

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

PHILIP C. BELLFY

Plaintiff,

v

**MICHAEL T. EDWARDS and
HON. JOCELYN K. FABRY**

Defendants.

CASE NO.: 2:23-CV-51

HON. PAUL L. MALONEY

Mag. Judge Maarten Vermaat

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**THE HONORABLE JOCELYN K. FABRY'S RESPONSE
TO PLAINTIFF BELLFY'S MOTION FOR SUMMARY DISPOSITION**

NOW COMES Defendant, the Honorable Jocelyn K. Fabry, by and through her attorneys, GREWAL LAW PLLC, and for her Response to Plaintiff Bellfy's Motion for Summary Disposition, states as follows:

STATEMENT OF FACTS

Plaintiff is a former lay advocate that filed an “election challenge” in the Sault Ste. Marie Tribe of Chippewa Indians (the “Tribe”) Tribal Court.¹ At the time of the allegations contained within Plaintiff’s Complaint, Mr. Michael T. Edwards was the attorney representing the Tribe’s Election Commission, and the Honorable Jocelyn Fabry, the Chief Tribal Court Judge, was the presiding judge in the “election challenge.”²

Plaintiff filed his Complaint in this matter alleging that Mr. Edwards and the Hon. Fabry “conspired to deprive [Plaintiff of his] 14th Amendment Constitutional rights to due process and equal protection by failing to ‘notice’ [Plaintiff] of an alleged ‘hearing’” in the Tribal Court election challenge.³ Both Mr. Edwards and Hon. Fabry filed Motions to Dismiss Plaintiff’s Complaint in its entirety, which remain pending before this Honorable Court.

On April 26, 2023, Judge Fabry filed her Motion to Dismiss Pursuant to Rule 12(b), arguing that she has immunity from suit, that the Court lacks subject matter jurisdiction, and that Plaintiff failed to state a claim under the 14th Amendment or 18 USC § 242 upon which relief can be granted.⁴ One day later, on April 27, 2023, Mr. Edwards filed his Motion to Dismiss Pursuant to Rule 12(b)(6).⁵ Pursuant to Local Rule 7.2(c), Plaintiff had 28 days to respond to Defendants’ dispositive Motions to Dismiss, meaning no later than May 24, 2023, and May 25, 2023, respectively. Plaintiff did not file a response to either Motion to Dismiss.

Instead of responding to either Motion to Dismiss and addressing the legal challenges in this matter, Plaintiff now files this “Motion for Summary Disposition” [sic] without properly citing to any

¹ **ECF 1:** Plaintiff’s Complaint, PageID.1.

² *Id.*

³ *Id.* at PageID.2.

⁴ **ECF 8:** Hon. Fabry’s Motion to Dismiss, PageID.15-19.

⁵ **ECF 10:** Defendant Edwards’ Motion to Dismiss, PageID.45-46.

legal or factual authority to adequately support his argument and burden.⁶ This Response timely follows, and will show that Plaintiff's Motion should be denied.

STANDARD OF REVIEW

Summary Judgement under Rule 56 may only be granted if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.⁷ A movant asserting that a fact is genuinely disputed *must* support the assertion by citing to particular parts of material in the record.⁸ This Honorable Court cannot resolve issues of fact and can instead only determine whether there are issues in dispute to be decided in a trial on the merits.⁹

APPLICABLE LAW AND ARGUMENT

Plaintiff is not entitled to judgment as a matter of law because he failed to state claims upon which relief can be granted. Plaintiff is also required to put forth factual allegations that support a valid and actionable legal basis, which he has likewise failed to do. Plaintiff also improperly included factual allegations in his Motion that are not supported by the record. Stated otherwise, Plaintiff's Motion is an attempt to expand the record with unfounded allegations. As such, Plaintiff has failed to meet his burden and his Motion should be denied.

A. Plaintiff is Not Entitled to Judgment as a Matter of Law.

Plaintiff does not have valid legal claim to be entitled to the relief he seeks. As discussed in detail in Hon. Fabry's Motion to Dismiss,¹⁰ Plaintiff's claims under the 14th Amendment and 18

⁶ **ECF 15:** Plaintiff's Motion for Summary Disposition, PageID.243-246.

⁷ Fed. R. Civ. P. 56(a).

⁸ Fed. R. Civ. P. 56(c)(1) (emphasis added).

⁹ *Lansing Mercy Ambulance Serv. v. Tri-Cnty. Emergency Med. Control Auth., Inc.*, 893 F. Supp. 1337, 1342 (W.D. Mich. 1995).

¹⁰ **ECF 8:** Hon. Fabry's Motion to Dismiss, PageID.15-19; *see also* **ECF 8:** Brief in Support of Hon. Fabry's Motion to Dismiss, PageID.20-34. For purposes of judicial efficiency, Hon. Fabry incorporates by reference the entirety of her Motion to Dismiss and Brief in Support of her Motion to Dismiss as if fully set forth herein; *see also* *See Talton v. Mayes*, 163 U.S. 376, 384 (1896); *see also* *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978) (holding that the Fourteenth Amendment is not applicable to Indian Tribes).

USC § 242 legally fail, and Plaintiff is not entitled to any relief as a matter of law. Plaintiff's claim also fails because he does not have standing to assert the claims contained in his Complaint.¹¹

Plaintiff's Motion does not use factual allegations to support any actionable legal claim. In his Motion for Summary Disposition, Plaintiff confuses the issue of factual claims and legal claims:

Both Defendants, through their attorneys, are asking the Court to dismiss this case due to my failure to state a claim. So, let me restate those claims from the Complaint so there can be no confusion: "[1] At no time during this litigation did the Court (Fabre) send me a 'Notice of Hearing.' Additionally, [2] at no time during this litigation did the Court [Fabre] send me the access information that I would need to attend [this never-noticed] hearing via Zoom."¹²

Factual claims alone do not warrant a judgement as a matter of law. Plaintiff must prove that his factual claims can be used to support a valid and actionable legal basis. Plaintiff failed to do so by being unable to rebut any of the claims made by Hon. Fabry and Mr. Edwards in their Motions to Dismiss, and he has again failed to do so now. In his Motion for Summary Disposition, Plaintiff does not cite to a single statute or jurisprudence to properly argue that his factual allegations could even amount to his requested relief when applied through the 14th Amendment or 18 USC § 242.

Plaintiff's failure to cite relevant and applicable law applies to both his underlying legal claims and his factual allegations. For example, Plaintiff does not attempt to rebut Hon. Fabry's argument that she is immune from suit or that neither the 14th Amendment nor 18 USC § 242 apply to the Tribe. For those reasons, Plaintiff cannot establish that he is entitled to judgement as a matter of law. Further, as for his factual allegations, Plaintiff does not cite to any specific authority to support his allegation of what a "proper" Notice of Hearing is, how the Notice of Hearing submitted by Mr. Edwards is not "proper," that Hon. Fabry has the responsibility to "properly notice" Plaintiff

¹¹ See also **ECF 11**: Brief in Support of Defendant Edwards' Motion to Dismiss PageID.57-58 (Judge Fabry incorporates Defendant Edward's argument that Plaintiff lacks standing by reference as if fully set forth herein).

¹² **ECF 15**: Plaintiff's Motion for Summary Disposition, PageID.243.

of a hearing, or that the notice of hearing had to be court-stamped for it be “proper.”¹³ Quite simply, Plaintiff’s factual allegations do not support any valid legal argument that would allow this Honorable Court to grant the relief Plaintiff seeks.

Plaintiff has failed to address the legal claims necessary to support his Complaint, he is not entitled to judgement as a matter of law, and this Motion should be denied in its entirety.

B. Plaintiff’s Motion Legally Fails Because He Failed to Meet His Initial Burden.

Mere allegations are not enough to support a Plaintiff’s claims.¹⁴ Instead, the moving party is required to cite to materials contained in the record to support those allegations.¹⁵ Plaintiff has failed to do so and has thus failed to properly meet his burden in requesting judgement as a matter of law.

Pursuant to Rule 56, Plaintiff must support his Motion by citing to “particular parts of materials in the records,” such as depositions, documents, electronically stored information, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials.¹⁶ Plaintiff has only cited to one exhibit, an email chain regarding Plaintiff’s request for concurrence on an improper motion to compel. This email has no bearing on the factual and legal issues at play here and do not support Plaintiff’s request for judgement as a matter of law.

Of importance, Plaintiff did not even execute an affidavit stating that he did not receive the notice of hearing Mr. Edwards has affirmatively stated that he mailed to Plaintiff. In fact, *Plaintiff has never affirmatively stated during this litigation that he never received the mailed notice of hearing from Mr. Edwards.* Quite simply, Plaintiff failed to support his Motion with any competent and material evidence in the record as mandated by Rule 56. Because Plaintiff failed to carry his

¹³ *Id.*

¹⁴ *Lansing Mercy Ambulance Serv.*, 893 F. Supp. at 1343.

¹⁵ Fed. R. Civ. P. 56(c)(1).

¹⁶ *Id.*

burden, Hon. Fabry and the Tribal Court need not spend the additional time, resources, and expense of gathering factual material to contradict Plaintiff's unsupported allegations. Should this Honorable Court not deny this Motion in its entirety, Hon. Fabry' requests the opportunity to support or address any relevant factual issues pursuant to Rule 56(e)(1).

CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated in Hon. Fabry's Motion to Dismiss and those reiterated herein, Plaintiff's claims under the 14th Amendment and 18 USC § 242 legally fail and Plaintiff is not entitled to any relief as a matter of law. Plaintiff did not attempt to address these legal issues in response to Hon. Fabry's Motion, nor does he attempt to do so here. Instead, Plaintiff relies on factual allegations only, which are not properly supported by citations to particular parts of materials in the record.

WHEREFORE, Defendant, Hon. Judge Jocelyn Fabry, respectfully requests this Honorable Court to:

- A. Deny Plaintiff's Motion for Summary Disposition in its entirety;
- B. Award Hon. Fabry fees and costs for having to defend this matter; and
- C. Grant her any further relief this Honorable Court deems equitable and just.

Respectfully submitted,

GREWAL LAW PLLC

Dated: June 26, 2023

/s/ Daniel V. Barnett

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Certificate of Compliance

I hereby certify that this Brief contains 1,631 words, including headings and footnotes, as computed by Microsoft Word.

Respectfully submitted,

GREWAL LAW PLLC

Dated: July 12, 2023

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