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

JOHN STRANGMEIER	§	
	§	
v.	§	**CIVIL ACTION 4:11cv03463**
	§	
CITY OF HOUSTON, ET AL	§	

CITY OF HOUSTON'S AND MAYOR ANNISE PARKER'S MOTION FOR SANCTIONS

TO THE HONORABLE JUDGE LYNN HUGHES:

The City of Houston and Mayor Annise Parker, defendants, file this Motion for Sanctions pursuant to 28 U.S.C. § 1927, 42 U.S.C. § 1988, and this Court's inherent power to sanction, and request this Court to impose sanctions against both John Strangmeier and his attorney, Randall Kallinen, to punish them for filing this case, which was filed in bad faith, without basis in law or in fact, and for improper purposes, and which was ultimately dismissed by Strangmeier on May 24, 2012 (DE 28).

1. Facts in this case demonstrate sanctions are appropriate.

Strangmeier filed this suit alleging that his receipt of a red light citation from the City of Houston violated his rights under the United States Constitution. Initially, he alleged violations of his Fourth, Fifth and Fourteenth Amendment rights. On the face of Strangmeier's Original Complaint, he failed to state a claim on which relief could be granted. The receipt of a civil traffic citation simply does not rise to the level of a Fourth Amendment violation. Further, Strangmeier entirely failed to articulate any cognizable Fifth or Fourteenth Amendment claims, and even if he had, the claims were not ripe for adjudication

because Strangmeier affirmatively pled that he was contesting the citation through the process afforded to him and thus no property had been taken from him. The takings claim and related due process claim were not ripe in federal court until Strangmeier had first sought a remedy for the alleged violations in state court. On October 14, 2011, the Court held an initial conference and, after reviewing the allegations in Strangmeier's Complaint and the defendants' Rule 12(b) motion to dismiss, indicated that there was no valid legal or factual basis for the claims asserted. Strangmeier sought to amend the complaint, and the Court issued an order indicating that if Strangmeier "does not accomplish anything useful by amending" he must pay the City's defense costs. (DE 11).

In Plaintiff's First Amended Complaint, he added additional facts that provided no additional support for his legally infirm claims. Most prominently, he added copious allegations to support a new claim that the ATS contract with the City of Houston violates the Texas Transportation Code. (DE 13, pp. 3-5; ¶¶ 11-17). He provided no basis for his standing to assert such a claim. The City and Mayor Parker's second motion to dismiss again addressed each of the claims, including the First, Fourth, Fifth and Fourteenth Amendment claims and state law contract and conversion claims and demonstrated there was no viable legal basis for any of the claims and that they were frivolously brought. (DE 19). And later, he attempted to supplement his pleading, to which defendants were forced to respond. (DE 24, 26). This supplement primarily attempted to present information based on another case (City of Houston v. American Traffic Systems). The motion for leave to supplement was

never granted. He then dismissed his suit without prejudice when this Court set the matter for hearing. (DE 28). In addition to the requirement of drafting and filing two motions and a response, defendants were required to attend two hearings.

2. Sanctions should be awarded under 28 U.S.C. § 1927.

Sanctions are available under 28 U.S.C. § 1927 against a party's attorney who unreasonably multiplies the proceedings in a case. There are three essential elements to sanctions under Section 1927:

> First, the attorney must engage in "unreasonable and vexatious" conduct. Second, that "unreasonable and vexatious" conduct must be conduct that "multiplies the proceedings." Finally, the dollar amount of the sanction must bear a financial nexus to the excess proceedings . . . .

Peterson v. BMI Refractories, 124 F.3d 1386, 1396 (11th Cir. 1997). Proof of vexatious and unreasonable conduct requires a showing of "bad faith, improper motive, or reckless disregard of the duty owed to the court." *Temple v. Am. Airlines, Inc.,* 48 Fed. Appx. 480, 2002 WL 31049426, at *3 (5th Cir. Aug. 26, 2002) (quoting *Edwards v. Gen. Motors Corp.,* 153 F.3d 242, 246 (5th Cir. 1998) (affirming award of sanctions under Section 1927)).

Sanctions under Section 1927 are typically supported by evidence of "repeated filings despite warnings from the court, or other proof of excessive litigiousness." *Vanderhoff v. Pacheco,* 344 Fed. Appx. 22, 2009 WL 2776607, at *28 (5th Cir. Sep. 2, 2009) (quoting *Procter & Gamble Co. v. Amway Corp.,* 280 F.3d 519, 525 (5th Cir. 2002)). Although sanctions under Section 1927 are not imposed lightly, the conduct of Kallinen in this case as detailed above indicates that he knew his case was baseless. *See, e.g., Blanco River, L.L.C.*

v. Green, 2012 WL 33048, at *5-6 (5th Cir. Jan. 6, 2012) (slip copy) (upholding award of sanctions for attorney's bad faith in answering post-judgment interrogatories and other conduct).

Defendants ask that this Court take judicial notice of the clerk's file in this case, and award attorney's fees under 28 U.S.C. § 1927 to punish Kallinen for filing this suit and requiring a response by defendants, in addition to other vexatious conduct.

3. Attorney's fees should be awarded under 42 U.S.C. § 1988.

An award of attorney's fees under 42 U.S.C. § 1988 is available to a prevailing defendant in a case where the plaintiff makes an affirmative claim under section 1983. 42 U.S.C. § 1988. Because the facts demonstrate that Strangmeier dismissed his case to avoid a disfavorable judgment on the merits, defendants are a prevailing party and entitled to attorney's fees. *Dean v. Riser,* 240 F.3d 505, 511 (5th Cir. 2001). Moreover, the facts demonstrate that defendants are entitled to an award of attorney's fees because Strangmeier's lawsuit against defendants, that made claims under 42 U.S.C. § 1983 (DE 13, ¶¶ 28-30, 43), was frivolous, unreasonable, and groundless:

> The question before this Court is whether the district court abused its discretion in awarding attorney fees to the four prevailing defendants regarding § 1983 claims of unreasonable search and seizure. Under 42 U.S.C. § 1988, a district court may award attorney fees to a prevailing party in a § 1983 suit, which this court reviews for an abuse of discretion. *See United States v. Mississippi*, 921 F.2d 604, 609 (5th Cir.1991); *see also Walker v. City of Bogalusa*, 168 F.3d 237, 239 (5th Cir.1999). A prevailing defendant is entitled to fees "only when a plaintiff's underlying claim is frivolous, unreasonable, or groundless." *Walker*, 168 F.3d at 239.FN1 When considering whether a suit is frivolous, a district court should look to factors such as whether the plaintiff

> established a prima facie case, whether the defendant offered to settle, and whether the court held a full trial. *See Mississippi*, 921 F.2d at 609.

Myers v. City of West Monroe, 211 F.3d 289, 282 (5th Cir. 2000). This standard was applied in *Parr v. Nicholls State University*, 2012 WL 1032905 (E.D.La., March 27, 2012):

> . . . Defendants seek an award of attorney's fees, as the "prevailing party," pursuant to 42 U.S.C. § 1988. Such an award, however, is not automatically provided to every prevailing defendant. Rather, a successful defendant must show that the plaintiff's claim was "frivolous, unreasonable, or groundless." *Myers v. City of West Monroe*, 211 F.3d 289, 292 (5th Cir.2000) (quoting *Walker v. City of Bogalusa*, 168 F.3d 237, 239 (5th Cir.1999)); *Fontenot v. Toups*, 2011 WL 677345, *5 (E.D.La. Feb. 16, 2011). As set forth in *Offord v. Parker*, No. 11–20086, 2012 WL 13929, *1 (5th Cir.2012)(summary calendar), district courts are to consider certain factors in making this decision: "(1) whether the plaintiff established a prima facie case; (2) whether the defendant offered to settle, and (3) whether the court held a full trial."

Further, district courts:

> must "resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation." *Christiansburg Garment Co. v. E.E.O. C.*, 434 U.S. 412, 421, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). Instead, a court must ask whether " 'the case is so lacking in arguable merit as to be groundless or without foundation rather than whether the claim was ultimately successful.'" *Stover v. Hattiesburg Pub. Sch. Dist.,* 549 F.3d 985, 997 (5th Cir.2008).

Id. Strangmeier's causes of action were lacking in any arguable merit, and were without foundation. The actions taken by both Kallinen and Strangmeier detailed above illustrate that this case was frivolous, unreasonable, or groundless. Therefore, defendants should be awarded their reasonable attorney's fees.

4. This Court should sanction Kallinen and Strangmeier under its inherent authority.

This Court has the inherent power to sanction both litigants and their attorneys. *Toon v. Wackenhut Corrections Corp*., 250 F.3d 950, 952 (5th Cir. 2001). The Fifth Circuit has explained that the standard is, essentially, bad faith: "To support an award of sanctions under its inherent power, '[a] court must make a specific finding that the sanctioned party acted in bad faith.'" *Matta v. May*, 118 F.3d 410, 416 (5th Cir.1997) (*citing Dawson v. United States*, 68 F.3d 886, 895 (5th Cir.1995)). A court must make a specific finding that the party acted in bad faith in order to impose such sanctions. *Dawson v. United States,* 68 F.3d at 895.

Strangmeier and Kallinen acted in bad faith by filing a frivolous lawsuit. The claims upon which the suit were based are spurious as explained in detail above. The suit was ultimately dismissed by Strangmeier, because he knew the suit was brought in bad faith, but wanted to avoid having it dismissed with prejudice by this Court.

5. Defendants will provide evidence of reasonable attorney's fees upon request.

If this Court is inclined to grant defendant's Motion for Sanctions, and if the Court determines it to be necessary, defendants request the opportunity to submit evidence to the Court to establish a reasonable and necessary attorney's fee for responding to this suit.

Conclusion

FOR THESE REASONS, defendants ask this Court to award defendants attorney's fees under 28 U.S.C. § 1927, 42 U.S.C. § 1988, and its inherent power, against John Strangmeier or Randall Kallinen or both due to the conduct detailed in this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served in accordance with the Federal Rules of Civil Procedure on this the 7th day of June, 2012.

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Via efiling

/s/ Elizabeth Stevens
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