

FILED
10-15-2018
Clerk of Circuit Court
Winnebago County, WI
2017CV000389

STATE OF WISCONSIN**CIRCUIT COURT
BRANCH VI****WINNEBAGO COUNTY**

WILLIS W. HAGEN II, an individual,

Plaintiff,

-vs-

**BOARD OF REGENTS OF THE UNIVERSITY OF
WISCONSIN SYSTEM and
UNIVERSITY OF WISCONSIN-OSHKOSH,**Case No. **17-CV-389**Classification Code No. **30704**

Defendants,

-and-

ALEXANDER NEMEC,

Intervenor.

**PLAINTIFF'S NOTICE AND MOTION FOR
A TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION
AGAINST INTERVENOR ALEXANDER NEMEC**

TO: Anne M. Bensky, Esq.
Wisconsin Department of Justice
17 West Main Street
P. O. Box 7857
Madison, WI 53707-7857

Honorable Daniel Bissett
Winnebago County Circuit Court
415 Jackson Street
P. O. Box 2808
Oshkosh, WI 54903-2808

Christa Westerberg, Esq.
Pines Bach LLP
122 West Washington Avenue
Suite 900
Madison, WI 53703-2718

Clerk of Circuit Court
Winnebago County Circuit Court
415 Jackson Street
P. O. Box 2808
Oshkosh, WI 54903-2808

PLEASE TAKE NOTICE that at a date and time set by the Court, the Plaintiff, Willis Hagen II, will move the Circuit Court for Winnebago County, the Honorable Daniel J. Bissett presiding, for an emergency temporary restraining order and a permanent injunction enjoining the Intervenor, Alexander Nemec, from (1) publishing confidential information that had been mistakenly released to him under the Wisconsin Public Records Law, (2) requiring him to identify all persons and entities to whom he disclosed the confidential information and records, and (3) requiring him and all those to whom he disclosed the confidential records to permanently and irreversibly destroy the documents that had been erroneously sent to him by the Defendants.

This Motion is based on Wis. Stat. § 813.02 (1)(a), the Court's order dated September 2, 2017, and all other records on file with the Court, along with the following facts to be adduced during an evidentiary hearing to be scheduled by the Court:

1. On May 3, 2017, the Plaintiff commenced an action under Wis. Stat. § 19.356 (4) to enjoin release of certain employee records that Intervenor Alexander Nemec had requested.
2. The records requester, Alexander Nemec, intervened in the action.
3. The court reviewed the records in camera, and, on September 22, 2017, denied the Plaintiff's request to enjoin release of the records and ordered that the "records shall remain in redacted form," except that certain redactions would be eliminated.
4. Plaintiff appealed this decision, and on June 21, 2018, the Wisconsin Court of Appeals upheld this Court's decision. The Wisconsin Court of Appeals issued a remittitur on July 26, 2018, returning the file to this Court.
5. Plaintiff did not petition for Supreme Court review.
6. On Wednesday, August 15, 2018, the records custodian emailed Alexander Nemec the records responsive to the request that were the subject of the action under Wis. Stat. § 19.356.
7. The records custodian mistakenly emailed the unredacted version of the records to Alexander Nemec.
8. The undersigned recently noticed the error and brought the error to the attention of Attorney Jennifer Lattis, Deputy General Counsel for the University of Wisconsin System on or around September 30, 2018.
9. On October 1, 2018, based on information and belief, the records custodian communicated to Alexander Nemec that the records had been released in error, asked Alexander Nemec to delete the unredacted records, and explained she would send the proper redacted version. Nemec stated, "Your mistake is not my problem," and refused to give assurances that he would destroy the unredacted record.
10. On October 5, 2018, the Defendants' attorney proposed a Stipulation that would have disposed of the need for an evidentiary hearing. The proposed Stipulation is attached hereto as **Attachment A**. Alexander Nemec, through his attorney, rejected this Stipulation.
11. On October 10, 2018, the Plaintiff's attorney proposed a Stipulation that would have disposed of the need for an evidentiary hearing. The proposed Stipulation is attached hereto as **Attachment B**. Alexander Nemec, through his attorney, rejected this Stipulation.
12. On October 15, 2018, Alexander Nemec, through his attorney, stated his position as follows:

We obviously don't agree with that characterization, but I don't think we need to for the present purposes. Mr. Nemec lawfully

obtained these records and was not the one who made this mistake. Nonetheless, I can confirm that all copies have now been deleted or destroyed. We do not plan to provide any additional statement from Mr. Nemec. If you still want to go to court to get additional relief, that's up to you. But any further court orders raise significant First Amendment concerns, and we will oppose them on that basis.

13. If Alexander Nemec is not ordered to destroy the original and all copies of the unredacted records, and if he is not ordered to identify to whom he disclosed the original and all copies of the unredacted records along with the confidential information found therein, and does not agree to not publicize their contents, irreparable harm will result, not only for the Plaintiff, but for others whose names are mentioned. This Court already determined that the redactions, as ordered on September 22, 2017, were in the public interest.

14. There would be no adequate legal remedy if the unredacted records are publicized and retained by Nemec and others to whom he may have disclosed or shared the confidential information and records.

15. This Court has jurisdiction to enforce its September 22, 2017, order, and has personal jurisdiction over Alexander Nemec, who has full party status in this action.

16. This court has discretion to issue this temporary restraining order. Waste Mgmt., Inc. v. Wisconsin Solid Waste Recycling Auth., 84 Wis. 2d 462, 466, 267 N.W.2d 659, 662 (1978).

WHEREFORE, the Plaintiff asks this Court to enter an order enjoining Alexander Nemec from publicizing, printing, or sharing, in any manner, whether verbally, in writing, or otherwise, the contents of those portions of the records subject to redaction, and further ordering Alexander Nemec to delete and destroy any and all copies of the unredacted records that were sent to him on August 15, 2018, and order that Alexander Nemec take all reasonable efforts to obtain any copies, whether electronic or otherwise, of the unredacted records that he may have sent to others, and further order Alexander Nemec to take action consistent with the **Attachment B**.

DEMPSEY LAW FIRM, LLP

Attorneys for **Plaintiff**

Electronically signed by Peter J. Culp

Peter J. Culp

Wisconsin Bar No. 1022595

ADDRESS:

210 North Main Street, Suite 100
Oshkosh, Wisconsin 54903-0886

Telephone: 920-235-7300

Facsimile: 920-235-2011

Email: peterc@dempseylaw.com

Dated: October 15, 2018