

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

MARCUS FONTAIN,
Plaintiff,

Case No. 1:19-cv-304
Black, J.
Litkovitz, M.J.

vs.

APRIL L. LANE, et al.,
Defendants.

ORDER

Plaintiff Marcus Fontain filed this civil rights action on April 26, 2019, alleging that defendants, including a county receiver, lawyers, and others, violated his federal constitutional rights through their actions in connection with a state court lawsuit concerning his ownership rights of the Dina Towers Condominium Building in Hamilton County, Ohio. (Doc. 1). On May 9, 2019, the undersigned recommended that plaintiff's motion for a temporary restraining order be denied and that this Court should abstain exercising its jurisdiction over plaintiff's claims against defendants pending the conclusion of the state court civil proceedings. (Doc. 7).

Thereafter, the District Judge adopted the Report and Recommendation. (Doc. 11). Defendants Brian O'Connell, Harjinder Sandhu, Jasreen Sandhu, April Lane, Jeffrey Lane, and Zachary Prendergast filed motions to dismiss in May 2019 (Docs. 8, 9) and plaintiff has filed six motions (Docs. 12, 13, 16, 23, 24, 26), all of which remain pending in light of the Court's abstention over plaintiff's claims pending the conclusion of state court proceedings.

In May 2020, plaintiff filed a "Notice of Status of the State Cases" asserting that the state actions are "ongoing" either at the trial court level or on appeal. (Doc. 17). These cases include *H&R Cincinnati Properties, LLC, v. Marcus Fontain*, Case Nos. A-1705644, C-190574, and *Marcus Fontain v. Harjinder Sandhu*, Case Nos. A-1901296, C-2000011. (*Id.* at PAGEID 824). On September 4, 2020 and March 18, 2021, the Court ordered the parties to submit status reports on

the pending state court proceedings. (Docs. 18, 25). The parties complied. (Docs. 19, 21, 22, 26, 27, 28). Plaintiff alleged that this matter was “ripe for trial on the merits and the Court should set it on the trial calendar.” (Doc. 26 at PAGEID 1176). Defendants, however, maintained that “the various lawsuits between the parties pending in state court currently remain pending, either in the court of appeals or in the trial court.” (Doc. 27 at PAGEID 1265; *see also* Doc. 28 at PAGEID 1271). Defendants stated that plaintiff had initiated a lawsuit in Warren County, Ohio “directed to the same objective” following “the last status report to this Court.” (Doc. 27 at PAGEID 1265).

On August 3, 2021, the Court again ordered the parties to submit status reports on the pending state court proceedings. (Doc. 29). Plaintiff and defendants filed their respective reports. (Docs. 30, 31, 32, 33, 34). Plaintiff alleged that this matter is “ripe for trial on the merits” and the Court should “set the case on the trial calendar. . . .” (Doc. 32 at PAGEID 1298-99). Defendants argued that “the state court civil proceedings are effectively concluded” and the “Receivership Action, underlying all of Plaintiff Marcus Fontain’s claims in the present case, has been completely resolved.” (Doc. 30 at PAGEID 1284; *see also* Doc. 31). Defendants contended that “the stay should now be lifted, and the [defendants’] pending Motion[s] to Dismiss should be decided.” (*Id.*).

On September 30, 2021, plaintiff filed a “judicial notice of intent to sue State Judge Terry Nestor and settlement demand pursuant to Evidence Rule 201(b)(1)(2) and 201(c)(2).” (Doc. 35). Plaintiff attached a twenty-page letter, addressed to Hamilton County Court of Common Pleas Judge Terry Nestor, to his filing. (*Id.* at PAGEID 1621-40). As best the Court can discern, plaintiff appears to express his intent to “commence a federal lawsuit” against Judge Nestor,

“unless” Judge Nestor complies with various demands. (*Id.*).¹ Most recently, on February 9, 2022, plaintiff filed an amended “notice of defendant’s ongoing deprivation of plaintiff’s rights in violation of Title 42 USC § 1983; and Due Process.” (Doc. 38).

In addition to the aforementioned state court proceedings, the Court notes there is currently a pending Ohio Supreme Court case involving plaintiff and defendants²: *Marcus Fontain v. Harjinder Sandhu, et al. and Westfield Insurance Company, et al.*, Case No. 2022-0036. It appears that plaintiff filed an appeal to the Ohio Supreme Court based on the First District Court of Appeals’ entry denying plaintiff’s motion for reconsideration of the order denying plaintiff’s application for a rehearing *en banc* in *Marcus Fontain v. Harjinder Sandhu*, Case Nos. A-1901296, C-2000011. (*Id.*, Notice of Appeal).

In light of the age of this lawsuit, the pending motions, the pending Ohio Supreme Court case, and the Court’s desire to efficiently manage its docket, the Court **ORDERS** the parties to submit status reports on the pending state court proceedings, including the pending Ohio Supreme Court case, within **fifteen (15) days** of the date of this Order.

IT IS SO ORDERED.

Date: 3/29/2022


Karen L. Litkovitz
Chief United States Magistrate Judge

¹ Plaintiff requests Judge Nestor to do the following: “(1) enter an Order quashing your fraudulent February 13, 2019, Restraining Order, issued against my wife and me; (2) enter an Order quashing your illegal February 13, 2019, Order Extending the Receivership, commensurate with the parties Settlement Agreement and the Agreed Entry of Dismissal by Judge Steven E. Martin; (3) enter an Order vacating and setting aside your sham September 12, 2019, Judgment Order deceitfully styled as a ‘**Final Entry Terminating Receivership Enforcing the Settlement Agreement and Assessing Costs**’ from the dismissed *H&R Cincy v. Fontaine*, Case No. A1705644.” (Doc. 35 at PAGEID 1621) (emphasis in original).

² The Court notes that in addition to the named defendants in this matter, the Ohio Supreme Court matter also involves a newly named defendant, Westfield Insurance Company. *Marcus Fontain v. Harjinder Sandhu, et al. and Westfield Insurance Company, et al.*, Case No. 2022-0036.