

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STANLEY ALLEN VEZEY,

Plaintiff,

vs.

BRYCE EDGMON, Speaker of the Alaska
State House of Representatives,
and
CATHERINE A. GIESSEL,
President of the Alaska State Senate,
Individually,

Defendants.

E-FILED in the TRIAL COURTS
State of Alaska Fourth District

MAY 11 2020

Clerk of the Trial Courts

Case No.: 4FA-19-02233 CI

**DEFENDANTS' REPLY BRIEF IN SUPPORT
OF MOTION FOR ATTORNEY'S FEES AND COSTS**

Defendants are entitled to their attorney's fees and costs as the prevailing party in this case. Plaintiff has wholly failed to meet his burden of demonstrating that he is a constitutional claimant under AS 09.60.010 who is immune from a fee award under Rule 82. Likewise, Plaintiff offers no persuasive reason why the Court should not award enhanced fees in light of his vexatious conduct and the other reasons articulated in Defendants' motion. Instead, Plaintiff seeks to rewrite the history of the case and re-cast his claims as constitutional in an effort to avoid a fee award. Plaintiff is entitled to his own opinion about the applicable legal principles, but he is not entitled to his own facts. Having forced Defendants to incur substantial legal fees months after Plaintiff's claims were effectively mooted by the end of the special session, Plaintiff now seeks to avoid any accountability for his conduct. The Court should award fees to Defendants.

DEFENDANTS' REPLY ISO MOTION FOR ATTORNEY'S FEES AND COSTS

Vezey, vs. Edgmon and Giessel Case No.: 4FA-19-02233 CI

Page 1 of 8

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I. PLAINTIFF IS NOT A CONSTITUTIONAL CLAIMANT.

Plaintiff's lead argument is that he is a constitutional claimant because he included an allegation in his Complaint to that effect – and if Plaintiff said so, it must be true.¹ To state the obvious, simply stating that one is a constitutional claimant does not make it so. It was Plaintiff's burden to demonstrate that he satisfied the statutory test here. "The text of AS 09.60.010(c)(2) provides that the protection against attorney's fees only applies if the action 'concern[ed] the establishment, protection, or enforcement of a [constitutional] right.'"² Plaintiff's lawsuit did not concern the establishment, protection, or enforcement of any constitutional right because there is no constitutional right for the Governor to dictate where the Legislature meets during a special session. As Plaintiff has previously admitted, the Alaska Constitution is completely silent on this issue, while an Alaska statute does address it.³ This case was always about Plaintiff's effort to enforce statutory rights under AS 24.05.100(b). The Alaska Supreme Court has clearly held that AS 09.60.010(c) simply does not apply when the right at issue – as is the case here – finds its source in statute.⁴

¹ See Plaintiff's Opposition to Defendants' Motion for Attorney's Fees and Costs ("Opp.") at 2 (citing Complaint ¶ 2).

² *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Bor.*, 273 P.3d 1128, 1139 (Alaska 2012) (quoting AS 09.60.010(c)) (emphasis added).

³ See Defendants' Motion for Attorney's Fees and Costs ("Motion") at 4.

⁴ See *Lake & Peninsula Borough v. Oberlatz*, 329 P.3d 214, 226 (Alaska 2014). Plaintiff argues that Defendants seek to "preempt" Plaintiff's purported constitutional claims by focusing on the statutory claim. See Opp. at 2-3. Plaintiff misses the point. There were no constitutional claims to "preempt" because the source of the right claimed by Plaintiff was statutory.

The fact that Plaintiff may have mistakenly believed that his claims related to constitutional rights does not provide him any protection here. In *Alliance of Concerned Taxpayers*, the plaintiff asserted that it was entitled to protection under AS 09.60.010(c) because it was attempting to protect a constitutional right of initiative.⁵ The trial court found that fees were not awardable because the plaintiff raised “state constitutional issues regarding the initiative restrictions” and the trial court “had referenced numerous constitutional provisions in its decision.”⁶ The Alaska Supreme Court reversed, finding that although an analysis of the relevant issues necessitated consideration of constitutional case law, the “power” that was asserted by plaintiff was statutory in origin and therefore AS 09.60.010(c) did not apply.⁷ In this case, Plaintiff asserted that Defendants were required under AS 24.05.100(b) to acquiesce to the Governor’s choice regarding the location of the special session. In response, *Defendants* raised a number of constitutional defenses (e.g., separation of powers, the Legislature’s inherent constitutional authority to handle its internal affairs) to defeat Plaintiff’s arguments. Defendants’ use of constitutional defenses obviously has nothing to do with whether or not Plaintiff’s claim concerned the establishment, protection, or enforcement of a constitutional right.⁸

⁵ 273 P.3 at 1133.

⁶ *Id.*

⁷ *See id.* at 1139.

⁸ *Cf. Opp.* at 3 (claiming that Defendants’ separation-of-powers argument “implicates the Constitution, demonstrating that Plaintiff did indeed raise constitutional claims”). If taken seriously, Plaintiff’s argument would mean that a litigant could avoid fees simply on the basis of the defenses presented – not the nature of the plaintiff’s claims.

Importantly, Plaintiff does not dispute that if Plaintiff's claims had involved compliance with constitutional provisions, then the non-justiciability doctrine would not have applied.⁹ The court's ruling that Plaintiff's claims were non-justiciable confirms that no constitutional rights were asserted by Plaintiff. All that Plaintiff says is that the court may have erred when deciding non-justiciability. Plaintiff is wrong on the merits. In any event, the court's non-justiciability finding confirms that AS 09.60.010(c) is inapplicable here.

Assuming, for the sake of argument, that Plaintiff raised any constitutional issue, the argument was frivolous and Plaintiff would not be entitled to protection under AS 09.60.010. Plaintiff disputes that his arguments were frivolous because, he claims, Defendants have not shown that Plaintiff abused the judicial process or exhibited an improper or abusive purpose.¹⁰ Plaintiff is mistaken. Defendants explained in their Motion that Plaintiff, a self-professed expert of all statutory and constitutional provisions relating to the Legislature, had vexatiously abused the judicial process when he repeatedly and knowingly violated the Defendants' legislative immunity through expedited motion practice and preliminary injunctions to harass and coerce the Defendants to hold the special session where Plaintiff wanted it held.¹¹ This was in direct violation of the plain language of the Alaska Constitution.¹² Plaintiff was attempting to use the judicial process as a cudgel to impair and impede the Defendants' ability to fulfill their legislative duties. This abusive

⁹ *Abood v. Gorsuch*, 703 P.2d 1158, 1161 (Alaska 1985).

¹⁰ *See* Opp. at 6.

¹¹ *See* Motion at 6-8.

¹² *See id.* at 6 n.18.

tactic – coupled with his knowledge that the Alaska Constitution was silent on the issue he raised – renders his claims frivolous.

II. ENHANCED FEES ARE APPROPRIATE HERE.

In an effort to avoid an enhanced fee award, Plaintiff now scrambles to rewrite the history of this case and present himself as a mere “good faith civil litigant” who simply hoped to obtain clarity from the court through this case.¹³ The facts are otherwise.

The plain language of the Constitution makes clear that legislators like the Defendants are immune from civil process during a legislative session.¹⁴ Plaintiff knew this, due to his extensive familiarity with the applicable statutes and constitutional provisions.¹⁵ Despite this knowledge, during a single week of the special session, Plaintiff filed and served a motion for declaratory judgment and preliminary injunction, filed and served a motion for expedited consideration of the substantive motion, attempted to initiate a conference regarding his substantive motion and requested an “immediate response,” filed and served a second motion for expedited consideration and request for hearing on expedited time, attempted to arrange for personal service of these motions in Juneau, and filed and served a “Disclosure to the Court” about his earlier filings.¹⁶ Plaintiff peppered the Defendants with an unrelenting stream of service attempts by U.S. mail, by personal

¹³ Opp. at 7.

¹⁴ Decision at 5.

¹⁵ See Affidavit of Stanley Allen Vezey in Support of Opposition to Motion to Dismiss Pursuant to Legislative Immunity; Civil Rule 12(b)(2); Nonjusticiability; and Civil Rule 12(b)(6) ¶¶ 2-3 (filed Sept. 17, 2019).

¹⁶ See Motion to Dismiss at 3-4.

process server, by fax, and by email.¹⁷ Plaintiff now insists that his rapid-fire improper service attempts were “warranted by press of time,”¹⁸ but later argues that it was reasonable for Plaintiff to litigate these issues *after* the session had concluded¹⁹ – in other words, there was no “press of time” that could conceivably excuse his repeated and obvious violations of the Defendants’ legislative immunity. This lawsuit was brought to harass the Defendants and to coerce them to make decisions about how the Legislature should govern itself based on Plaintiff’s preferences under the threat of pending litigation. Further, even after Plaintiff conceded in a published interview that there was effectively no likelihood that he would obtain his desired outcome of forcing Defendants to convene the special session in Wasilla – and after the Governor confirmed on July 17 that the special session should proceed in Juneau – Plaintiff stubbornly and vexatiously continued his litigation to harass the Defendants further. Enough is enough. The Court should award enhanced fees here due to Plaintiff’s vexatious conduct.

Plaintiff devotes just six sentences to his argument that his pursuit of his claims was “reasonable.” He fails to respond to many of the arguments presented in Defendants’ Motion. In essence, he asserts that his claims were reasonable because he says so. Plaintiff ignores that he was not the proper party to bring the claims, that he violated the plain language of the Constitution in serving the Defendants in violation of their legislative immunity, and that his claims were non-justiciable. As to mootness, Plaintiff repeats his

¹⁷ *See id.*

¹⁸ *Opp.* at 9

¹⁹ *See id.* at 9-10.

failed argument that the passage of time did not resolve anything and that the issue is likely to be repeated.²⁰ Plaintiff's stubborn approach is emblematic of the unreasonableness of his claims in this case.

Plaintiff offers no substantive response to the application of Civil Rule 82(b)(3)(H) (significance) and (A) (complexity). He concedes that the issues raised were "not an insignificant matter" but states that the briefing was completed in less than four months.²¹ The fact that these significant issues were resolved as promptly as they were speaks to the efficiency of Defendants' work, not the lack of significance of the issues. While Plaintiff now dismisses the litigation as not especially complex, the parties' dense briefing confirms that the truth is otherwise. The case was made more complex and time-consuming due to Plaintiff's stubborn pursuit of baseless claims that threatened to erode the separation of powers between the executive and legislative branches.

Finally, Plaintiff does not dispute that Defendants are entitled to an award of at least 20 percent of their reasonable attorney's fees under Rule 82(b)(2). He does not challenge the hourly rate or any time entry submitted by Defendants' counsel.

The Court should award Defendants their fees and costs as described in Defendants' Motion.

²⁰ See *id.* at 10.

²¹ See *id.*

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DATED: May 11, 2020

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CERTIFICATE OF SERVICE

This certifies that on May 11, 2020, a copy of the foregoing was served via email on:

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/s/ Karen P. Warne
Practice Assistant