, particularly when it is public, which this now is, can be damaging to the respondent and also to The Bar if it gets “off the tracks.” Otherwise, why would The Bar have a designated reviewer whose duty it is to contemporaneous assure things are going fairly and certify that they are to all involved.

Ben Kuehne is The Bar’s Achilles heel no only as to “fairness” but also as to how “irreparable” the injury to Thompson is, particularly since The Bar has now tied, extortionately, the Ben Kuehne-approved demand that he submit to a psych evaluation for mental competency to be completed *after* he pleads guilty. Thus, Thompson, as demanded by The Bar, cannot even settle this dispute, this disciplinary matter, without acceding to the baseless, hurtful, illegal psych evaluation demand, which is made in violation of The Bar’s 3-7.13. How does any lawyer plausibly make an argument that Thompson is not being harmed right now by this situation in which Thompson is being held hostage by a demand that The Bar try to pathologize his faith yet again?

iii. *“The threatened injury to the movant outweighs whatever damages the proposed injunction may cause to the opposing party.”* Let’s get this straight: The Bar entire disciplinary machinery—nay, The Bar itself—will wither away if Thompson is allowed to have due process in his disciplinary matters? Not a single client has complained. Thompson has asked The Bar, in formal discovery in the disciplinary proceedings, what “harm,” what “injury” has been caused by him. The Bar has, if this court can believe it, stated that it cannot state what “harm” has been done because “that

calls for a legal conclusion.”!!! Thompson is not making this stuff up. He could not make this stuff up. He is clearly not that clever.

The *sine qua non* of Bar discipline, according to the ABA Standards of Discipline and according to The Florida Bar’s Standards for Imposing Lawyer Sanctions, is injury. Note this from The Bar’s own web site:

STANDARDS FOR IMPOSING LAWYER SANCTIONS AND BLACK LETTER RULES

The Board of Governors of The Florida Bar adopted an amended version of the ABA Standards for Imposing Lawyer Sanctions and thereby provided a format for Bar counsel, referees and the Supreme Court of Florida to consider each of these questions before recommending or imposing appropriate discipline:

(3) the potential or actual injury caused by the lawyer's misconduct;

The Bar cannot and will not enunciate what injury Thompson has caused, and yet it is asking this federal court to take, on faith alone, that Thompson’s request to know that, as well as to know with some specificity what he did wrong, will bring the entire system crashing down around our ears.

iv. *“If issued, the injunction would not be adverse to the public interest.”* The Bar’s invocation of this fourth prong is the most absurd of all. The Bar’s position, when boiled down to its essence, is that the “public” is best served by a Bar disciplinary system that, according to former Florida Bar President Miles McGrane’s own poll of our members “protects the powerful and targets the weak.” In doing so, The Bar not only harms, unfairly, the targets, but calls into question the public’s perception of the legitimacy of the entire disciplinary process.

The Bar is like the sheriff in the cinematic comedy classic, *Blazing Saddles*, who holds a gun to his head in front of the enraged citizenry, and proclaims “Anybody moves,

and the Sheriff gets it!” The Bar is holding a gun to its own head with its outrageous, over-the-top efforts to discipline Thompson not only for ulterior reasons, not only in violation of selective prosecution/equal protection concerns, but in violation of specific Bar Rules passed and supposedly enforced by The Bar but now ignored, wholesale by these same people that proclaim Thompson failed to cross his t’s and dot his i’s.

When Thompson worked for a home building in Miami, handling its zoning hearings before the Dade County Commission, that company’s direction of construction would drive Thompson around, showing him how Dade County violated its own building and zoning codes on its own structures. This is what The Bar is doing. This is what the government at all levels routinely does: It tells mere citizens what rules are to be obeyed and then disobeys them. This is the opposite of due process; it is tyranny. One would think a bunch of lawyers would understand that.

CONCLUSION

12. It is an irony lost upon the Senior Assistant to Attorney General that his boss, Florida Attorney General Bill McCollum, thanked Thompson for alerting him to the fact that the SLAPP Bar complainant herein, Take-Two Interactive Software, Inc., the makers of the *Grand Theft Auto* games, were planning to sell their *Manhunt 2* video game in Florida this summer.

13. As a result of Thompson’s alerting Bill McCollum to this fact, the Attorney General, Judge Tunis’ lawyer’s boss, warned parents in a special news release of what was coming their kids’ way—a “game” in which kids could rehearse cutting their opponents’ testicles off, jamming syringes into their eyes, decapitating opponents with kitchen knives, and other fun things. Attorney General McCollum was particularly

concerned, given Thompson's letter to him, that kids would be able to play this murder simulation game on the Nintendo Wii game platform whereby kids hold motion capture devices so that their limbs become the game "controllers," their entire body acting out and rehearsing the mayhem. This is state-of-the-art virtual reality used by the US Defense Department to get new recruits to kill.

14. After Judge Tunis' lawyer's boss came out with his warning, thanks to Thompson, the Entertainment Software Rating Board, which rates games in this country as to age, did something totally unanticipated by Take-Two and the rest of the industry: It rated *Manhunt 2* "Adults-Only," thereby prohibiting its sale not only to minors but also to anyone else of any age, given the fact that Sony and Nintendo have made a private sector corporate decision not to allow sale of Adults-Only games for play on their respective gaming platforms. Thompson is being blamed by the video game industry and its enthusiasts, publicly, for this result. Thompson was more than happy to help.

15. Take-Two's Chairman Strauss Zelnick, with whom Thompson met in New York three months ago to warn him this *Manhunt 2* disaster might happen, responded by telling the world that *Manhunt 2* "is fine art." Right, and Jeffrey Dahmer would be his generation's Rembrandt. Zelnick laughed at Thompson when Thompson warned him. He's not laughing now. Take-Two's stock has tanked on NASDAQ since.

16. This is the Kafka-esque nonsense with which Thompson has had to deal for ten days shy of three years from The Florida Bar, from the SLAPP-happy Bar complaint entertainment industry, and now from a Florida Senior Assistant Attorney General who is filing pleadings with this federal court not only to falsely portray Thompson's actions before Judge Tunis but also, ultimately, whether by inadvertence or design, to protect this

Bar-facilitated assault upon this state's children. Thompson then, according to all these people, poses a greater threat to the public than do the predatory practices of these entertainment companies who have enlisted the aid of The Bar to protect not the public but their illegal products.

17. Where does this anything-goes mentality at The Bar come from? Where does the idea come from that lawyers can do anything they can get away with in order to squash another lawyer whose efforts to protect children, often *pro bono*, with no client and no member of the public complaining, poses a greater danger to our state than do giant multi-national corporations who push porn and violence to our children?

18. The undersigned can tell this court where it comes from: It comes from the pit of Hell, and it smells like smoke. It also comes from a vendetta that The Bar has been pursuing against Thompson, off and on, since 1989. The first attempt by The Bar to pathologize Thompson's faith could be passed off, by some, as an accident. Now that the Bar is trying to do it again, it is a *pattern*. It is a pattern by people who are intolerant because they act under color of state law and believe they are thus above the law.

19. The Bar may succeed in what it is trying to do to Thompson. Judge Tunis' artful dodging may convince even the federal court system that when she denies a continuance she has actually granted it. "I actually did vote for the \$87 billion—before I voted against it" reads a lot like Judge Tunis' lawyer's latest.

But all the Bar findings and all the clever pleadings will not rebut the demonstrable importance *to all of us* of a Bar that follows its own Rules as it seeks to enforce them against others.

There is something much bigger going on here than The Bar and Thompson and Tunis and the inattentive Florida Supreme Court. It is found on the wall of the courtroom in which Judge Dava Tunis has routinely denied Thompson any semblance of due process and equal protection: “We who labor here seek only the truth.”

Truth matters. Public and private virtue matter. The innocence of children matters. Common decency matters. In the end, right and wrong matter. Thompson is not perfect. He is a Christian and knows better than that. But this imperfect Bar is going to run over both Thompson and its own Rules in its self-righteous pursuit of political correctness over his dead body.

If that is the pronouncement of a mentally incapacitated lawyer, then let The Bar prove it, and let it exhume Patrick Henry to prove it as to him as well.

I SOLEMNLY AFFIRM, under penalty of perjury, that the foregoing is true, correct, and complete, so help me God.

I HEREBY CERTIFY that this has been served upon record counsel this 14th day of August, 2007, electronically. It is also served upon the Judicial Qualifications Commission, which is looking at Judge Tunis, and to Attorney General Bill McCollum to alert him what his subordinates, at the expense of Florida’s children, are doing.

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