

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

2012 JAN -4 PM 1:52

WALLACE S. NOLEN,)
 Plaintiff)
)
 vs.)
)
 ALDRICH PUBLIC LIBRARY,)
 NANCY F. POPE, KAREN)
 LANE, CITY OF BARRE,)
 TIMOTHY BOMBARDIER, ANDREW)
 MARCEAU, ROSS WEILAND, and)
 JANE DOE 1-20,)
 Defendants)

BY 
 DEPUTY CLERK

Case No. 2:11-cv-183

**DEFENDANTS' MOTION FOR DISMISSAL WITHOUT PREJUDICE
AND SUPPORTING MEMORANDUM OF LAW**

NOW COME the Defendants, by and through their respective counsel, and hereby respectfully move the Honorable Court to dismiss this matter without prejudice. For support, Defendants offer the following memorandum of law.

MEMORANDUM OF LAW

On September 14, 2011, the Court stayed this case through December 15, 2011, and ordered that Plaintiff update the Court in writing as to his ability to proceed. The Court also ruled that any filings requesting additional stay were due by December 22, 2011, and that if Plaintiff failed to contact the Court by December 22, 2011, the case could be dismissed for failure to prosecute.

It appears that on December 20, 2011, Plaintiff filed with the Court a copy of a December 13, 2011 letter "To Whom It May Concern," from Dr. Steven Ades, MD, speaking to what seem to be Plaintiff's significant health problems, stating in part that Plaintiff "may not be able to attend hearings or appointments while he is receiving chemotherapy for the next 5 months."

Defendants request that this matter be dismissed without prejudice pursuant to the Court's rulings of September 14, 2011 and F.R.Civ.P. 41(b). While Plaintiff has filed the above referenced letter, he has not requested additional stay. The above referenced letter leads a reasonable person to believe that Plaintiff will be unable to engage in the effective prosecution of the case, being weakened "both mentally and physically" as a result of his treatment, and possibly being unable to "attend hearings or appointments," which reasonably read, could include depositions.

Meanwhile, the Defendants remain alleged wrongdoers in a "federal case." As an example of how the circumstances can visit hardship on the Defendants, attached hereto as APPENDIX is a copy of a February 10, 2011 letter from Oliver Twombly, Esq. to Elizabeth LaPerle opining as to the impact of Plaintiff's litigation on City of Barre City Clerk Carolyn Dawes' personal efforts at obtaining a loan.¹

As the Court has allowed Plaintiff to proceed in forma pauperis, Plaintiff will not be financially prejudiced by a dismissal without prejudice. Such a dismissal will allow the Plaintiff to tend to his medical issues, with the ability to re-file the case if and when he is able, while allowing the Defendants to conduct their lives free (temporarily at least) of Plaintiff's allegations and any burdens associated with such allegations.

WHEREFORE, Defendants respectfully request that this matter be dismissed without prejudice.

¹ While Ms. Dawes is not a named Defendant in the present case, she is a named Defendant in No. 2:10-cv-00241 wks, another case brought by the same Plaintiff, and in which the Court issued the same rulings as to stay and notification of the Court on September 14, 2011.

Dated at Burlington, Vermont, this 4th day of January 2012.

McNEIL, LEDDY & SHEAHAN, P.C.

By: 

Joseph A. Farnham, Esq.

271 South Union Street

Burlington, VT 05401

Attorneys for Defendants City of Barre,
Timothy Bombardier, Andrew Marceau,
and Ross Weiland

Dated at Montpelier, Vermont, this 4th day of January, 2012.

PRIMMER, PIPER, EGGLESTON
& CRAMER, PC

By: 

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Library, Nancy F. Pope and Karen Lane

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