UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE-OPELOUSAS DIVISION

BELVA WEBB & FAITH WEBB	*	CASE NO. 6:12-CV-00897
	*	
VERSUS	*	JUDGE DOHERTY
	*	
JOSEPH P. MORELLA, CHIEF P. LASALLE, DR. MELVIN G. BOURGEOIS, BOURGEOIS MEDICAL CLINIC, LLC OF MORGAN CITY, DR. ROBERT M. BOURGEOIS, DR. JOHN DOE, THE ST. MARY PARISH SCHOOL BOARD, MORGAN CITY POLICE DEPARTMENT, AND OFFICER JOHN DOE OF THE MORGAN CITY POLICE DEPARTMENT, ABC INSURANCE	*	MAG. JUDGE HILL
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MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS UNDER RULE 11

The defendants, Joseph P. Morella and Patrick LaSalle, submit this memorandum in support of their motion for sanctions against the plaintiffs, Belva Webb and Faith Webb, and their counsel, Martin E. Regan, Jr. and Daniel G. Abel (collectively sometimes referred to as the "Plaintiffs").

I. INTRODUCTION

As set forth in the complaint, filed on April 16, 2012, the Webbs allege that Morella, in his capacity as a judge, and LaSalle, in his capacity as Chief of Police for the City of Patterson, used their authority and resources to conspire to violate the Webbs' civil rights by fabricating Belva Webb's drug test results in February 2012.[1] The purported motivation for the fabricated drug results was to gain advantage in a separate federal suit brought by the Webbs against Morella.[2] Significantly, on April 19, 2012, Judge Haik found that the Webbs' first lawsuit against Morella was baseless and dismissed the complaint because it failed to state any cause of action under federal law. In addition to the dismissal of the case, Judge Haik granted Morella's motion for sanctions against the Webbs and their attorneys, the same counsel who represents the Webbs in the instant lawsuit, and awarded Morella attorney's fees.[3]

In this second lawsuit, the plaintiffs fail to cite any factual allegations to support a claim that Mr. Morella had one thing to do with the drug testing of Belva Webb. Neither are there allegations that Mr. Morella was serving in some judicial capacity, a necessary requirement to show a civil rights violation by one "acting under color of state law."[4] Just as in the first Morella

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[1] Although the complaint does not specify, Judge Morella's jurisdiction he serves as a City Court Judge for the cities of Patterson and Berwick.

[2] Rec. Doc. 1 ¶¶ 4 - 6.

[3] *Webb v. Morella*, No. 6:10-CV-01557, Rec. Doc. 41 and 43.

[4] *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993) citing, *McAlester v. Brown*, 469 F.2d 1280, 1282 (5th Cir. 1972). See also, *Stump v. Sparkman*, 435 U.S. 349, 362, 98 S.Ct. 1099, 1107 (1978).

lawsuit, the plaintiffs have failed to plead a viable cause of action under federal law, and, just as in the first lawsuit, the Webbs and their attorneys should be sanctioned for filing such a baseless complaint.

With respect to Chief LaSalle, the plaintiffs' only factual allegation against him is that he personally requested a drug screen be performed on Belva Webb.[5] Chief LaSalle's alleged involvement is belied by the exhibits attached to the plaintiffs' complaint which show that the St. Mary Parish School Board, not Chief LaSalle, requested that Belva Webb be drug tested.[6] However, even assuming for purposes of argument that LaSalle recommended that a drug screen be performed, this alone does not factually support the allegation that LaSalle was involved in a purported fabrication conspiracy. There are no facts set forth in the complaint which support the plaintiffs' theory of liability against Chief LaSalle.

The plaintiffs are required to plead "enough facts to state a claim to relief that is plausible on its face."[7] The claim is plausible on its face if the plaintiff pleads facts that allow the court "to draw reasonable inference that the defendant is liable for the misconduct alleged."[8] The plaintiffs' pleadings must show, rather than merely allege in a conclusory fashion, that the defendant acted unlawfully because "plausibility" requires more than "sheer possibility" or

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5 Rec. Doc. 1 ¶ 8.

6 Rec. Doc. 1-2.

7 *Bell Atl. Corp. v. Twombly*, 05-1126, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007).

8 *Ashcroft v. Iqbal*, 07-1015, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009).

"conceivability."[9] Conclusory allegations and unwarranted deductions such as those made in this lawsuit do not suffice.[10]

The filing of this lawsuit without any stated legally supportable facts upon which to base allegations of a conspiracy to fabricate drug charges is nothing more than the improper use of legal process to harass Mr. Morella and Chief LaSalle in violation of Rule 11.[11] Notably, this suit was filed on April 16, 2012, just three days before Judge Haik heard the motion to dismiss and the motion for sanctions filed in the first lawsuit. Given this timing, one might question whether it was the plaintiffs who were attempting to gain some advantage rather than the movers, as is alleged in this action.

Further, the award of Rule 11 sanctions and attorneys' fees in the first action evidently did not deter the plaintiffs or their counsel.[12] The Webbs have again signed a "sworn verification of facts," and the their attorneys have filed another suit setting forth baseless, conclusory allegations contrary to the Rule 11 certifications made to the court.[13] Counsel filed the complaint without conducting a reasonable inquiry and without considering that conclusory allegations of this sort do not meet proper pleading standards.

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9 *Iqbal*, 556 U.S. 662; 129 S.Ct. at 1949-50, 1952.

10 *Guidry v. Bank of LaPlace*, 90-3428, 954 F.2d 278, 281 (5th Cir. 1992).

11 Fed. Rules Civ. Proc., Rule 11.

12 *Webb v. Morella*, No. 6:10-CV-01557, Rec. 41.

13 Rec. Doc. 1, p. 21 of 22.

Neither was this a situation where time was of the essence; there was no prescription date looming. The complained of drug screen was conducted in February 2012. There was no reason to rush to file such a factually unsupported lawsuit unless the plaintiffs and their attorneys had an ulterior motive. This suit has caused unnecessary expense and cost to the defendants. As a result, Rule 11 sanctions against the Webbs and their counsel are clearly warranted.

II. CONCLUSION

It is evident that the complaint was filed for no other reason than to harass Mr. Morella and Chief LaSalle. Otherwise, there is no colorable excuse for filing such a legally and factually insufficient complaint. The plaintiffs and their attorneys do nothing more than throw baseless, factually unsupported claims against Mr. Morella and Chief LaSalle in the hopes that their allegations would eventually find factual and legal support. "Such a 'shotgun approach' to pleadings, where the pleader heedlessly throws a little bit of everything into his complaint in the hopes that something will stick, is to be discouraged."[14]

It is evident that the factually unsupported conclusory claims asserted against Mr. Morella and Chief LaSalle are not warranted and are woefully insufficient, a fact which competent plaintiffs' counsel obviously would be aware of. As a result, Mr. Morella and Chief LaSalle are entitled to an order directing the plaintiffs and their attorneys to pay to them all

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[14] *Southern Leasing Partners, Ltd. v. McMullan*, 86-4206, 801 F.2d 783, 788 (5th Cir. 1988) abrogated on other grounds as recognized by *Childs v. State Farm Mut. Auto. Ins. Co.*, 98-3590, 29 F.3d 1018, 29 Fed. R. Serv. 3d 1032 (5th Cir. 1994), citing *Rodgers v. Lincoln Towing Serv. Inc.*, 596 F.Supp. 13, 27 (N.D. Ill. 1984), *aff'd*, 771 F.2d 194 (7th Cir. 1985).

reasonable attorneys' fees and all other expenses directly incurred as a result of their blatant violation of Rule 11.[15]

Respectfully submitted,

LABORDE & NEUNER

s/James L. Pate

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[15] Fed. R. Civ. P. 11(c)(2) and (4).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2012 a copy of the above and foregoing documents was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to:

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by operation of the Court's electronic filing system.

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