



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: WATER CONTAMINATION LITIGATION CIVIL ACTION NO. 16-C-6000

THIS DOCUMENT APPLIES TO:

JANET L. THOMPSON,

v.

Civil Action No. 16-C-123 KAN

**AMERICAN WATER WORKS SERVICE
COMPANY, et al.,**

**ORDER GRANTING WEST VIRGINIA-AMERICAN WATER COMPANY'S AND
AMERICAN WATER WORKS SERVICE COMPANY'S MOTION TO DISMISS**

On September 21, 2018, the Presiding Judges assigned to the Water Contamination Litigation, held a status conference and heard Defendant J. Clifford Forrest's *Motion to Dismiss Plaintiff's Amended Complaint* (Transaction ID 58788717). Also pending was a previously-filed motion to dismiss Plaintiff's Amended Complaint filed by Defendants West Virginia-American Water Company and American Water Works Service Company, Inc. (collectively referred to in this order as "WVAWC"), which was not scheduled for hearing (Transaction ID 62491421). All parties appeared by counsel and Ms. Thompson appeared *pro se*. The Court granted Defendant J. Clifford Forrest's motion and dismissed the Amended Complaint, with prejudice, as to Mr. Forrest and also as to all plaintiffs who had never been served with the Amended Complaint. See Order Granting Defendant J. Clifford Forrest's Motion to Dismiss Plaintiff's Amended Complaint (Transaction ID 62517690).

The Presiding Judges have reviewed and fully considered the WVAWC's motion, Plaintiff's responses, the Amended Complaint, as well as the arguments presented, and have conferred with one another to ensure uniformity of their decisions, as contemplated by West Virginia Trial Court Rule 26.07(a). For the reasons set forth below, the Presiding Judges

unanimously **GRANT** WVAWC's motion and **DISMISS** Plaintiff's Amended Complaint, with prejudice.

FINDINGS OF FACT

1. On January 28, 2016, the Chief Justice of the Supreme Court of Appeals of West Virginia issued an Administrative Order pursuant to Rule 26.06(c)(3) of the West Virginia Trial Court Rules transferring "all civil actions involving the same or similar common questions of law or fact concerning the [January 2014] chemical leak and water contamination at issue" to the Mass Litigation Panel.¹ The Supreme Court further authorized the Panel to "transfer and join with the existing Mass Litigation any similar or related action subsequently filed in any circuit court of West Virginia." *Id.*

2. On February 2, 2016, Plaintiff Janet Thompson, appearing *pro se*, filed a Complaint against American Water Works Service Company, Inc. and West Virginia-American Water Company in the Circuit Court of Kanawha County, West Virginia (Transaction ID 58747733).

3. At the time Ms. Thompson filed her Complaint, she was subject to a Court Order requiring her to "(1) submit any civil action, other action, or any filing requesting relief from the Circuit Court of Kanawha County on behalf of herself or any other person she hereinafter wishes or; (2) retain a licensed attorney prior to filing any future civil action or other filing." See "Order Granting Petitioners' Request for Declaratory Judgment and Motion for Extraordinary Relief" entered on October 2, 2015, in *City of Charleston, et al., v. Janet L. Thompson*, Civil Action No. 15-P-180 (Transaction ID 58788717 at Exhibit 12).

¹ Administrative Order, In re: Motion To Refer *Scott Miller, And Bar 101, LLC, D/B/A Bar 101 and Ichiban, Individually And On Behalf Of All Others Similarly Situated, Plaintiffs vs. Freedom Industries, Inc., a West Virginia Corporation, And West Virginia-American Water Company, a West Virginia Corporation, Defendants*, Kanawha County Civil Action No. 14-C-47, Jan. 28, 2016. The Order is available on the website of the Supreme Court of Appeals of West Virginia at: <http://www.courtswv.gov/lower-courts/mlp/mlp-orders/water-contamination/MotionToRefer-Miller.pdf>.

4. Ms. Thompson filed the Complaint in this action after she received permission for its filing from the Circuit Court of Kanawha County, West Virginia. See Order Permitting Petition to be Filed, *Janet Thompson v. West Virginia American Water Company*, Civil Action 16-C-123, Feb. 2, 2016 (Hon. Tod J. Kaufman, Chief Judge).

5. On February 26, 2016, Ms. Thompson filed an Amended Complaint naming twenty-one (21) additional Defendants, including Freedom Industries, Inc. (“Freedom”) and J. Clifford Forrest. (Transaction ID 58747798) Ms. Thompson did not receive permission from the Circuit Court of Kanawha County to file the Amended Complaint.

6. WVAWC answered the Amended Complaint and filed a motion to dismiss. Defendant J. Clifford Forrest also filed a motion to dismiss.

7. On July 27, 2018, the Court scheduled a status conference in Ms. Thompson’s case and one other case to be conducted on September 21, 2018. (Transaction ID 62293346) On July 31, 2018, the Court scheduled Defendant J. Clifford Forrest’s *Motion to Dismiss Plaintiff’s Amended Complaint* for hearing on September 21, 2018. (Transaction ID 62293346) Both Orders stated that “Janet L. Thompson and all counsel of record are ORDERED to appear.”

8. The Court heard oral argument on Defendant J. Clifford Forrest’s motion to dismiss the Amended Complaint as barred by the bankruptcy of Freedom.

9. The Court then requested that Ms. Thompson respond to Mr. Forrest’s motion to dismiss. Ms. Thompson stated, among other things, that she was not present to discuss the bankruptcy of Freedom. When the Court attempted to explain to Ms. Thompson that her action against Mr. Forrest was barred by the Freedom’s bankruptcy, Ms. Thompson became combative and refused to answer the Court’s questions, accused the Court of representing the Defendants, and stated her only purpose in attending the hearing was to guarantee clean water for the public. Ms.

Thompson then walked toward the exit of the courtroom, continuing to argue with the Court. The Court asked Ms. Thompson to remain in the courtroom because there were other matters to discuss regarding her case. Ms. Thompson refused to further participate in the hearing and exited the courtroom despite the Court's request that she remain at the hearing. She did not return to the hearing.

10. The Court then directed counsel for WVAWC to summarize their position regarding their motion to dismiss. Counsel advised that WVAWC had filed a motion to dismiss but had not set it for hearing. Counsel for WVAWC further advised that it had intended to seek referral of Ms. Thompson's action to the Resolution Judges assigned to the Water Contamination Litigation. However, given Ms. Thompson's behavior, refusal to participate in the hearing, and the fact she left the courtroom against the instructions of the Court, counsel for WVAWC moved to dismiss the action for failure to prosecute under Rule 41 of the West Virginia Rules of Civil Procedure.

CONCLUSIONS OF LAW

1. Rule 41(b) of the West Virginia Rules of Civil Procedure provides that, "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for improper venue, operates as an adjudication upon the merits." Rule 41 (b) "protects the integrity of a court's docket by giving courts discretion to dismiss actions that are not being actively pursued." Louis J. Palmer and Robin J. Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure* §41(b), p. 1069 (5th Ed. 2017).

2. The Court also has inherent power to control its docket and the behavior of the litigants who appear before it. See *Daily Gazette v. Canady*, 175 W.Va. 249, 332 S.E.2d 262 (1985).

3. Ms. Thompson was ordered to appear for both a status conference and a hearing on the motion to dismiss filed by Defendant J. Clifford Forrest. Ms. Thompson filed responses to the motion (Transaction IDs 62376076 and 62376070) and appeared at the hearing as ordered.

4. Ms. Thompson refused to respond to the arguments presented by counsel for J. Clifford Forrest, accused the Court of siding with the Defendants and argued that she was not there to seek anything for herself, but rather to seek “clean water” for the public. She was contumacious, and belligerent to the Court, refused to return to the podium when requested, and refused to continue participating in the hearing, even though the Court informed her it was not finished discussing her case, and requested that she remain in the courtroom.

5. Both Rule 41 and its inherent authority allow the Court to control the proceedings and behavior of litigants before it. Other courts have held that Ms. Thompson has engaged in prior abusive litigation conduct. By Order dated October 2, 2015, the Kanawha County Circuit Court dismissed an election contest filed by Ms. Thompson and found “the outrageous allegations and meritless personal attacks raised in Ms. Thompson's repeated actions go well beyond the proper airing of legitimate grievances and constitute vexatious and oppressive misuse of the judicial system to the point of harassing the City, the County, and their officials.” See “Order Granting Petitioners' Request for Declaratory Judgment and Motion for Extraordinary Relief” entered on October 2, 2015, in *City of Charleston, et al., v. Janet L. Thompson*, Civil Action No. 15-P-180 (Transaction ID 58788717 at Exhibit 12). As a result, the Court found:

. . . it is appropriate to exercise its inherent authority to grant extraordinary relief, and GRANTS Petitioners' request for extraordinary relief: As a result, it is ORDERED that Ms. Thompson either (1) submit any civil action, other action, or any filing requesting relief from the Circuit Court of Kanawha County on behalf

of herself or any other person she hereinafter wishes to file to the Chief Judge of the Circuit Court for review and a finding that the civil action or filing states a tenable cause of action before filing, or; (2) retain a licensed attorney prior to filing any future civil action or other filing. Ms. Thompson may not initiate a civil action or other filing by another means than those prescribed in this paragraph. This Court finds that this is a fair and reasonable resolution which maintains Ms. Thompson's access to the Court system and constitutional rights while at the same time preventing an unconscionable drain on judicial and governmental resources.

Id.

6. Ms. Thompson obtained an order allowing the filing of her original Complaint against the WVAWC, but did not seek permission for the greatly expanded Amended Complaint naming twenty-one (21) additional Defendants. With the exception of Defendant, J. Clifford Forrest, none of the additional Defendants named in the Amended Complaint were ever served.

7. Dismissal is a sanction that is not lightly imposed. However, Ms. Thompson's highly inappropriate and contumacious behavior in refusing to respond to the Court's questions or to remain and address other issues as requested by the Court, as well as her belligerence to the Court in the face of reasonable requests merits dismissal of her Amended Complaint.

Therefore, pursuant to Rule 41(b) of the West Virginia Rules of Civil Procedure and its inherent powers, the Court **GRANTS** WVAWC's motion and **DISMISSES** the Amended Complaint, with prejudice.

The Court **FINDS** upon **EXPRESS DETERMINATION** that this is a final order available for the proper application of the appellate process pursuant to Rule 54(b) of the Rules of Civil Procedure and the Rules of Appellate Procedure. Accordingly, this order is subject to immediate appellate review. The parties are hereby advised: (1) that this is a final order; (2) that any party aggrieved by this order may file an appeal directly to the Supreme Court of Appeals of West Virginia; and (3) that a notice of appeal and the attachments required in the notice of

appeal must be filed within thirty (30) days after the entry of this Order, as required by Rule 5(b) of the West Virginia Rules of Appellate Procedure.

The Clerk is directed to close this case, and place it among the cases ended. A copy of this order is this day served on the parties of record via File & Serve*Xpress*. The Court also directs the Mass Litigation Manager to send a copy of this Order to *pro se* Plaintiff Janet Thompson *via* U.S. Mail at the following address:

Janet L. Thompson
1326 Elmwood Avenue
Charleston, WV 25301

It is so **ORDERED**.

ENTER: October 3, 2018.

/s/ Alan D. Moats
Lead Presiding Judge
Water Contamination Litigation