IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MATTHEW A. KEZHAYA *Movant – Appellant*, **THE SATANIC TEMPLE** *Plaintiff*, *V.* **CITY OF BELLE PLAINE, MN**, *Defendant – Appellee.*	CASE NO. 22-2183 Appellant's statement of the issues

COMES NOW Appellant Matthew A. Kezhaya, appearing *pro se*, with a statement of issues on appeal pursuant to FRAP 10(b)(3)(a).

This appeal is closely related to an appeal from dismissal orders in two underlying cases: *Satanic Temple v. City of Belle Plaine* (21-3079 and 21-3081). At issue is whether I was properly sanctioned in the amount of $17,000 for insisting on an appealable "final judgment on the merits."

In *Satanic Temple I*, I served as a plaintiff's trial counsel in a case which raised a promissory estoppel count and various civil rights claims. About two months after the deadline to amend the

complaint, the City moved for judgment on the pleadings, asserting that the complaint failed to state a claim. During the pendency of the motion, neither party participated in discovery on the understanding that discovery was impermissible until my client's complaint survived the motion for judgment on the pleadings.

About one year after the deadline to amend, the District Court granted the City's motion in part, and dismissed my client's civil rights claims "without prejudice" for pleading defects. The order did not grant leave to amend the complaint. The promissory estoppel count survived and the case proceeded toward discovery. There were about four months of discovery left after the dismissal order.

Upon the dismissal order, my local counsel and I researched the issues and determined that the civil rights claims were ejected from the first lawsuit. The claims could only be finally disposed of by either returning the claims to the first suit by leave to amend the complaint, or by filing a second lawsuit. I opted to attempt to amend the complaint because the statute of limitations bar was years away. I also reasoned that one case is better than two. Judicial economy.

About three months after the dismissal order (*i.e.*, one month before the close of discovery), I notified the City's attorneys that I intended to move to amend the complaint to correct the asserted pleading deficiencies. The City's attorneys objected. Unphased, I undertook a fact investigation and created a proposed amended complaint which exhaustively detailed the fact allegations leading to suit, and included supporting evidence of the material facts.

At the close of discovery, I moved to amend the complaint, or alternatively to nonsuit the promissory estoppel count so that everything could be heard at once. The Magistrate denied both requests on timeliness grounds. Foreseeing an affirmance, I resolved to cut to the second suit rather than waste everyone's time on an appeal. *Satanic Temple II* is the second suit on the same cause of action. The District Court explicitly preauthorized *Satanic Temple II* by dismissing some of the claims from *Satanic Temple I* "without prejudice."

The City's attorneys moved to dismiss the second suit because of claim preclusion. The City's attorneys argued that the Magistrate's order was a *de facto* dismissal "with" prejudice. I responded that the

Magistrate's order could not bar the second complaint because it was neither a "final judgment on the merits" nor did the Magistrate even have jurisdiction to enter a "final judgment on the merits."

The City's attorneys also moved for sanctions on the same ground of claim preclusion. The City's cited authority all relied on authority which holds that the denial of leave to amend is treated like a dismissal with prejudice. But, on my further research, I found that all of the City's cited authority involved a preceding dismissal *with* prejudice. None of the City's cited authority involved my fact-pattern: a preceding dismissal *without* prejudice.

I responded with summarized briefing on why claim preclusion does not bar *Satanic Temple II*. I also explained that I had researched the issues, and I presented the supporting authorities for why the Magistrate's order is "irrelevant" to the claim preclusion analysis. I also cited the District Court to a binding case from this very Court, that the denial of leave to amend the complaint does not "contort" a dismissal without prejudice into one with prejudice. Minimally, I responded, my authorities are non-frivolous grounds to assert that

the law should be extended or modified to cover this scenario.

The District Court agreed with the City in full, dismissed *Satanic Temple II* with prejudice because of claim preclusion, and announced that it intended to sanction me, personally. As sole grounds for finding that it was "objectively unreasonable" for me to believe that the second lawsuit was not barred, the District Court distinguished the binding opinion from this Court. The District Court said that this Court previously held that the denial of leave to amend does not "contort" a dismissal without prejudice into one with prejudice, but only because the preceding dismissal there was for lack of jurisdiction; this case, however, was dismissed without prejudice for pleading defects. The District Court did not respond to my objection that both are dismissal without prejudice, meaning they are not the requisite "final judgment on the merits."

The District Court announced that my sanction would be monetary in nature, and for a sum equal to that which the City "incurred" in defending against *Satanic Temple II*. The District Court did not explain why non-monetary sanctions would not suffice. The

District Court instructed the City's attorneys to move for fees with supporting evidence. The City's moved for attorney's fees as instructed. But their motion offered no evidence that the City "incurred" even one penny of expenses. Instead, the motion provided a statement as to all defense-related time. I expected a fee agreement, invoices, and proofs of payment. Not a statement of hours.

So, I had my client request the City's records as to any fee agreements, invoices, or proofs of payment in connection with defending the second lawsuit. Suspecting that the City's insurer paid all defense-related expenses on *Satanic Temple II*. I also had my client request the City's insurance agreement which, in any part, covered the City's costs of defending against *Satanic Temple II*.

The City stated that it had no fee agreement with its counsel of record, no invoices from its counsel of record, and no proofs of payment to its counsel of record; none of which, at least, that had a connection with defending against *Satanic Temple II*, per the District Court's announcement. But the City did have a responsive insurance agreement. With all that, I could prove that the City did not

"incur" any expenses in defending against *Satanic Temple II*.

I objected to the City's motion, attached the verifying proof that the City did not "incur" any expenses, and argued that the only appropriate sum consistent with the announced order was $0. I also objected that the City's attorneys' time logs made claims for duplicative time, made claims for non-compensable time, and included some unintelligible descriptions. And I objected that no monetary sanctions were appropriate absent an explanation why non-monetary sanctions were insufficient.

In response, the District Court retroactively changed positions and ordered that the City should recover "reasonable attorney's fees," instead of the sum of money the City "incurred." As for my objections to the unreasonableness of the fees sought, the District Court recognized that many claims were duplicative and non-compensable. Its solution was to apply a 50% discount across the board, without first evaluating whether 50% of the time claimed was substantiated by the evidence. As for my objection that non-monetary sanctions would have been more than sufficient, the District Court

held that I engaged in a "repeated disregard of court orders" by failing to seek leave to amend the first complaint before the District Court agreed that it was defectively pleaded. The Clerk issued a judgment that corresponded with the final sanctions order. I timely entered a notice of appeal. The issues on appeal follow:

1: The sanctions order is rooted in legal and factual error.

1.1: The second suit was not barred by claim preclusion.

1.1.1: The order was not a "final judgment on the merits."

1.1.2: The second suit had explicit preauthorization.

1.2: I presented nonfrivolous grounds to extend current law.

2: Non-monetary sanctions would more than suffice.

3: Some of the amount due is unsupported by this record.

3.1: None of the amount due is supported by the evidence.

3.2: Some of the amount due is unlawful.

3.2.1: There are claims for time spent on the merits.

3.2.2: There are claims for duplicative time.

3.2.3: There are unreasonably vague entries.

3.3: The amount due did not match the announcement.

3.3.1: The defendant paid nothing for the second lawsuit.

3.3.2: The announcement order could not be amended.

3.3.3: Amending what cannot be amended is error.

4: Upon remand, the Court should order reassignment.

4.1: Conflating the roles of the judiciary and the defense.

4.2: Obstructing and retaliating against normal litigation.

4.3: Driving a wedge between my client and the courts.

5: Upon remand, the Court should order fees-and-costs-shifting.

5.1: The sanctions issue was plainly duplicative and harassing.

5.2: The citing authorities preempt any claim of merit.

5.3: The additional authorities remove any remaining doubt.

Respectfully submitted on June 21, 2022,

By: /s/ Matthew A. Kezhaya, appearing *pro se*

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CERTIFICATE AND NOTICE OF SERVICE

NOTICE IS GIVEN that I, Matthew A. Kezhaya, efiled the foregoing document by uploading it to the Court's CM/ECF system on June 21, 2022 which sends service to registered users, including all other counsel of record in this cause. /s/ Matthew A. Kezhaya