

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Blanche M. Manning	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 3154	DATE	July 19, 2007
CASE TITLE	Martin v. Brock		

DOCKET ENTRY TEXT:

Mr. Martin's motion to remand [18 & 21], motion to vacate [22], and motion to recuse [23] are denied. Mr. Martin should provide the court with a courtesy copy of any further pleadings via regular mail, and should refrain from faxing pleadings to the court absent prior authorization. In addition, if he files any further motions, they must be accompanied by a notice of motion or they will be stricken. See Local Rule 78.2.

■ [For further details see text below.]

STATEMENT

The court recently dismissed a complaint filed by plaintiff Andy Martin. His motions to recuse this court, to vacate the court's judgment, and to remand are before the court.

First, Mr. Martin seeks to disqualify this court, apparently because he believes that it is biased against him. The court will construe this request as one seeking relief under 28 U.S.C. §§ 455(a) and 455(b)(1). Section 455(a) requires a federal judge to "disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned." This section is the "catchall recusal provision, covering both interest and relationship and bias and prejudice grounds." *Litky v. United States*, 510 U.S. 540, 548 (1994). Motions to disqualify under § 455(a) are viewed objectively. *Te-Ta-Ma Truth Foundation--Family of URI, Inc. v. World Church of the Creator*, 246 F.Supp.2d 980, 986 (N.D. Ill. 2003). Thus, the court must determine whether a reasonable person would perceive a significant risk that the judge will resolve the case on a basis other than the merits. *Id.* This inquiry is made using a reasonable person standard, as opposed to a "hypersensitive or unduly suspicious person" standard to avoid giving a party peremptory strikes against a judge or allowing judge shopping. *Id.* (internal citations omitted). Disqualification pursuant to § 455(a) may be appropriate when there is an appearance of bias, as opposed to actual bias. *Id.*

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In contrast, under § 455(b)(1) the assigned judge must disqualify herself if she “has a personal bias or prejudice concerning a party.” Section 455(b)(1), like § 455(a), is governed by “the same reasonable person inquiry, the only difference being that § 455(b)(1) concerns the judge’s bias or prejudice against the party whereas § 455(a) concerns the judge’s general bias or prejudice and interest or relationship that may cause the judge not to decide the case based on the merits.” *Id.* Disqualification under § 455(b)(1) is required only if the moving party points to compelling evidence arising from an extrajudicial source which demonstrates that the judge is actually biased or prejudiced. *Id.*

Here, Mr. Martin takes issue with the court’s ruling, characterizing it as “racist justice” and contending that it shows that the court is biased against him. Adverse rulings, however, are not evidence of judicial bias. *See, e.g., In re Mann*, 229 F.3d 657, 658 (7th Cir. 2000). Mr. Martin also takes issue with the fact that the court did not fax its order to him upon issuance. Litigants, however, are responsible for checking the docket, which is now available electronically. Thus, the court regrets that Mr. Martin was inconvenienced by the fact that he did not immediately receive notice of its prior orders. Nevertheless, it was not obligated to fax those orders to him. The court further finds that a reasonable person would not believe that its decision shows that it ruled on a basis other than the merits. *See* 28 U.S.C. § 455(a). In addition, Mr. Martin has not directed the court’s attention to any admissible evidence which demonstrates that the court’s rulings are based on extrajudicial facts outside the corners of the record. *See* 28 U.S.C. § 455(b)(1). Instead, the motion to recuse appears to be based on Mr. Martin’s belief that the court’s decision is “unfounded and malicious” and the court is, among other things, “vicious and unprincipled.” Ultimately, however, the motion flows from dissatisfaction with the court’s rulings, and since this is not a basis for recusal, his motion to recuse this court is denied.

Next, Mr. Martin seeks to vacate the court’s dismissal order and to remand this case, contending that the court lacked jurisdiction because he is willing to limit his claims to an amount less than \$75,000 and that the order is void because the court did not afford him an opportunity to respond prior to its dismissal order. In the dismissal order, the court noted that it could properly exercise diversity jurisdiction over this matter. Mr. Martin disagrees, and states that he is not seeking an amount greater than \$75,000. The assessment of the amount in controversy, however, is made at the time of removal. *Carter v. Tennant Co.*, 383 F.3d 673, 681 (7th Cir. 2004). At the time of removal, the defendants noted that Mr. Martin sought at least \$50,000 in damages (the DuPage County Court jurisdictional minimum). He also identified himself as a public figure who may run for public office, noted that he had won “substantial settlements” in other cases and had spent years developing and protecting his reputation, and asked for injunctive relief blocking Media Matters from publishing commentary about certain matters which Media Matters asserted would cause it to lose hundreds of thousands of dollars in contributions.

The court remains satisfied that these allegations show that as of the time of removal, the amount in controversy exceeded the jurisdictional minimum. *See Wilkow v. Forbes, Inc.*, 241 F.3d 552, 555-55 (7th Cir. 2001) (libel suit based on a newspaper article contending that the plaintiff was impoverished and had filched a bank’s money was properly brought under the diversity jurisdiction); *In re Brand Name Prescription Drugs Antitrust Litigation*, 123 F.3d 599, 610 (7th Cir. 1997) (when the plaintiff seeks an injunction, the cost that a defendant would be forced to forgo if the injunction was in place counts towards the amount in controversy).

Moreover, a plaintiff may not defeat removal by filing a post-removal affidavit limiting his recovery. *See Matter of Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir. 1992) (“jurisdiction is determined as of the instant of removal” so “a post-removal affidavit or stipulation” that the plaintiff will not seek \$75,000 or more is ineffective). Instead, to prevent a defendant from removing an action, a plaintiff who wishes to establish that

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he is seeking less than \$75,000 must file a binding stipulation with his complaint. *See, e.g., In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir. 1992) (holding that where the plaintiff failed to file a stipulation or affidavit with his state court complaint and amount in controversy appeared to be above the jurisdictional minimum, a post-removal stipulation had no legal effect). Mr. Martin did not attempt to limit the relief sought in his state court complaint and does not presently disagree with any of the allegations in the defendants' notice of removal. To the contrary, he drafted sweeping allegations, and only agreed to cap his damages claims after his case was removed. For all of these reasons, the motion to remand is denied.

The court, however, takes this opportunity to clarify its prior dismissal order. It originally referenced the portions of the Connecticut injunction referring to actions filed originally in federal court and found that the failure to comply with the injunction justified the extreme sanction of dismissal. The court substitutes the following citation to the injunction which governs filings in state fora, since this case was removed. *In re Martin-Trigona*, 592 F.Supp. 1566, 1568, 1573 (D. Conn. 1984). Specifically, the Connecticut court required Mr. Martin to "append pertinent informational material to pleadings in state courts." *Id.* Mr. Martin did not do so.¹ Instead, as noted previously by the court, he filed suit in state court using an alias.

The court has carefully studied Mr. Martin's motion to vacate, which takes exception to the fact that the court did not afford Mr. Martin an opportunity to respond prior to dismissing his complaint and challenges the court's impartiality. Critically, Mr. Martin does not dispute that he is the same person who is the subject of the Connecticut injunction. Moreover, the court is not required to order a response prior to considering whether a complaint states a claim. *See* 28 U.S.C. § 1915(e)(2)(B); *Rowe v. Shake*, 196 F.3d 778, 783 (7th Cir. 1999) (the court must screen complaints filed by all litigants and dismiss any which fail to state a claim).

Fundamentally, the court was and remains extremely disturbed by the fact that Mr. Martin is a highly educated and exceptionally sophisticated pro se litigant who graduated from law school and has filed hundreds upon hundreds of lawsuits over the years. *See In re Martin-Trigona*, 55 Ill.2d 301, 302 N.E.2d 68 (Ill. 1973) (mischaracterization of nature of pending action listed in application for admission to the practice of law and the making of untrue and defamatory charges against members of district committee on character and fitness warranted denial of application to the Illinois bar). Yet, he did not comply with the Connecticut injunction and filed suit in state court under a different name without mentioning the injunction let alone making a good faith effort to comply with its terms. As it did when it originally dismissed this suit, the court finds that this constitutes an abuse of the judicial process. *See Dotson v. Bravo*, 321 F.3d 663, 668-69 (7th Cir. 2003) (filing a case under a false name without justification to gain a tactical advantage "certainly qualifies as flagrant contempt for the judicial process and amounts to behavior that transcends the interests of the parties").

The court also notes that when it weighed potential courses of action to be taken based on Mr. Martin's filings, it considered the merits of his defamation and false light claims, which are based on articles attached to

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¹ The court acknowledges that Mr. Martin's state court complaint refers, without providing any specifics, to a prior Connecticut court case "where his business had been stolen and he had been kidnapped, by persons who acted as a 'virtual secret society' within the federal courts of that state." Complaint at 6. He goes on to allege that Connecticut judges attacked him after he exposed corruption in the federal court system. This is not the kind of disclosure contemplated by the injunction, as it does not put a reader of the complaint on notice of the injunction detailing Mr. Martin's litigation history.

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Mr. Martin's complaint. See 28 U.S.C. § 1915(e)(2)(B). In Illinois, a "statement of fact is not shielded from an action for defamation by being prefaced with the words 'in my opinion,' but if it is plain that the speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." *Haynes v. Alfred A. Knopp*, 8 F.3d 1222, 1227 (7th Cir. 1993). Whether a statement is a factual assertion (and thus is actionable if false), or is protected opinion is a question of law for the court. See, e.g., *Dilworthy v. Dudley*, 75 F.3d 307, 309 (7th Cir. 1996). The Seventh Circuit has held that under Illinois law, statements of opinion that someone is racist "fit comfortably within the immunity for name-calling" unless they imply the existence of undisclosed, defamatory facts. *Stevens v. Tillman*, 855 F.2d 394, 401-02 (7th Cir. 1988). Here, Mr. Martin's defamation claim rests squarely on the defendants' description of him as a racist. As a matter of law, this statement is an opinion and thus is not actionable. See *id.* (allegedly defamatory statements by black parents in their campaign to remove white principal of elementary school, including claims that principal was a "racist," that principal "ran the school like a plantation," and that principal was "miseducating" the children, were insulated from reach of libel law by the First Amendment because they were statements of opinion, not fact).

Mr. Martin's remaining claim appears to be based on his contention that calling him anti-Semitic places him in a false light before the public. In Illinois, to prevail on a false light claim, a plaintiff must establish (among other things) that the defendants' statements were unfounded. See *Pope v. Chronicle Pub. Co.*, 95 F.3d 607, 616 (7th Cir. 1996). Mr. Martin's complaint alleges that he has never engaged in "litigation activity or opinion commentary [which] even remotely rises to the level of anti-Semitism." Complaint at 7. However, the court takes judicial notice of the fact that three courts have found to the contrary. See *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993) (noting that the plaintiff "has used legal pleadings to ventilate his contempt and hatred of persons of Jewish heritage"); *U.S. v. Martin-Trigona*, 759 F.2d 1017, 1019 n.3 (2d Cir. 1985) (noting that one of the plaintiff's complaints was "rife with viciously anti-Semitic assertions"); *In re Martin-Trigona*, 737 F.2d 1254, 1256 (D. Conn. 1984) (stating that the plaintiff has used "pleadings and other legal papers, the contents of which are set out in their appalling detail in the district court's opinion, as a vehicle to launch vicious attacks upon persons of Jewish heritage").

In sum, after carefully considering the entire record, the court finds that Mr. Martin's filings, his use of an alias, and his failure to comply with the Connecticut injunction when viewed together constitute an attempt to abuse the courts. Alternatively, the court finds that his suit, in any event, fails to state a claim for which relief may be granted. Accordingly, the court declines to revisit its dismissal order.