

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION

LARRY HENRY TOMPKINS,	§	
Plaintiff	§	
	§	
VS.	§	CIVIL ACTION NO.
	§	7-04CV-057-R
	§	
MILTON EUGENE DOUGLASS,	§	
ATTORNEY, THE HON. ROBERT	§	
BROTHERTON, and THE HON.	§	
ROY T. SPARKMAN,	§	
Defendants.	§	

JOINT STATUS REPORT

As required by the Court's Order of September 20, 2004, Plaintiff and counsel for the Defendants submit the following Joint Status Report:

A. NATURE OF THE CASE AND CONTENTIONS OF THE PARTIES

1. Plaintiff's Introduction and Contentions:

In this 42 USC § 1983-1985 denial of due process claim (not libel claim which was a Texas state claim), Plaintiff Larry Tompkins filed suit against three Defendants that were involved in illegal activities in a Texas state court libel claim in which I was one of three plaintiffs. My different and separate Federal USC 42 denial of due process claim has two parts. The first part is the obvious denial of my due process by Milton Eugene Douglass and Judge Robert Brotherton. Douglass broke TRCP 21 by not giving my attorney in that claim, Barry H. Richardson, due notice of a motion and proposed order, and Brotherton broke TRCP 21 by signing an order on a motion to reassign the Texas state libel case that obviously had no certificate of service. Conspiracy may have been a part of that wrongful action.

The second part of my claim involves the conspiracy aspect of USC 1985 and ex parte communications between the Defendants and some Defendant's ex parte contact with a Fort Worth administrative judge. Judge Sparkman in a hearing announced he had been in ex parte contact with a Fort Worth administrative judge named Judge Jeff Walker involving a motion in the Texas state court libel claim scheduled before his court. He said he was told by Walker how to rule on the motion before my attorney, Barry H. Richardson was allowed to present any evidence on the motion. Ex parte conspiracy communication very possibly involved Judge Robert Brotherton at that time. Only prudent discovery can bring those facts to light.

Plaintiff contends this claims should not be dismissed because this Court does have subject matter jurisdiction. This federal USC 42 §§ 1983-1985 claim is for denial of due process and conspiracy to deny process. The Texas State claim was for libel. This case is not "inextricably intertwined" with a challenge to a state court libel judgment. This federal USC 42 §§ 1983-1985 claim is not an appeal of the Texas state libel case. The *Rooker-Feldman* doctrine relates to federal appeal of a state court judgment. The federal claim names only a lawyer and two judges. None of the Defendants were parties in the state case. This is not an appeal of a state case; it is a separate damage action against three persons who were not sued in state court. The state court outcome does nothing to protect these three parties from that. The "Absolute Immunity" the judges are seeking is not appropriate and would perpetuate the subjective reassigning of cases by any judge without proper notice to the parties. When cases are originally assigned, it is by objective blind draw out of a can. As it stands now, if Douglass represents a client in a case that has drawn his wife's court, he can consider which other judge would be most favorable to his case. He can then, to his unfair

advantage, have another of the judges sign a reassign order without proper prior notice to the other parties.

I am stating the easily provable claim that in the Texas state court libel claim (not denial of due process claim which is the federal claim) at least two Defendants, Milton Eugene Douglass and Judge Robert Brotherton, broke the Texas Rules of Civil Procedure Rule 21 regarding filing and serving of pleadings and motions. I am not sure yet what Judge Roy Sparkman's knowledge and involvement was at that point on the federal denial of due process claim re: TRCP 21. Only some constructive discovery could bring those facts to light. TRCP is printed below and very clearly states:

TRCP 21. Filing and Serving Pleadings and Motions

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefor, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

Now it seems to me, what is stated above is what is supposed to be the Texas state process for the filing and serving of pleadings and motions. What is stated above is the Texas law that states the process of filing and serving pleadings and motions. Now "Every", the dictionary defines as "all or excluding nothing." The motion to reassign the Texas state liable case Milton Eugene Douglass filed would have had to have been part of the "every motion" covered by TRCP 21 rule. The motion is to be filed first and a proposed order and copy of the filed motion with certificate of service is to be left with the secretary of the judge involved. A hearing is set on the motion and upon hearing the order is signed or amended and then filed with the clerk. In the Texas state libel case the signed order was dated before the motion was filed with the clerk. I believe there is a high possibility there

was ex parte communication between Douglass and Brotherton. Possibly there was ex parte communication with Sparkman at that time. Only prudent discovery would help bring those facts to light.

The lawyer for the two judges admits that declaratory relief against the two judges remains a live issue, but asks that the Federal Court exercise discretion to dismiss as to the judges. Plaintiff would point out that a conspiracy involving those two judges and one non-immune lawyer, makes it improper to join all three in this lawsuit, even if damages arising from the conspiracy can only be assessed against the non-immune lawyer defendant. The Court should refuse to release the judges from the non-monetary declaratory relief, because their presence is important to adjudicating the conspiracy claims against the lawyer.

2. Defendants' Introduction and Contentions:

In this 42 USC §§ 1983 and 1985 action, Plaintiff Larry Tompkins filed suit against Defendants, two state court judges and counsel for the opposing party, alleging that during his state court case, Defendants conspired to deny his constitutional rights regarding the selection or appointment of a new judge. Defendants deny any violations occurred and deny any claim exists against the Defendants.

Defendants contend this case should be dismissed because this Court lacks subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine, and the Court should decline to exercise its jurisdiction to grant declaratory relief. Defendants contend Plaintiff's attempted constitutional claims are inextricably intertwined with a challenge to a state court libel judgment and are insufficient to vest subject matter jurisdiction with the Court. Defendants Judge Brotherton and Judge Sparkman contend that they are entitled to judicial immunity making them absolutely immune

from suit as well as liability. Defendant Douglass asserts immunity for his actions as a lawyer during the state court proceedings. Further, Defendant Douglass asserts that he is not a state actor, and that Plaintiff failed to state a cause of action under 42 USC §1983 or 42 USC §1985. Defendants contend that Plaintiff has failed to plead, and can prove no set of facts which would create, a cognizable claim for civil rights violations. Defendants request Plaintiff's complaint be dismissed. Defendant Douglass requests attorney fees and costs as permitted by law.

**B. PENDING OR CONTEMPLATED MOTIONS,
INCLUDING POSSIBLE JOINDER OF OTHER PARTIES**

1. Plaintiff:

Plaintiff anticipates joining any malpractice insurance company or companies that had malpractice coverage on attorney Douglass at the time Douglass presented the motion and order for process without sending opposing party notice as required by TRCP 21.

Plaintiff has spent over \$1,300.00 on this suit in the past few months. Plaintiff only makes \$1,000.00 a month for 24/7 care giving. Food and other expenses for Plaintiff and his grandmom come out of that. The \$1,300.00 invested over the last three months is three times more than what a ten percent (10%) tithe would be. A 25 year practiced attorney originally identified the claim to the Plaintiff. Plaintiff has had another attorney with federal practice do research on this case and I believe every point in my suit is substantially and sufficiently supported. I have been engaging and have visited with both attorneys in this case. Any Defendants' motion with the word "frivolous" in it will immediately receive a Plaintiff's motion for sanctions. I intend to answer each point in the two currently filed motions to dismiss.

No motions for jury trial will be needed. I have followed Judge Buchmeyer's opinions on several local cases, based on those I have faith and confidence in his not being swayed by the wealthy and powerful defendants in this case over the small plaintiff.

2. Defendants:

Defendants do not anticipate joining any additional parties. Defendants have filed motions to dismiss. Defendant Douglass anticipates filing further motions seeking relief should Plaintiff's frivolous action be continued. Should the case not be dismissed, Defendants anticipate filing motions for summary judgment and/or motions on the pleadings and motions in limine should a jury trial be required.

C. SETTLEMENT PROSPECTS AND MEDIATION

1. Plaintiff:

Plaintiff would be very surprised if substantial progress and settlement were not made on this case in the next three months. I believe settlement is at least a 50-50 possibility. I will promote pretrial settlement and stipulation of facts.

2. Defendants:

Plaintiff seeks declaratory relief on questions related to judicial decisions on which the Defendant Judges cannot compromise. Plaintiff seeks monetary damages for alleged violations which were not appealed in the underlying state case and which do not create a cause of action. Therefore, this case has no prospects for settlement.

D. RECOGNITION OF RESPONSIBILITIES UNDER *DONDI* STANDARDS

Counsel for all parties have reviewed the Court's Civil Justice Expenses and Delay Reduction Plan and *Dondi Properties Corp. v. Commerce Sav. & Loan*, 121 F.R.D. 284 (N.D. Texas 1988) (En

banc). The undersigned counsel agree to conduct this litigation according to the standards outlined in *Dondi* and the court's Civil Justice Expense and Delay Reduction Plan.

**E. TRIAL BEFORE MAGISTRATE JUDGE ROBERT K. ROACH
UNDER 28 U.S.C. §636(c)**

At this time, the parties do not agree to trial before Magistrate Judge Robert K. Roach.

F. REQUEST FOR MODIFICATION OF THE SCHEDULING ORDER

1. Plaintiff:

Plaintiff requests no stay on discovery and especially not on evidence relating to attorney Milton Eugene Douglass. A quick joining of any appropriate malpractice insurance company would be desirable and discovery is needed for that. Discovery on either Judge would be done respectfully with plenty of notice and time to work into their schedules.

2. Defendants:

Counsel for the Defendants filed Motions to Dismiss and, given the time periods established in the Court's current scheduling order, request that all matters be stayed pending the Court's ruling on the Motions to Dismiss. As a result, Defendants request modification of the Scheduling Order to permit the Court to rule on the Motions before any party is required to engage in discovery.

G. ESTIMATED LENGTH OF TRIAL

Two (2) to three (3) days.

Dated: October 15, 2004

Respectfully submitted,

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