

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

ANTHONY TOCCI,	:	
Plaintiff,	:	
v.	:	Case No. 3:07-cv-314
ANTIOCH UNIVERSITY, et al.,	:	JUDGE WALTER H. RICE
Defendant.	:	

ORDER OVERRULING PLAINTIFF’S MOTION FOR IMMEDIATE DISMISSAL (DOC. #104) OF THE COURT’S ORDER OF JULY 9, 2010, ORDER DIRECTING PLAINTIFF TO HAVE NO FURTHER DIRECT COMMUNICATIONS WITH DEFENDANTS UNTIL LITIGATION IS CONCLUDED, SAVE AND EXCEPT THROUGH DEFENDANTS’ ATTORNEYS (DOC. #46)

On July 1, 2014, Plaintiff Anthony A. Tocci filed a Motion (Doc. #104) captioned “A Motion for the Immediate Dismissal of the Order, Restraining Anthony A. Tocci from: 1. Contacting Anyone (Professors, Staff, or Administrators) of Antioch University Midwest. 2 Access to the Physical Campus and Any of its Buildings or Functions.” Plaintiff’s Motion addresses the Court’s Order of July 9, 2010 (Doc. #46). Therein, the Court stated:

The Defendants have also filed a Motion for an Order Requiring Plaintiff to Cease and Desist all Direct Communications with Defendants and a Motion for Expedited Hearing, wherein they assert that the Plaintiff continues to attempt to contact the University directly, both by telephone and by mail. Doc. #25. Defense counsel

has repeatedly contacted Plaintiff's counsel, asking for assistance in this matter, yet Plaintiff refuses to cease the conduct. *Id.* The Plaintiff does not respond to the Motion.

The Plaintiff is hereby ordered to have no further direct communications with the Defendants, either by telephone, mail, email or any other means of communication, until this litigation is concluded, save and except through the Defendants' attorneys. A violation of this Order may be punished as a contempt of Court.

Doc. #46 at 21.

The Court notes that its Order was drafted to be self-terminating, as evidenced by the inclusion of the condition that "until this litigation is concluded," Plaintiff was not to contact Defendants directly. Thus, upon conclusion of this litigation, the Court's order will terminate, without the need for Plaintiff or Defendants to file a motion requesting any further Order from the Court.


However, this litigation has not concluded. As was his right, Plaintiff chose to appeal this Court's Decision and Entry of August 26, 2013 (Doc. #92), in which the Court sustained Defendants' Motion to Enforce the Settlement and Motion for Attorneys' Fees and Costs (Doc. #51). *See* Doc. #92, Notice of Appeal. "As a general rule, an effective notice of appeal divests the district court of jurisdiction over the matter forming the basis for the appeal." *Zundel v. Holder*, 687 F.3d 271, 282 (6th Cir. 2012) (quoting *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir.1987)). Plaintiff's notice of appeal divested this Court of jurisdiction over the settlement agreement and, more specifically, the question of its enforceability. Plaintiff's motion requesting that the Court "dismiss" its Order invokes the language of the settlement agreement to support his request.

However, Plaintiff's appeal means that the question of the agreement's enforceability has not been conclusively resolved. Thus, even if the Order in question were not self-terminating, the Court would lack the jurisdiction to rule on a motion that requests the enforcement of a provision of the settlement agreement until the complete resolution of the appeals process.

Furthermore, the appeals process in this case has not concluded. On June 10, 2014, the Sixth Circuit Court of Appeals issued an Order that affirmed the Court's enforcement of the settlement agreement between Plaintiff and Defendants. Doc. #103. The cover letter sent with the Sixth Circuit's Order to all parties indicated that the mandate in the case was still to be issued. However, on June 18, 2014, Plaintiff submitted a Petition for Rehearing to the Sixth Circuit Court of Appeals, requesting a reconsideration of his appeal. Court of Appeals Docket #: 13-4123 at Doc. #40. Under Rule 41(d)(1) of the Federal Rules of Appellate Procedure, "[t]he timely filing of a petition for panel rehearing . . . stays the mandate until disposition of the petition or motion, unless the court orders otherwise." Plaintiff's appeal will either be reheard, delaying the mandate of the Sixth Circuit until an unknown future date, or, if Plaintiff's petition for a rehearing is denied, the mandate will issue seven days after the entry of an order denying the petition. Fed. R. App. P. 41(b). When the Court receives a mandate from the Sixth Circuit Court of Appeals, this litigation will have concluded, and with it, the Court's Order to Plaintiff.

Plaintiff's Motion for Immediate Dismissal is directed towards an Order of the Court that will automatically terminate upon conclusion of this litigation. Furthermore, the Plaintiff filed the motion after this Court's jurisdiction over his case was divested by the Notice of Appeal that Plaintiff filed. Accordingly, Plaintiff's Motion for Immediate Dismissal is OVERRULED for want of jurisdiction. Plaintiff is advised to direct all future motion practice to the Sixth Circuit Court of Appeals until said court issues a mandate that definitively resolves Plaintiff's appeal. Until such time, this Court lacks jurisdiction over this matter.

Date: July 14, 2014



WALTER H. RICE
UNITED STATES DISTRICT JUDGE