McPeters v. Edwards et al Doc. 46

# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

KAREN McPETERS, Individually, and on	§	
behalf of those individuals, persons, and	§	
entities who are similarly situated,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	
	§	CIVIL ACTION NO. 4:10-CV-1103
THE HONORABLE FREDERICK E.	§	
EDWARDS; BARBARA GLADDEN	§	
ADAMICK, DISTRICT CLERK;	§	
<b>MONTGOMERY COUNTY, TEXAS; and</b>	§	
REED ELSEVIER, INC. d/b/a LexisNexis,	§	
	§	
<b>Defendants.</b>	§	

# DEFENDANT HONORABLE FREDERICK E. EDWARDS'S ADOPTION AND JOINDER IN DEFENDANTS' RESPONSES TO PLAINTIFF'S MOTION TO AMEND

#### **Introduction/Requested Relief**

The Honorable Frederick E. Edwards ("Judge Edwards"), Defendant, requests the Court to deny the motion to amend filed by Plaintiff Karen McPeters ("McPeters") and to strike the Second Amended Complaint filed by McPeters on June 6, 2010. *See Docket Nos. 19, 36.* Judge Edwards also asks that McPeters's First Amended Complaint be reinstated as McPeters's live pleading. *See Docket No. 11.* 

Without conferring with or seeking leave from the Court or permission from counsel for any of the defendants, McPeters filed her Second Amended Complaint on June 6, 2010. *Docket No. 19*. McPeters then moved the Court for leave to amend her First Amended Complaint and

file her Second Amended Complaint on June 9, 2010. *Docket No. 36.* All defendants opposed McPeters's motion to amend. *See id.* 

On June 9, 2010, the Court set a hearing on McPeters's motion to amend for June 18, 2010, requesting responses to the motion to amend on or before June 16, 2010. *Docket No. 38*. Defendants Montgomery County, Texas and Barbara Gladden Adamick (collectively "Montgomery County") filed a response on June 13, 2010. *Docket No. 40*. Defendant Reed Elsevier, Inc. ("Reed Elsevier") filed a response on June 16, 2010. *Docket No. 42*.

### Adoption and Joinder in Defendants' Responses

Judge Edwards adopts, joins in, and incorporates by reference as if fully set forth herein the responses to McPeters's motion to amend filed by Montgomery County and Reed Elsevier. *Docket Nos. 40, 42.* As both Montgomery County and Reed Elsevier pointed out in their motions, McPeters is entitled to amend her pleadings only once as a matter of course without seeking consent or approval. *See id.*; *see also* FED. R. CIV. P. 15(a). She did not seek consent or approval prior to filing her Second Amended Complaint. *See, e.g., Docket No. 19.* For this and for all of the other reasons set forth in the responses filed by Montgomery County and Reed Elsevier, Judge Edwards requests the Court to deny McPeters's untimely motion to amend. Further, because McPeters filed her Second Amended Complaint without leave or consent, Judge Edwards requests the Court to strike the Second Amended Complaint and reinstate the First Amended Complaint as McPeters's live pleading. *See Docket Nos. 11, 19.* 

### **Conclusion**

Judge Edwards requests the Court to deny McPeters's motion to amend; to strike McPeters's Second Amended Complaint; and to reinstate McPeters's First Amended Complaint as her live pleading. Judge Edwards requests any other, further, or alternative relief to which he is entitled.

Respectfully submitted,

SHEPHERD, SCOTT, CLAWATER & HOUSTON, L.L.P.

/s/Allison Standish Miller

Allison Standish Miller Texas Bar No. 24046440 Federal I.D. No. 602411 Email amiller@sschlaw.com

OF COUNSEL FOR DEFENDANT JUDGE FREDERICK E. EDWARDS

## **ATTORNEY-IN-CHARGE:**

Billy Shepherd
Texas Bar No. 18219700
Federal I.D. No. 10666
Email bshepherd@sschlaw.com
SHEPHERD, SCOTT, CLAWATER & HOUSTON, L.L.P.
2777 Allen Parkway, 7th Floor
Houston, Texas 77019
Telephone No. (713) 650–6600
Telecopier No. (713) 650–1720

#### **CERTIFICATE OF SERVICE**

I hereby certify that on Wednesday June 16, 2010, a true and correct copy of the foregoing instrument was forwarded via electronic delivery pursuant to local rules, *to-wit*:

Robert L. Mays, Jr. Attorney at Law 8626 Tesoro Drive, Suite 820 San Antonio, Texas 78217 Telephone No. (210) 657–7772 Telecopier No. (210) 657–7780 Attorney for Plaintiff

Miranda R. Tolar
Locke Lord Bissell & Liddell LLP
600 Travis Street, Suite 2800
Houston, Texas 77002
Telephone No. (713) 226–1618
Telecopier No. (713)223–3717
Attorney-In-Charge for Defendant

Reed Elsevier, Inc.

David K. Walker
Montgomery County Attorney
Sara Forlano
Assistant County Attorney
207 W. Phillips, First Floor
Conroe, Texas 77301
Telephone No. (936) 539–7828
Telecopier No. (713) 760–6920
Attorneys For Defendants
Montgomery County, Texas and
Barbara Gladden Adamick

John G. Parker
J. Allen Maines
Emily L. Shoemaker
S. Tameka Phillips
Paul, Hastings, Janofsky & Walker LLP
600 Peachtree Street, N.E., Suite 2400
Atlanta, Georgia 30308
Telephone No. (404) 815–2222
Telecopier No. (404) 685–5222
Of Counsel for Defendant
Reed Elsevier, Inc.

/s/Allison Standish Miller
Allison Standish Miller