

**United States Court of Appeals
For the First Circuit**

No. 21-1582

RIAN G. WATERS,

Plaintiff - Appellant,

v.

FACEBOOK, INC.; GOOGLE LLC; AIDAN KEARNEY,

Defendants - Appellees,

**JEREMY HALEY; MARTHA SMITH-BLACKMORE; WILLIAM
HIGGINS; JIM DALTON; MAURA TRACY HEALEY; JOHN DOES
(1-10),**

Defendants.

Appellant's Motion for an Injunction Pending Appeal

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I pro se Appellant Rian Waters (“I/me”) move pursuant to Federal Rule of Appellate Procedure 8, for the court to grant an injunction pending appeal enjoining Aidan Kearney and those working in concert with him to the listed relief.

The court should grant the order, because 1) Kearney’s fraudulent business has no legal commercial purpose. 2) Kearney’s illegal business is causing me irreparable harm. 3) The injunction will not cause the Defendants harm. 4) I will likely succeed on the merits. 5) The Lower Court did not deny the injunction motion or unopposed motion to restrain extra judicial statements [“EJS”] until dismissing the entire complaint. 6) The EJS motion included an affidavit detailing undenied allegations of an effective conspiratorial design that is preventing me

from having representation. 7) The injunction would be in the public's best interest.

Wherefore, I move for an order requiring Kearney and those acting in concert with him to;

1) refrain from making extrajudicial statements about parties or lawyers of this case, unless the statement is an exact quote from a legal document without additional comment.

2) refrain from making extra judicial statements about the identity, testimony, or credibility of any prospective witnesses.

3) refrain from contacting any prospective witnesses in this case.

4) stop and refrain from doing any commercial activity related to, or using the assets of his cancelled business Worcester Digital Marketing LLC, including but not limited to publishing new content as Turtleboy, selling ads, selling WDM's books, or soliciting donations for Turtleboy Sports.

5) retract all blogs/videos on his websites and social media accounts that name a party or witness in this case.

i. Background

I adopt the “Statement of the case” (OB 2-5) in my opening brief as the background. I add that the EJS motion asked the court to “consider the attached memorandum and affidavit, and oppositions to Google’s, Facebook’s, and Aidan Kearney’s motions to dismiss with my motion for a preliminary injunction.” FBAPP071

Recently there have been some alarming new developments that will be argued in the Lower court as soon as possible, but I wanted to keep this motion to arguments based on facts that could be fairly addressed on appeal with Kearney defaulted.¹

ii. Argument

Kearney’s blog is weaponized.

1) Right before Kearney causes significant damage to a person, Kearney and his followers say, “don’t poke the Turtle.” (like officer Sean O’Donnell said to me) (RA. 81 at 23 & RA. 111)(RA 72 at 11 & RA 73)

2) Kearney encouraged threats against me by liking them;

¹ I mentioned that Kearney’s business was dissolved and that he did not have a legitimate financial interest in the injunction motion, (Docket 17 pg 17) The issue ripened a little more when the Mass. Appeals court reversed summary judgment in my favor August 2021. It is too relevant to ignore.

a. He's got one of those faces you just want to smash with a brick (RA 40)

b. Make me Joe Doe #11. If I find your ass you'll be sorry. Luckily the poker community is small. You'll remember Mike when he makes your teeth even more f*cked up! (RA 41)

3) Kearney trained his followers to use virtual private networks and fake names when sending threats to escape liability. (RA 89 at 77)

4) Aidan Kearney trained his followers to leave malicious reviews and harass attorneys that take cases against him by telling them not to, with NOT in capital letters. R.A. 71-75 at 7b & 9-13, 14b, 15, 16e, 17c, 18, 23)

Other undenied allegations in the injunction motions and or verified complaints;

“undenied factual allegations must be accepted as true” United States v. Baus, 834 F.2d 1114, 1122 (1st Cir. 1987))

1) On 10/29/2020 Aidan Kearney attacked the credibility of potential witnesses in this case Michelle Olson, Amanda Sawyer, and Michael Gaffney on his weaponized platform. R.A. 33

2 On 10/29/2020 Aidan Kearney shamed and insulted me over the list of damages in the Verified Complaint on his weaponized platform. R.A. 33

3 Aidan Kearney secretly took pictures and video of me in a courtroom of the state case and conspired with Michelle Olson by sending her the pictures so she could post them and give himself plausible deniability. (R.A. 33 at 8 & RA. 40-43)

4 Aidan Kearney told my old roommate that anyone who helps me with a court case against him deserves to have their sh*t blown up. R.A. 70 at 2

5 Aidan Kearney conspired with Katherine Peter to create and publish gay porn images of me and my first witness in the state case to obstruct the case. 1879CV0344 (R.A. 34-35 & 70)

6 Aidan Kearney spent almost five minutes shaming Amanda Sawyer in January 2020, and literally said the reason she deserved to be shamed was because she was willing to be my witness. (R.A. 71 at 5)

7 Aidan Kearney got an opposing attorney to ask for a continuance when Kearney couldn't show up in exchange for Kearney removing pictures of the attorney's kids from his websites. (R.A. 71 at 7a & 8)

8) I sent an email to Facebook's lawyers informing them that Aidan Kearney was harassing me on the "Arise for Social Justice" page with a link, Facebook allowed him to do it again the next day. (R.A. 75 at 24)

9) I sent several emails to Google's lawyers informing them that Aidan Kearney's harassment on their platform was not just causing cognitive impairment, but was also indirectly terrorizing my physical wellbeing, Google has done nothing. (R.A. 75 at 25)

10) On December 15th 2020 I informed YouTube that Kearney said Democrats and Republicans cannot live together and that the US needs a civil war. YouTube did not care. (R.A. 76 at 26)

11) Aidan Kearney says claims to be one of the most vindictive men on the planet and he says he gets sexual pleasure punishing people that ["mess] with him in court." (R.A. 11 at 51)

12) On or about July 11th, 2019, Aidan Kearney threatened to harass any company that hires me because I sued him. (R.A. 102 at 157)

13) "[Kearney] said it's a fact that the world will be a better place without me in it. He then showed pictures of the house that I have been

using for an address, read my address and phone number out loud, and tried calling me.” (R.A. 12 at 53)

14) The following threats were directed at me by Kearney’s followers.

I think someone needs to kick this bastard in the kidneys. R.A. 42
Scum! Hope Karma is real! Please make him suffer!!!! R.A. 40 What a scumbag. Can't wait to see him at Walmart R.A. 40 I would like to kick him in the kidneys and he never gets up R.A. 41 Where does this kid frequent? Work? Etc? R.A. 41 “Time to ruin his life” R.A. 41 "I would love to slaughter Rian' s entire family down to the child.” R.A 10

“Officer Hernandez told me that the Springfield Police do not pursue perjury, wiretapping, or civil witness intimidation charges. He suggested I file another civil complaint.” (R.A. 14 at 59)

iii. Legal Standard

To grant an injunction pending appeal, the court considers the following factors: (1) Whether the movant has made a strong showing that he is likely to succeed on the merits; (2) whether the movant will be irreparably injured absent an injunction; (3) whether issuance of the injunction will substantially injure the other parties interested in the

proceeding; and (4) where the public interest lies. Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of Bos., No. 21-1303, at *11 (1st Cir. Apr. 28, 2021) (“The first two factors are the most critical. It is not enough that the chance of success on the merits be better than negligible. By the same token, simply showing some possibility of irreparable injury fails to satisfy the second factor.”) “[A] finding attributing great weight to one of the four components might make up for a relatively weak finding as to another” Mariani Giron v. Acevedo Ruiz, 834 F.2d 238, 240 (1st Cir. 1987)

iv. I Moved first in the District Court

I arguably did request for injunctive relief in the motion to alter or amend judgment, as I asked the court to add findings or reconsider the injunction motions, and said they were necessary pending appeal. Even if my rule 59(e) request for reconsideration is insufficient the court should still grant relief as requesting relief from the District Court again would be impractical. The District Court had already dismissed the case sua sponte with prejudice, and certified that the appeal would be not taken in good faith, and the court denied a rule 60B motion that used most of the same arguments in the Blue Brief. Jaded by

experience, I would expect that if I request relief from the lower court again that the court would probably deny it on the day of oral arguments and thereby cause more harm than good. See ADD 8 at 17, ADD 10 at 71; ADD 11 at 89;

v. I will likely win the appeal

Kearney defaulted and never opposed the injunctions above or below.

None of the Defendants put up any defense (with merit, see next section) to my misconduct allegations. (Opening Brief pg 10) Kearney never denied having a conspiratorial design preventing me from having an attorney. (OB. 54) Neither Kearney nor the Lower court argued any reason why “Social Justice Warrior” should not be added as a protected class under 1985(3) in light of my evidence of congressional intent. (OB. 42-47), Neither Kearney nor the Lower court argued any reason why Kearney’s fake profiles used to conduct his public shaming without due process does not meet the alternative requirement for 1985(3) “or go in disguise upon the public highway, or on the premises of another.” (OB. 41-42) Kearney provides no argument in defense against any of the conspiracy theories (OB. 23-28) Kearney never addressed any of my

State action theories, (OB. 14-20) and the Lower court's conclusory decision does not help Kearney much on a de novo review. I could go on, but I argue that should be enough to win the appeal.

The issues in the Rule 60(B) motion are appealable

The Lower court never denied a Rule 60(b) motion. As the Lower court noted, it "lack[ed] jurisdiction to hear Plaintiff's Rule 60(b) motion because of his pending appeal... however, the court liberally construes his motion as one pursuant to Rule 62.1 for an indicative Ruling." (FBAPP 192) "[A] federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously." Colón-Torres v. Negrón-Fernández, 997 F.3d 63, 75 (1st Cir. 2021) Aside from the injunction motions, the lower court's sua sponte decision to dismiss was not based on two party arguments, unlike, Cochran v. Quest Software, Inc., 328 F.3d 1, 11 (1st Cir. 2003) I argued that Kearney's misconduct was obstructing the case in my rule 59(e) motion, (FBAPP 133-5) but the lower court did not allow me to "raise arguments" (ADD 11-2) (even though it was my first opportunity to respond,) so any "virtually iron-clad rule" of not allowing new arguments on appeal must be set aside for the absolute rule of due

process. "[t]o the extent that the post-judgment motions relate to issues raised before judgment, the appellate court will deal with them anyway." Dice Corp. v. Bold Techs., 556 F. App'x 378, 383 (6th Cir. 2014)

Regardless, I filed an informal notice of appeal in the First Circuit on October 13th, 2021, in my "MOTION to extend time to file brief and appendix filed by Appellant Rian G. Waters." pg 1) The motion stated, *"The lower court ruled on my rule 60(b) motion on October 12th, 2021 at around 4:25 pm, and it took me a while to read the decision and look up how it affects the appeal. Amended Notice of Appeal will be filed today."* The caption of the October 13th filing *listed me the Appellant, and each of the Appellees.* The Appellant brief was also filed two days after the indicative ruling decision which is within the allotted time to file a notice and contains the necessary information. "[T]he notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal. If a document filed within the time specified by Rule 4 gives the notice required by Rule 3, it is effective as a notice of appeal." Smith v. Barry, 502 U.S. 244, 248-49 (1992) ("The Federal Rules do envision that the notice of appeal and the

appellant's brief will be two separate filings... They do not preclude an appellate court from treating a filing styled as a brief as a notice of appeal, however, if the filing is timely under Rule 4 and conveys the information required by Rule 3(c). Such treatment is, in fact, appropriate under *Torres* and under Rule 3(c)'s provision that '[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal...' Rule 4(a)(1) sets out a transmittal procedure to be followed when the notice of appeal is mistakenly filed with an appellate court, and provides that a misfiled notice 'shall be deemed filed in the district court' on the day it was received by the court of appeals.") *Id.* 249 We have "jurisdiction over [an] underlying order if the appellant's intent to challenge it is clear, and the adverse party will suffer no prejudice if review is permitted." Lincoln Composites, Inc. v. Firetrace USA, LLC, 825 F.3d 453, 458 (8th Cir. 2016)

Facebook falsely alleges that for the first time on appeal I try to "morph [my] state law claims for "product design" (Count I) and "gross negligence" (Count II) into a claim under Section 1983." This was alleged in the SAC (R.A. 101 at 150,) and the Rule 60 (B) motion alleged

these theories particularly. (FBAPP170 FBAPP173-4) The Lower Court did not address causation outside of conspiracy for 1983.

vi. Absent the injunction I will suffer more irreparable harm.

The harassment makes me too incompetent to represent myself.

I concede that Kearney's harassment is not impairing me as much as it did last year, but it is still causing permanent damage to both my mental and physical health. (RA. 84 at 38 & 41) Kearney's harassment has caused me to have adjustment disorder, which causes "a stress-response (e.g., sleep disturbances or concentration problems) that results in significant impairment in social, interpersonal, occupational, educational, or other areas of functioning" as well as accessory symptoms preoccupation, avoidance, depression, impulsivity, and anxiety. (R.A. 46-7) Whenever I look for dates of misconduct, the harassment stresses my adjustment disorder causing preoccupation related to the stressor and its consequences. (R.A. 91 at 84-5) The preoccupation and avoidance are critical hinderances to my ability to litigate this case as the facts are traumatic. Reading case law is not stressful, but I got tons of evidence that is literally too stressful for me to go through, as it causes significant sleep disturbance, and significant

cognitive impairment. The impulsivity is also harmful as I file stuff without making sure it is done correctly in an urge to lower my stress level. (eg. The rule 59(e) motion I filed two days after decision so that I could get some sleep. (OB 10)) The impairment to occupational functioning makes everything take at least 4 times longer to be half as good as it would be if I was not impaired and causes me to make foolish mistakes. I need a lawyer so that I can heal. “[T]here certainly is no reason to think judges or juries are better qualified than appropriate professionals in making such decisions.” Youngberg v. Romeo, 457 U.S. 307, 322-23 (1982) “Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area.” Roman Cath. Diocese of Brooklyn v. Cuomo, 141 S. Ct. 63, 68, 208 L. Ed. 2d 206 (2020)

Kearney would also have less of an incentive to harass me before court hearings if the court granted an injunction that allowed me to have representation.

It is not safe for me to get a driver’s license or to report crimes to local police in Massachusetts, as Kearney brags that he has police in

every department that are willing to send him pictures of their computer screens, (RA 80 at 16)

The content from Kearney's fraudulent business is preventing me from making a legitimate income. (RA 102 at 157) If Kearney's content harassing me was unpublished, I could raise I could work for a lawyer or write a book. Without an injunction it's not worth giving Kearney more targets to destroy.

The longer I am exposed to stressors the more likely I will have severe mental health damage later in life.

Kearney has promised that that he will destroy me when this is over, and his impatience is showing. He has admitted that he is one of the most vindictive people on the planet, and he can't help himself but respond with vengeance anytime pokes him in court (RA 90 at 78-9)

vii. The Injunction will not cause Kearney any unearned harm.

Kearney's business is fraudulent.

Kearney does not have any legal interest in intimidating lawyers, witnesses, or myself, because his websites and social media profiles that are causing me irreparable harm are being used to perpetuate

fraudulent commercial activity. On April 29th 2020, Kearney committed perjury by filing a certificate of cancellation claiming that Worcester Digital Marketing LLC (“WDM”) would finish winding down by 04/30/2020. See Mass. Gen. Laws ch. 156C § 14 “Post dissolution acts that are not ‘winding up’ activity are ultra vires.” Nat’l Lumber Co. v. Fink, 93 Mass. App. Ct. 1103 (Mass. App. Ct. 2018) “the certificate of cancellation has the effect of notifying the public at large that it no longer has capacity to transact business” Biance v. Lemieux, Civil No. 2:11-CV-429-NT, at *7 (D. Me. Apr. 27, 2012) see also Mass. Gen. Laws ch. 155 § 51. At the time Kearney had no plans of stopping business and Kearney did not comply with Section 46(b). “A limited liability company which has dissolved shall pay or *make reasonable provision to pay all claims* and obligations, including all contingent, conditional or *unmatured claims*” Mass. Gen. Laws ch. 156C § 46 Without making reasonable provision to pay my soon to be mature claims², Kearney could not legally sell, transfer, or otherwise use the property, “...any

² 1879CV0344 Reversed in part holding that an imputation of a crime is defamatory per se.

remaining assets shall be distributed as provided in this chapter.” Id. Therefore, without having reasonable provision of payment for the judgments, Kearney could and cannot legally continue to use or otherwise transfer the primary assets of the cancelled business without settling or finishing the pending lawsuits. “[a] limited liability company interest is personal property. A member has no interest in specific limited liability company property.” In re Kane, No. 10-18898-JNF, at *11 (Bankr. D. Mass. May 23, 2011) Even assuming arguendo that Aidan Kearney was legally using a cancelled business’s assets to conduct some unidentified legal new business³, Kearney has admitted a couple times that old blogs do not make him a lot of money.

viii. Public Interest

Voices silenced and lives devastated

In today’s technology centric environment, the first page of results when Google searching a person’s name, and a person’s social media presence are two of the most important factors in determining what

³ Kearney is still using his old business bank account, soliciting donations, selling ad space, seeking sponsors, recruiting staff, selling merchandise, contract public shaming, selling books...

business opportunities, employment, and personal relationships are available to a person. A fate of being not just unemployed, but unemployable is not any better than life in prison. Aidan Kearney has trained his cult-like following to leverage this modern threat and use the facilities of Facebook and Google to organize in large numbers for the purpose of denying his targets access to these important areas of liberty. Aidan Kearney's consistent targeting of witnesses, lawyers, and plaintiffs causes a community intimidation effect silencing hundreds of citizens who have been victimized by this massive conspiracy. With an abundance of caution, I ask the court to consider the consequences of allowing a conspiracy of this magnitude to continue destroying lives without any effective State or Federal redress. As Hamilton said, "justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained or until liberty be lost in the pursuit. In a society, under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign, as in a state of nature where the weaker individual is not secured against the violence of the stronger." (The Federalist, ed. 1864, No. 51, p. 401.)

There must be one rule of law for all men, and by that rule all men's rights must be tried and tested; relaxation of legal liabilities and remission of legal duties in one direction would logically be followed by the same looseness in every other direction, resulting in an invasion of individual right which would be intolerable.

Online harassment is out of control

Kearney's goal is to start a civil war, see undenied allegation # 10. See also page 50 of my Opening Brief.

Conclusion

This court should grant an injunction to prevent Aidan Kearney from obstructing the case anymore.

/S/ Rian Waters Dated: December 8, 2021

6 Liberty square PMB # 424 Boston MA 02109

(530)739-8951 **Watersrian@gmail.com**

Certificate Of Service

I, Rian Waters, hereby certify that on December 8th, 2021, I served the attached Motion, on Facebook, Google, Aidan Kearney, and Katherine Peter by Electronic filing for attorneys of record, and by emailing: bristolturtlechick@gmail.com; ryan@mclanelaw.com

Subscribed under the penalties of perjury.

/S/ Rian Waters Dated: December 8, 2021

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