

From: GARY NORTINGTON

Date: 7/24/2018 3:07:48 PM

To: Rudy Davis

Attachments: □

Dear Bro. Rudy, (This is page 9 of continuing saga on the SE MI PUBLIC OFFICE MAFIA; page 10 continues this event.)

Following is text of my motion for reconsideration in MI Court of Claims on JACKSON, MI MDOC PRISON STAFF CARINA BLAIR, BRENDA SCHMELTZ, JAMES E. SIMS and UNKNOWN Guard ----- STEPHENS taking part in damaging my guitar, typewriter, beard trimmer, calculator and other property then taking the property for damage they did; mob rule of the radical left like in a third world country (I said this to STEPHENS in 2017). This was unlawful retaliation for my medical lawsuit on Dr. Badawi M. Abdellatif refusing to treat me for food allergies and ischemic heart disease which caused multiple Heart Attacks and Strokes in 2016, Northington v ABDELLATIF, US Dist Ct No 2:16-cv-12931. It's my guerilla warfare against unlawful behavior modification tactics of the SE MI PUBLIC OFFICE MAFIA Communists. My philosophy is to take the enemies' weapon(s) from them and beat them with it until they don't want to use it anymore; my "One in a Million" stand against evil Beast.

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Gary M. Northington,
Plaintiff Pro Se, No. 17-000 dd253-MP
vs JUDGE CYNTHIA DIANE STEPHENS
MDOC, et al,
defendants.

-----/

PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY;
PLAINTIFF'S 30 JULY 2018 MOTION FOR RECONSIDERATION

Plaintiff Gary M. Northington Pro SE, pursuant to MCR 2.119(F), requests reconsideration of the 03 JULY 2018 ORDER dismissing Defendant Washington, and to substitute Defendant Richard D. Russell for Defendant Washington, as follows:

FACTS ON DELAY IN FILING THIS MOTION

1. Plaintiff timely filed MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR RECONSIDERATION when he received the 03 JULY 2018 ORDER on 12 JULY 2018 pursuant to the Mailbox Rule adopted by the Michigan Supreme Court.
2. Anomaly or error in writing the, Complaint was caused by Plaintiff being in recovery from multiple heart attacks and strokes in 2016 which diminished his cognitive functions, making him mentally slow and unable to comprehend complex or new things.

FACTS ON INCORPORATION OF DEFENDANT WASHINGTON

3. MCR 2.113(G) allows that: "Statements in a pleading may be adopted by reference" into "another part of the same pleading".
4. Judge Cynthia D. Stephens (hereinafter "the COURT"), when ruling "plaintiff's complaint

fails to make any specific allegations against Defendant Washington" (hereinafter "Washington") (OPINION, p. 5 (03 JUL 2018)), failed to consider Defendant Washington (hereinafter "Defendant") was adopted by reference into every paragraph of the Complaint by the statement on page 1 saying: "Names of actors Russell, Schmeltz and Stephens shall be deemed to include Defendant Washington" (Complaint, p.1)(Plaintiff's Summary Answer, p. 2 & 5).

5. Therefore, the ruling of no allegations against Washington are in error.

6. However, substitution of Defendant Russell for Washington may be ORDERED under, MCR 2.202(B) and (D), and Plaintiff given certified copy of Summons and Complaint now held by the Clerk for service.

FACTS ON OFFICIAL CAPACITY ACTION

7. The COURT failed to consider MCL 600.6419(1) waives immunity in OFFICIAL CAPACITY suits for a "department" or "officer" "who reasonably believes that he or she is acting, within scope of his or her authority while engaged in or discharging a government function in the course of his or her duties" under MCL 600.6419(7) when ruling "plaintiff's complaint fails to allege ... she (Washington) was not acting within scope of her authority" (OPINION AND ORDER, p. 5 (03 JULY 2018)).

8. The COURT failed to consider all parties are sued in OFFICIAL CAPACITY only (Complaint, p. 2); not sued in INDIVIDUAL/PERSONAL CAPACITY.

9. The COURT failed to consider said ruling (pgh. 7 herein) of the OPINION, p. 5, is on INDIVIDUAL/PERSONAL CAPACITY using MCL 691.1407(5) which applies only to INDIVIDUAL/PERSONAL CAPACITY lawsuits.

10. The COURT failed to consider Defendant only raised a moot defense of being sued in INDIVIDUAL/PERSONAL CAPACITY using only INDIVIDUAL/PERSONAL CAPACITY cases and statute (Defendants' Summary Motion, p.2-3; and Defendant's Brief, p. 5-8) which do NOT apply to this OFFICIAL CAPACITY action (Plaintiff's ANSWER To SUMMARY Motion, p. 4-6; Brief, p. 4-5).

11. "A suit against a public officer in official CAPACITY is merely another way of pleading an action against an entity of which an officer is an agent". PUCCI v SOMERS, 962 F Supp 2d 931, ____ (ED Mich. 2013); PUCCI v 19th JUDICIAL CIRCUIT 2016 Mich App LEXIS 560 (2016).

12. Therefore, dismissal of Washington should be vacated as erroneously based on INDIVIDUAL CAPACITY rather than the charged OFFICIAL CAPACITY and/or substitute Defendant Russell for Washington.

(This continues on page 10.)

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(this is page 10, my continuing motion from page 9.)

FACTS ON IMMUNITY REGARDING WASHINGTON

13. The COURT failed to consider the State waived immunity for OFFICIAL CAPACITY suits in the Court of Claims under MCL 600.6419(1). "Government agencies are not immune from tort liability". ROSS v CONSUMER'S POWER, 420 Mich 567, 591 (1984)(on MCL 691.1402 which parallels 600.6401(1)) (Plaintiff's Summary Answer, p. 5-6; and Brief, p. 5-6). Liability is on the State. PUCCI, supra.

14. The COURT failed to consider when ruling State officials "are immune from tort liability for injuries to persons or damages to property" (OPINION, p. 5 (03 JUL 2018)) that MCL 691.1407(5) only applies to INDIVIDUAL CAPACITY claims not cognizable in Court of Claims (Plaintiff's Summary Answer, p. 5-6; Brief, p. 4-6). MEDA v HOWELL, 110 Mich App 179, 183-184 (1981)

15. The COURT failed to consider non-tort/prospective relief actions should not be dismissed "simply because underlying facts could also have established a tort action", ROSS, 420 Mich at 647-648, and an OFFICIAL CAPACITY "action imposes liability on the entity that the official represents, not the individual personally" (Plaintiff's Summary Brief, p. 4). PUCCI, 962 F Supp 2d 931, ____.

16. The COURT failed to consider said relevant law when ruling Washington "is entitled to immunity under the Governmental Tort Liability Act ... and that claims against her must be dismissed" under MCL 691.1407(5) (OPINION, p. 5).

17. Therefore, the dismissal of Defendant Washington was in error and should be reversed for misapplication of immunity under MCL 691.1407(5) and applicable statute is waiver of immunity under MCL 600.6419(1) and MCL 600.6458.

WASHINGTON WAIVED MCL 691.1407(5) DEFENSE

18. "A waiver is a voluntary relinquishment of a known right". MCDONALD v FARM BUREAU INSURANCE, 480 Mich 191, 204 (2009).

19. "An affirmative defense may be waived by a party's failure to assert it". TRAVELERS INS. v DETROIT EDISON, 465 Mich 185, 204-205 (2001). This ruled that MCR 2.111(F)(2) failure to plead a defense waives it.

20. "[T]he question of waiver is usually one of intent, as indicated by the acts and declarations of the party". Griswold v Ludington, 126 Mich App 401, 412 (1898).

21. Washington's Summary Brief, p. 5, states: "MCL 691.1407 provides, in relevant part", then goes on to quote MCL 691.1407(1) and (2)(a-c). The Brief, p. 7, then cites MCL 691.1407(7)(a), but never cites MCL 691.1407(5) used by the COURT (OPINION, p.5).

Plaintiff believes Washington thereby waived any defense of MCL 691.1407(5) on immunity for highest State officials because not specifically pleaded. See also MCR 2.111(F)(3).

22. Washington also raises useless defenses of "wanton misconduct" and "gross negligence" not needed to state a claim in Court of Claims (Defendants' Summary Brief, p. 7-8). State's waiver of immunity under MCL 600.6419(1) does not require such.

23. Plaintiff argued Washington had NO immunity under MCL 600.6419(1 and 7) because waived by the State (Plaintiff's Summary Answer, p. 6 (bottom); Brief, p. 6 (top)).

24. Under the standard of citing a section of statute not raised by Washington (pgh. 21 herein), MCL 681.1407(5), the COURT should have used the same standard to analyze Plaintiff's argument of State waiver of immunity under MCL 600.6419(1). LITKEY v UNITED STATES,

510 US 540, 551 (1994)(appearance of favoring).

25. Therefore, for Washington and the COURT'S misapplication of laws on immunity, animus, and/or for Washington not citing the "highest official" defense of the misapplied immunity statute,

the COURT should rule Washington waived any immunity defense.

26. Aforesaid palpable error unduly affected outcome.

RELIEF REQUESTED

THEREFORE, for aforesaid reasons, Plaintiff Gary M. Northington Pro Se requests this Honorable Court to vacate the dismissal of Defendant Washington and/or ORDER Richard D. Russell substituted for Defendant Washington if necessary.

Respectfully submitted,

/s/ Gary M. Northington

Dated: 30 JUL 2018 -----

Gary M. Northington 193035

141 First

Coldwater, MI 49036

(517) 278-6942 email @ JPay.com

PROOF OF SERVICE

I, Gary M. Northington, certify that on this day I served one copy of the foregoing Motion for Reconsideration upon: Asst. AG James E. Long, P.I. Box 30736, Lansing, MI 48909, by mailing to him.

/s/ Gary M. Northington

Dated: 30 JUL 2018 -----

In paragraph 24, case of LITKEY v U.S. said: "A judge should not give the appearance of favoring one party or the other". I originally intended to make one whole issue on judicial misconduct but it is sufficient in that one paragraph to give the judge the message.

The Chief Judge of this Court was the judge who presided over imprisoning me and took the \$4,000 bribe from the prosecutor. It is stated in one of my affidavits in this case that JUDGE MICHAEL J. TALBOT unduly influenced PRISON STAFF to commit the wrongful acts for which this case was filed; the unlawful damaging and taking of my property. JUDGE CYNTHIA DIANE STEPHENS was likely manipulated by her boss, JUDGE TALBOT (who we forced to retire), to make the deceptive ruling for which I requested reconsideration in my foregoing. I don't back down. motion.

It's about standing against spiritual wickedness in high places. Ephesians 6:10-18. --- like Jesus did. Ephesians 5:1-2.

May God Bless You All!!!