

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: DVCE 18-008661

BRENDA FORMAN,

Petitioner,

vs.

WILLIAM GELIN,

Respondent.

**PETITIONER'S MOTION TO STRIKE RESPONDENT'S OBJECTION TO
PETITIONER'S MOTION TO CANCEL JANUARY 31, 2019 HEARING**

Pursuant to Florida Rules of Civil Procedure 1.140(f) and 1.420(a)(1), and other applicable law, Petitioner Brenda Forman ("Clerk Forman") hereby respectfully moves the Court to strike the Objection to Petitioner's Motion to Cancel January 31, 2019 Hearing (the "Objection") filed on behalf of Respondent William Gelin ("Gelin") in response to Clerk Forman's Motion to Cancel January 31, 2019 Hearing (the "Motion to Cancel"), and in support thereof, states as follows:

A. INTRODUCTION

Without even addressing the Court's complete inability (i.e., lack of jurisdiction) to proceed in this action based upon Clerk Forman's Notice of Voluntary Dismissal Without Prejudice ("the Dismissal Notice") filed on January 15, 2019, Gelin, presumably for the sake of seeking to obtain additional fodder for his self-professed "journalistic" blog, filed the Objection, which is nothing more than a wholly improper attempt to (a) reopen the case, (b) litigate the merits of the case, and (c) obtain sanctions against Clerk Forman in the form of a dismissal with prejudice; not to mention an another opportunity for Gelin to take inappropriate and uncalled-for "pop-shots" at Clerk Forman.

However, none of the “relief” sought by Gelin is legally available to him based upon the Dismissal Notice; and as such, the Objection should be stricken as “immaterial, impertinent, or scandalous” pursuant to Florida Rule of Civil Procedure 1.140(f).

B. PROCEDURAL/FACTUAL HISTORY

1. For judicial economy and to avoid repetition, Clerk Forman incorporates herein by reference the Procedural/Factual History contained in the Motion to Cancel.

2. In response to the Motion to Cancel, Gelin filed and served the Objection. Although seemingly framed as a response in opposition to the Motion to Cancel, the substance of the Objection is actually a request for affirmative relief, as well as another chance for Gelin to smear Clerk Forman (as has been his modus operandi on his blog for quite some time).¹

3. First, and quite strangely, the Objection not only requests the Court to inquire into the reasoning behind the Dismissal Notice, but it contemptuously asks the Court to ascertain whether Clerk Forman “is sincere” in filing the Dismissal Notice.²

4. Second, it requests that the Court make a finding that the Petition was “baseless” and the action “frivolous,” by not only expressly including certain of the statutory provisions previously at issue in this now-dismissed action, but by arguing the facts (at least the “facts” according to Gelin) and attempting to apply them to the cited law (almost akin to a motion for summary judgment).

¹ For example, Gelin’s injurious, insulting, and inappropriate remarks include that Clerk Forman “is continuing to abuse the judicial process” (Objection at p. 1); that Clerk Forman has “abused the judicial system in a misguided attempt to chill free speech” (*id.* at ¶ 17); that Clerk Forman filed the Petition in an attempt to quell some supposed “bad publicity” that would ostensibly affect her 2020 re-election campaign (*id.*); that Clerk Forman filed the Dismissal Notice possibly because she was “remorseful for filing a frivolous petition” (*id.* at ¶ 18); and that Clerk Forman “may intend to continue to act in bad faith” (*id.* at ¶ 22). At a minimum, such impertinent and scandalous comments should be stricken from the Objection, pursuant to Rule 1.140(f).

² Contrary to what’s alleged by Gelin in the opening paragraph of the Objection, Clerk Forman is not “asking the Court to dismiss” her previously-filed Petition For Injunction For Protection Against Stalking (the “Petition”). Rather Clerk Forman dismissed the Petition (via the Dismissal Notice), which was her absolute right to do pursuant to Rule 1.420(a)(1), thereby bringing this action to an end, as set forth in the Motion to Cancel.

5. And, third, it requests that the Court make a finding of sanctionable conduct against Clerk Forman and to sanction Clerk Forman in the form of entry of an order of dismissal with prejudice.³

6. In essence, Gelin, via his Objection, has filed a *de facto* motion for summary judgment and/or motion for sanctions pursuant to Florida Statutes section 57.105.

7. There are three major problems with Gelin's requests. First, the action (which includes the Petition) has already been voluntarily dismissed without prejudice. Thus, as comprehensively set forth in the Motion to Cancel, the Court lacks jurisdiction to rule on the substance (i.e., the merits *vel non*) of the case, including an inability to enter any order of dismissal with prejudice.

³ As a basis for his request for a dismissal with prejudice as a form of sanction, Gelin feigns concern about another potential petition filing by Clerk Forman. Although attempting to establish himself as some victimized, free-speech crusader, Gelin would like nothing more than another filing against him so that he could attack, taunt, and smear it as well as the filer (and everyone associated with the filer) on his blog. There is no doubt that Gelin has been exploiting this proceeding, which he dubbed *Brenda v. Blog*, for publicity on his blog for the past six weeks (and which has invited scores of malicious, hateful, and even racist comments about Clerk Forman and her office, among other things); and certainly, Gelin has been getting substantial enjoyment from this action as well; even going so far as to having 200 wedding-style invitations printed (and offered for handout on his blog) for the Final Hearing Date (done before the Dismissal Notice):

In the Circuit Court of the 17th Judicial Circuit,

In and For Broward County, Florida

WILLIAM "BILL" GELIN

Requests the honour of your presence

For his Trial

Brenda L. Forman, Petitioner

vs.

The First Amendment Respondent
on Thursday, the thirty first of January

Two thousand and nineteen

at Nine o'clock in the morning

Consequently, any statement of "emotional distress" or concern of any nature on Gelin's part (as set forth in the Objection) is disingenuous at best.

8. Second, there is no authority whatsoever for the Court to inquire into any motive behind the filing of the Dismissal Notice, and there is certainly no “sincerity” requirement under Florida law.

9. And lastly, there were no proper motions for summary judgment or motions for sanctions filed *before* the Dismissal Notice, meaning that the Court cannot rule on any such (or purported) motions *after* the Dismissal Notice. Indeed, the only appropriate matter pending before this Court based upon the Dismissal Notice is the Motion to Cancel (which constitutes a proper “ancillary matter” as it does not address the substance of the case and only address something that arose *after* the Dismissal Notice was filed, i.e., the Court’s declaration that the January 31, 2019 hearing on the Petition (the “Final Hearing”) would be going forward notwithstanding the Dismissal Notice filing).

C. LEGAL ANALYSIS

10. Again, for judicial economy and to avoid repetition, Clerk Forman incorporates herein by reference the Legal Analysis contained in the Motion to Cancel.

11. Despite the clear and unambiguous state of the law in Florida, as soundly set forth in the Motion to Cancel, i.e., that this Court does not have jurisdiction to proceed with the Final Hearing, Gelin nevertheless seeks to have the Court continue to litigate the Petition ... to the point of wanting the Court to convert a requested “colloquy” at the Final Hearing to a full-blown evidentiary hearing in the hopes of somehow establishing that despite the statements contained in and attached to the Petition and the Supplemental Affidavit in Support of Petition for Injunction for Protection Against Stalking that Clerk Forman engaged in wrongful conduct.

12. Even if Gelin could somehow establish continuing jurisdiction notwithstanding the Dismissal Notice (which is impossible under the circumstances of this case), there is no basis for this Court to inquire into the Dismissal Notice.

13. First, as the Court is well aware, a voluntary dismissal under Rule 1.420(a)(1) requires no court action whatsoever. *See* Fla. R. Civ. P. 1.420(a)(1); *see also Semerena v. Aetna Health, Inc.*, 248 So. 3d 230, 231 (Fla. 3d DCA 2018) (noting that a plaintiff has a right to voluntarily dismiss an action without court order). Consequently, a trial court has no discretion whatsoever in granting or denying a plaintiff's voluntary dismissal. *See Pino v. Bank of NY*, 121 So. 3d 23, 31 (Fla. 2013); *see also Rich Motors, Inc. v. Loyd Cole Produce Express, Inc.*, 244 So. 2d 526, 527 (Fla. 4th DCA 1970)⁴.

14. Thus, barring extremely limited circumstances established by the Florida Supreme Court in *Pino* (not applicable to this action), and contrary to Gelin's request in the Objection, a trial court has **no ability** to review a voluntary dismissal.⁵ *See Pino*, 121 So. 3d at 32-33; *see also Rich Motors*, 244 So. 2d at 527 (holding that a "trial court has no authority to review a voluntary dismissal").

15. Second, whether the Dismissal Notice was "sincere[ly]" filed is irrelevant and beyond the scope of any proper analysis by the Court. Nowhere in Florida Rule of Civil Procedure 1.420 is there a sincerity requirement for filing a notice of voluntary dismissal; there is no mention of motive (good, bad, or otherwise) anywhere in the Rule.

16. In fact, the Florida Supreme Court has expressly recognized that Rule 1.420(a)(1) "does not take into account a plaintiff's motive in seeking [a] dismissal," and has even further

⁴ Importantly, it is worth repeating that, , that Clerk Forman is not and was not asking the Court to dismiss the Petition (as incorrectly proffered in Gelin's opening paragraph of the Objection). The Petition was dismissed upon the act of serving the Dismissal Notice. *Pino*, 121 So. 3d at 31.

⁵ For this reason alone, the Court should reject/strike the Objection.

acknowledged that nothing in Rule 1.420 “preclude[s] a plaintiff from taking a dismissal where the objective is tactical.” *Pino v. Bank of NY*, 121 So. 3d 23, 32 (Fla. 2013) (further stating that Rule 1.420 “presupposes that the plaintiff will have a tactical reasons for voluntarily dismissing its lawsuit at a particular point in time.”); *accord Estate of Williams v. Jursinski*, 160 So. 3d 500, 501 (Fla. 2d DCA 2015) (reversing trial court order compelling arbitration entered after plaintiff voluntarily dismissed the action notwithstanding plaintiff’s apparent motive to thwart mandatory arbitration by virtue of such dismissal)⁶.

17. Third, as a result of the Dismissal Notice, this Court has no authority or discretion to consider sanctions against Clerk Forman in this action. At the outset, no sanctions motion of any nature was filed by Gelin *prior to* filing of the Dismissal Notice; consequently there is nothing for the Court to consider under its “ancillary matter” jurisdiction (as discussed at paragraphs 15 and 16 of the Motion to Cancel).

18. However, even if the Objection itself could somehow be considered a motion for sanctions, putting aside Gelin’s utter failure to comply with Florida Statutes section 57.105 (with respect to sufficient safe harbor notice and proper service thereof), there would still not be jurisdiction for the Court to entertain such “motion.” *See Pomeranz & Landsman Corp. v. Miami Marlins Baseball Club, L.P.*, 143 So. 3d 1182, 1183 (Fla. 4th DCA 2014) (granting writ of prohibition to prevent trial court from hearing 57.105 motion filed after plaintiff voluntarily dismissed its case under Rule 1.420(a)(1) where [“t]he voluntary dismissal ended the trial court’s jurisdiction.”); *cf. Giuffre v. Edwards*, 226 So. 3d 1034, 1036 (Fla. 4th DCA 2017) (holding that the trial court was authorized to rule upon defendant’s motion for sanctions post-voluntary dismissal because the sanctions motion was filed before the voluntary dismissal)

⁶ Putting aside that Clerk Forman did not ask and is not asking the Court to dismiss the already-dismissed Petition and that there is no motive condition or requirement, it quizzes the mind as to how any jurist (or layperson for that matter) could possibly determine whether a filing is “sincere.”

19. Moreover, a trial court cannot enter an order dismissing an action with prejudice (as requested by Gelin), whether as a sanction or otherwise, after a notice of voluntary dismissal has been filed *even if* the court had previously indicated that it would be dismissing the action with prejudice. *See Homestead Ins. Co. v. Poole, Masters & Goldstein, C.P.A., P.A.*, 604 So. 2d 825, 826 (Fla. 4th DCA 1991) (reversing trial court’s order of dismissal with prejudice entered after plaintiff voluntarily dismissed the action even though the court’s oral ruling came beforehand); *see also Semerena*, 248 So. 3d at 231 (same); *Two Islands Dev. Corp. v. Clarke*, 239 So. 3d 115, 124-25 (Fla. 2d DCA 2018);

20. Simply put, the Objection, when viewed in the context of governing law (of which there is none cited anywhere in the Objection) is a blatantly unacceptable request for this Court to consider and rule upon the merits of the Petition *after* it has already been properly dismissed. As set forth in the Motion to Cancel, the Court lacks any jurisdiction to address the subject matter of the Petition beyond “ancillary matters” that do not exist here (beyond the Motion to Cancel), and there is nothing whatsoever in the Objection that would or could somehow resurrect the Court’s non-existing jurisdiction.

21. Based upon the foregoing, it is beyond clear that the Objection is a wholly-improper attempt by Gelin to resurrect the Petition and this action beyond the authority/jurisdiction of this Court while at the same time maligning Clerk Forman. Consequently, the Objection should be stricken pursuant to Rule 1.140(f).

WHEREFORE, Clerk Forman respectfully requests that this Honorable Court strike the Objection and cancel the hearing currently scheduled for 9 a.m., Thursday, January 31, 2019, as requested in the Motion to Cancel.

Dated this 25th day of January, 2019.

Respectfully submitted.

/s/Thomas H. Loffredo

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 2019, I electronically filed the foregoing with the Clerk of the Courts by using the Florida Courts E-Filing Portal system which will send a notice of electronic service to the parties on the below Service List.

/s/Thomas H. Loffredo

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