

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DEBORAH R. DOLEN,

Plaintiff,

v.

Case No. 8:09-cv-2120-T-23AEP

JULIE RYALS, et al.,

Defendants.

ORDER

The pro se plaintiff sues Julie Ryals, Mary Joanne Kidd, Jeffrey A. Kidd, and Mary Harvey for "cyberstalking, stalking, libel, defamation, violations of the Lanham Act, 15 U.S.C. § 1125, Fla. Stat. 784.048 & 836 and 42 U.S.C. 1983." (Doc. 4) The defendants counterclaim (Docs. 11, 12) for defamation and "cybersquatting." A May 24, 2010, order (Doc. 87) granted the plaintiff leave to amend her complaint and denied the plaintiff's motion for a preliminary injunction. The plaintiff amended the complaint to assert claims against only the defendant Julie Ryals (Doc. 88), who answered and counterclaimed. (Doc. 89) Because Ryals' counterclaims failed to comply with the applicable pleading standard, her answer was stricken and she was directed to serve another answer by August 6, 2010, (Doc. 92) when each defendant answered and counterclaimed against the plaintiff (Docs. 93 and 94).

Each motion, pleading, and response (1) engages in a confusing, rambling, misleading, and self-serving discussion of the procedural history of this case,

- (2) contains impertinent and inflammatory remarks about other parties or counsel, and
- (3) fails to adequately address each relevant legal or factual issue.

Mary Harvey, Jeffrey A. Kidd, and Mary Joanne Kidd (the "dropped defendants") move for "judgment on the pleadings" because the plaintiff drops those defendants from her amended complaint. (Doc. 95) The plaintiff moves "for leave to file third amended complaint & leave to add defendants back in," and asserts that the dropped defendants "committed new actionable activity . . . since the Second Amended complaint was filed." (Doc. 103) Although acknowledging both the obligation to move for leave to file an amended complaint and the defendants' opposition to an amendment, the pro se plaintiff inexplicably files a third amended complaint.

Rule 15, Federal Rules of Civil Procedure, governs a supplemental pleading, a pleading that alleges "any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." Rule 15 vests a district court with discretion to permit a supplemental pleading. In this action, the plaintiff amended and elected to drop certain defendants from the amended complaint. The plaintiff offers no compelling reason to complicate this already tortuous action by a supplemental pleading that adds parties after earlier relinquishing the claims against them. Enough is enough.

The plaintiff moves for a preliminary injunction (Doc. 112) but fails to either allege any new fact not considered in the previous order denying an injunction (Doc. 87) or to provide any new and meritorious legal argument.

Based on an alleged discharge in a bankruptcy in Houston, Texas, the plaintiff moves to "strike all counterclaims" asserted by Julie Ryals. (Doc. 96) The plaintiff also

moves "to dismiss or for more definite statement of Kidds [sic] & Harvey's counterclaims with request to amend complaint if counterclaims are allowed." The plaintiff asserts that the Kidds' and Harvey's claims were also discharged in the Houston bankruptcy.*

(Doc. 97) The defendants respond (Docs. 100 and 101) to each motion and assert (1) that post-petition claims are not discharged and (2) that the claims were "expressly reinstated once the bankruptcy case was lifted." An examination of the docket confirms the reinstatement of the defendants' claims. (Doc. 24)

The motion targeting the omitted defendants' counterclaims asserts also that the claims are "retaliatory [and] frivolous" because they are "overtly late" and because "it is obvious that [the omitted defendants] had no intent to respond or file anything until after Kent Rowald was obviously furious his July 2, 2010, submission for Ryals was dismissed by this court July 10, 2010 Doc. 92." (Doc. 97) The omitted defendants (1) failed to immediately assert their counterclaims in response to the second amended complaint, (2) state that their answer and counterclaims are filed in "an abundance of caution," and (3) fail to assert any entitlement to affirmative relief. (Doc. 94)

The plaintiff moves (Doc. 116) to exclude many of the defendants' proposed trial exhibits and asserts that they are hearsay and lack relevance. The exhibits are newspaper clippings and other documents discussing the plaintiff's history and character. Because the plaintiff asserts libel, defamation, and "loss of good will associated with her [trade]marks," (Doc. 88) her acts, character, criminal history, and

* Because Dolen separately moves (Doc. 103) to file an amended complaint, the motion "to dismiss or for more definite statement of Kidds [sic] & Harvey's counterclaims with request to amend complaint if counterclaims are allowed," (Doc. 97) is treated simply as a motion to dismiss the counterclaims.

reputation are relevant to elements of her claims, defenses, and damages. A determination of whether introduction of each exhibit would create "unfair prejudice" or constitute "needless presentation of cumulative evidence" is best rendered at trial.

The defendants move to "Compel Mental Examination of Plaintiff." (Doc. 119) The plaintiff responds (Doc. 132) by moving to strike the motion and asserts that the defendants fail to comply with Local Rule 3.01(g), which requires a statement of whether moving counsel has conferred with opposing counsel and whether counsel agree on resolution of the motion. The motion (Doc. 119) does not contain a Local Rule 3.01(g) statement. Because discovery is closed and the defendants had ample opportunity to obtain discovery about the plaintiff's mental condition and claimed damages, any renewed motion will be strongly disfavored.

The plaintiff moves for sanctions (Doc. 126) against the defendants but states that she "does not expect to gain anything by a sanction award, other than to bring these issues to the courts [sic] attention so the conduct of the Defendants and their counsel Kent Rowald do not affect her trial or evidence in the adverse as all of the actions described above were very meant to do." The plaintiff's stated purpose is accomplished. An award of sanctions in favor of the plaintiff is unwarranted.

The motion for judgment on the pleadings (Doc. 95) is **GRANTED**. The motion to strike all counterclaims (Doc. 96) is **DENIED**. The motion to dismiss counterclaims (Doc. 97) is **GRANTED**, the dropped defendants' answer and counterclaims (Doc. 94) are **DISMISSED**, and Mary Harvey, Jeffrey A. Kidd, and Mary Joanne Kidd are **DISMISSED WITH PREJUDICE** from this action. The motion for leave to file a third

amended complaint (Doc. 103) is **DENIED** and the plaintiff's third amended complaint (Doc. 108) is **STRICKEN**. The amended motion for a preliminary injunction (Doc. 112) is **DENIED**. The motion in limine (Doc. 116) is **DENIED WITHOUT PREJUDICE**. The motion to "Compel Mental Examination of Plaintiff" (Doc. 119) is **DENIED** and the plaintiff's motion to strike (Doc. 132) is **DENIED AS MOOT**. The motion for sanctions (Doc. 126) is **DENIED**.

ORDERED in Tampa, Florida, on February 24, 2011.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE