



RICHARDS v. UNIVERSITY COLLEGE

2005 | Cited 0 times | D. Minnesota | April 12, 2005

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

This matter is before the undersigned United States District Judge on Petitioner Charles Richards' ("Petitioner") Motion for Reconsideration or Appeal [Docket No. 14] of Magistrate Judge Arthur J. Boylan's Order [Docket No. 9] denying Petitioner's Petition for Letters of Request to Perpetuate Evidence ("Petition") [Docket No. 1] and Petitioner's Motion for Leave to Amend Original Petition [Docket No. 16]. For the reasons set forth below, Petitioner's Motions are denied.

II. DISCUSSION

In reviewing an R&R, the district court "shall consider the appeal and set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); see also D. Minn. LR 72.1(b)(2). In his Petition, Petitioner seeks to conduct discovery upon Respondents University College, Aberystwyth; University of Wales; Chief Officer of Police, Dyfed-Powys Police Area; Secretary of State, the Home Office, United Kingdom; and the Chief Executive of Saint David's Hospital ("Respondents"). All the Respondents reside in the United Kingdom. Petitioner asserts that he was admitted to law school at University College, Aberystwyth, Wales, in 2000, and received his L.L.B. degree in July 2003. In February 2003, an incident occurred in which Petitioner was contacted by the local police. Later, two constables came to Petitioner's residence, and ultimately took him into custody. Petitioner was brought to a hospital and underwent a preliminary mental health examination before he was released the next day.

The Petition seeks a Letter of Request to allow Petitioner to conduct discovery with respect to this incident. However, no case is currently pending in either the United States or the United Kingdom against the Respondents. Judge Boylan found that Petitioner failed to meet the Hague Convention burden for a Letter of Request, and denied the Petition.

In his Motion for Reconsideration or Appeal, Petitioner claims Judge Boylan was without authorization to enter the dismissal of the Petition. Second, Petitioner objects to Judge Boylan's conclusion that Petitioner did not expressly state any grounds for a likely suit either in the United States or United Kingdom. A further objection is made to Judge Boylan's use of the term "fishing expedition." Finally, Petitioner avers that venue in Minnesota is proper.



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As a threshold matter, Petitioner first argues that Judge Boylan did not have authority to dismiss his Petition, arguing that 28 U.S.C. § 636(b)(1)(A) prohibits magistrate judges from deciding certain dispositive motions. See also *Bennett v. General Caster Service of N. Gordon Co., Inc.*, 976 F.2d 995, 997 (6th Cir. 1992) (holding that magistrate judges may not decide motions similar to those specifically listed in 28 U.S.C. § 636(b)(1)(A)). Petitioner also claims magistrate judges may not decide federal questions. The matter before the Court, however, is not a dispositive motion in the sense that it is determinative of a cause of action, claim, or defense under the meaning of Fed.R.Civ.P. 72. Rather, the matter before the Court is properly categorized as a discovery request, which does not require the consent of parties to be decided before a magistrate judge. Therefore, the Petition is not analogous to the dispositive motions referenced in 28 U.S.C. § 636(b)(1)(A), and Judge Boylan's jurisdiction over the matter was proper. Moreover, this Petition presented no issue of federal law improper for a magistrate judge's determination.¹

Petitioner also objects to Judge Boylan's conclusion that Petitioner did not expressly state any grounds for a lawsuit under the laws of the United States or United Kingdom. Whether Petitioner did, in fact, state the grounds for a lawsuit is not essential to Judge Boylan's Order. Rather, Judge Boylan concluded that Petitioner had not persuaded the trial court of the need to proceed pursuant to the Hague Evidence Convention. Order at 2. Judge Boylan's determination was not essential to that finding. In any event, the Order's conclusion is not clearly erroneous. Although the Petition does state that a tort or contract action may lie, this information is far too vague to state a specific cause of action. As a result, Petitioner fails to demonstrate the Order was clearly erroneous.

Third, Petitioner objects to the characterization of his discovery efforts as a "fishing expedition," arguing that the discovery he seeks would directly support the illegality of actions taken by the United Kingdom against the Petitioner. Again, Judge Boylan's conclusion that the Petition was a "fishing expedition" is not necessary to the determination that the Petition should be denied. Rather, Judge Boylan's impression was reasonable in light of the fact that the Petition is couched in vague terms.

Finally, Petitioner objects to the comment that the case appeared to have no connection to Minnesota, stating that the Hague Convention presents no venue requirements. However, Judge Boylan's comment was not a legal ruling on venue. Rather, the fact that Minnesota appeared to have no connection to the case merely strengthened the impression that the Petition was a rather random attempt to gain information. Order at 3.

Petitioner also has moved to amend his Petition in an attempt to meet the Hague Convention requirements. However, as noted in the Order, the Hague Convention is not the exclusive means of obtaining discovery, nor is it necessarily the first option for discovery. *First American Corp. v. Price Waterhouse LLP*, 154 F.3d 16, 21 (2d Cir. 1998). Moreover, there is no indication that the Petitioner has attempted to obtain discovery in a more direct fashion. The Court recommends Petitioner utilize other means of discovery before enlisting the Court's aid in issuing a Letter of Request. III.



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CONCLUSION

Based upon the foregoing, and all the files, records, and proceedings herein, IT IS HEREBY ORDERED that: 1. The Order [Docket No. 9] is ADOPTED;

2. Petitioner's Motion to Reconsider or Appeal [Docket No. 14] is DENIED; and

3. Petitioner's Motion for Leave to Amend Original Petition [Docket No. 16] is DENIED; and

4. Petitioner's Petition for Letters of Request to Perpetuate Evidence [Docket No. 1] is DISMISSED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

1. Even assuming the Motion is dispositive, the Court may elect to treat the Order as a recommendation. The Petitioner is now before the District Court for review and the result is the same. Judge Boylan's determination is in accord with this Court's independent resolution of the issue.

