

IN THE CIRCUIT COURT OF GILMER COUNTY, WEST VIRGINIA  
14th JUDICIAL CIRCUIT

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**JAY LAWRENCE SMITH**

**Plaintiff,**

**V.**

**CASE NO. 11-C-29**

**COPY**

**JEAN BUTCHER and GILMER COUNTY COMMISSION,**

**Defendants.**

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**MOTION BY THE DEFENDANTS**

**BEFORE: HONORABLE RICHARD A. FACEMIRE, JUDGE**

**DATE: Monday, February 27th, 2012**

**PLACE: Gilmer County Courthouse  
10 Howard Street  
Glennville, West Virginia 26351**

**COUNSEL: Gerald Hough, for Defendants**

**PRO SE: Jay Lawrence Smith, Plaintiff**

**REPORTER: Janette Campbell, CCR/NP**

1                    *[BE IT REMEMBERED, the following Motion in the*  
2 *aforementioned case was had before the Honorable Richard A.*  
3 *Facemire on Monday, February 27th, 2012, as follows, to-wit:]*

4                    THE COURT:    The next matter is the case of Jay  
5 Lawrence Smith vs. Jean Butcher, 11-C-29. Let the record  
6 reflect Jay Lawrence Smith appears in person. And you're  
7 representing yourself, Mr. Smith?

8                    MR. SMITH:    I am, Your Honor.

9                    THE COURT:    Mr. Smith, you can't record things  
10 in the courtroom. You'll have to turn that off.

11                   MR. SMITH:    May I ask why?

12                   THE COURT:    It's the rules of the Court, sir.

13                   MR. SMITH:    I do -- may my objection be stated  
14 for the record?

15                   THE COURT:    I'll note your objections.

16                   MR. SMITH:    Okay.

17                   THE COURT:    There's an official court reporter,  
18 sir, that takes down everything in this courtroom.

19                   MR. SMITH:    Thank you.

20                   THE COURT:    If you don't like it, I apologize,  
21 but even news media cannot come into the courtroom or court  
22 without permission of the Court in the matter.

23                   MR. SMITH:    Okay.

24                   THE COURT:    I'm not being disrespectful to you,

1 sir. That's just a rule that I have for all parties.

2 MR. SMITH: I wonder -- I know in other courts,  
3 like Kanawha County, there's no objection. So I did not know  
4 that. So I, I apologize.

5 THE COURT: Well, each Court has its own control  
6 of its courtroom in the matter. Now, the matter is before the  
7 Court as a result of a motion having been filed by Mr. Hough.  
8 For what purpose did you set the matter, Mr. Hough?

9 MR. HOUGH: Your Honor, the county commission  
10 and the county clerk were named as defendants in Civil Action  
11 No. 11-C-29. And the allegations in that complaint, which the  
12 county commission did answer, and the county clerk did answer,  
13 were that on a FOIA request by the plaintiff, and I'm not sure  
14 whether Jay Lawrence Smith, J-a-y, because that's how he plead,  
15 or it's Lawrence Jay Smith because that's how he inquired in his  
16 correspondence, nevertheless, each and every FOIA request that  
17 he made in writing, the county commission responded to in  
18 writing in like form to the correct address. And we've attached  
19 those as appendix to, to our answer. And we made a couple of  
20 motions, the first of which was to dismiss this matter with  
21 prejudice, but the second was to, to ask the Court to grant Rule  
22 11 Sanctions for bringing a frivolous lawsuit. The allegations  
23 by Mr. Smith were that the commission did not respond, would not  
24 produce documents that were requested by Mr. Smith, that he

1 consistently had contacted the commission and the county clerk  
2 by telephone, by fax and by e-mail, which is not true. And each  
3 time we've attached here, and unfortunately the first two  
4 answers made, looks like there's a typo on the dates. Instead  
5 of October 14th, 2011, it's October 14, 2001, to the same  
6 address provided to us; October 24th, instead of 2011, it says  
7 2001, it's my error, my mistake. I wrote these. And you'll  
8 note that when we one we made responses for the FOIA request, it  
9 says "FOIA request" on the first one, "second reply" on the  
10 second one, "third reply" on the third one, and reminded Mr.  
11 Smith that there are certain sanctions for bringing a frivolous  
12 lawsuit. Finally, we answered once we had the document that Mr.  
13 Smith wanted with our fourth reply. And two or three days later  
14 Mr. Smith was kind enough to call and ask for details about this  
15 settlement that he was in such a pursuit for the documents, and  
16 we provided all the documents as fast as we had them. The point  
17 of this, Your Honor, is that when someone brings a lawsuit and  
18 makes allegations that he knows are false, there are sanctions  
19 for the same in the court. We don't have time to deal with  
20 frivolous lawsuits. And my second part of this motion is, Your  
21 Honor, I believe that the lawsuit was brought for an improper  
22 purpose, and that was to try to embarrass, trying to humiliate  
23 the commission, trying to make them look like they're a crooked  
24 county, whatever. One of the interesting things I discovered in

1 my dialogue with Mr. Smith was that he's good friends with  
2 another person who characterizes this county as "crooked" or  
3 "corrupt", Daniel Bingham.

4 THE COURT: Now, Mr. Smith, what documents are  
5 you seeking under the Freedom of Information request that you're  
6 saying you've not gotten?

7 MR. SMITH: Well, first of all, Your Honor, in  
8 regard to the fourth request, the requested documents have since  
9 been produced, as Mr. Hough said, in the forth request which  
10 came after I filed my FOIA lawsuit, that was regarding the  
11 settlement in which the clerk was named in a third-party  
12 complaint in U.S. District Court regarding Textron Corporation,  
13 sued Summit Bank for a breach of contract. Then Summit Bank  
14 turned around and filed a third-party complaint against the  
15 clerk alleging the clerk for improperly following lien  
16 information, brought them unwittingly into the suit. And so I  
17 filed my suit on December 23rd. Since then they've produced the  
18 document, they did it at a special meeting of the commission on  
19 January 20th of last month. And then when I got -- which I came  
20 to this meeting, it was produced at the time. Upon going back  
21 to Charleston - I live in Hurricane, Putnam County - but I have  
22 a box or a mailbox up in South Charleston. When I got there,  
23 there was a letter from Mr. Hough, I believe, dated two days  
24 prior, saying here is the documents you were requesting, or that

1 | you have requested that we have only gotten recently. And so I  
2 | would just respectfully ask that this -- I mean, my argument is,  
3 | this was not brought maliciously; this was brought in good  
4 | faith, to produce the document that is public record.

5 |                   THE COURT:    Now, what you're saying to the Court  
6 | is, you sought certain records, public records, under---

7 |                   MR. SMITH:    The settlements. Yes, sir.

8 |                   THE COURT:    Yeah. ---under the Freedom of  
9 | Information Act?

10 |                   MR. SMITH:    Yes, sir.

11 |                   THE COURT:    But you did not get those before you  
12 | filed your suit?

13 |                   MR. SMITH:    That is correct.

14 |                   THE COURT:    And then after you filed the suit  
15 | you got those documents?

16 |                   MR. SMITH:    Yes. And to be fair, they did file,  
17 | the defendants, the clerk and the commission, filed their answer  
18 | and counterclaim before that meeting.

19 |                   THE COURT:    And are you satisfied with the  
20 | documents and the response by the---

21 |                   MR. SMITH:    Yes. I would say before this Court,  
22 | yes, I mean, I did make, in my initial complaint, I did ask this  
23 | Court that the commission, asked for an injunction that they  
24 | undertake training, to underground FOIA. I'm willing to just,

1 to forgo that, because the information that was provided, via  
2 mail and at the meeting, does satisfy my request. And as far as  
3 I'm concerned this matter's over.

4 THE COURT: I mean, you're asking the Court to  
5 dismiss it?

6 MR. SMITH: I'm -- summarily dismissed. I mean,  
7 I'm pleased with what they gave. As I say, both meeting and via  
8 mail, and I afforded, I gave them an opportunity to comment.  
9 Mr. Hough did say there was going to be an additional 10,000,  
10 \$10,000 deductible. And as far as I'm concerned the matter, the  
11 matter's over. I see no additional relief. And to -- and for  
12 the record, I filed -- I was up here pro se. They're not going  
13 to be out any additional money for attorney's fee, if the Court  
14 were to rule it. And, also, the fact that I did, I qualify for  
15 financial affidavit. So there's going to be no additional cost  
16 that would be incurred by the county in this matter.

17 THE COURT: Well, now, did the clerk's office  
18 charge you for the copies or bill you for the copies or anything  
19 of that sort?

20 MR. SMITH: No, they didn't. As a matter of  
21 fact, if I'm not mistaken, I brought copies of---

22 THE COURT: Okay.

23 MR. SMITH: Yes, sir. So there was no  
24 additional expense to the county.

1 THE COURT: Now, what damages were sustained by  
2 the respondents?

3 MR. HOUGH: Your Honor, we haven't claimed any  
4 damages. We merely ask the Court for Rule 11 Sanctions for  
5 making false allegations, and for an improper purpose of  
6 bringing this lawsuit to begin with.

7 THE COURT: Well, of course, the county, if they  
8 believe that, or if individual believes that they're defamed, or  
9 anything malicious, that's a different civil action. And then  
10 file defamation and---

11 MR. HOUGH: It is.

12 THE COURT: ---things of that sort.

13 MR. HOUGH: It is.

14 THE COURT: That's not something that this Court  
15 addresses in this proceeding.

16 MR. HOUGH: That's correct. That's correct.  
17 Rule 11 does address, those folks who make false allegations to  
18 the Court in lawsuit as a plaintiff, and sign the same  
19 complaint. For instance, paragraph 24, the defendants did not  
20 provide a reason for why Mr. Smith couldn't get his information.  
21 Each and every response we made, we gave the simple reason: We  
22 don't have it. Paragraph 25, we have wantonly, maliciously  
23 deliberately, factiously failed to respond to any of his  
24 requests. That's, that an outright lie, and he knows it.



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1 THE COURT: Well, now, of course, Mr. Smith says  
2 that he didn't get these documents until after he filed the  
3 case.

4 MR. HOUGH: Well, he, he received the documents  
5 as soon as we had them.

6 THE COURT: Well, that's not my question. Were  
7 the documents provided to Mr. Smith prior to the filing of the  
8 lawsuit on December 23rd, 2011?

9 MR. HOUGH: No. And they could not be by the  
10 county because they didn't have them. They didn't have them.

11 THE COURT: But then later they were obtained  
12 and provided?

13 MR. HOUGH: As soon as they arrived here, we  
14 sent them directly, January 18th, to Mr. Smith, FOIA request,  
15 fourth reply, here is your sure information.

16 THE COURT: And the reason they weren't provided  
17 is because they were sent off to another entity and---

18 MR. HOUGH: We never had them. We never had  
19 them, and I told him that in writing three times, before this  
20 forth response. And, yet, he alleges to this Court that he  
21 never got a response from us and that we've purposely,  
22 maliciously failed to respond; that's absurd.

23 THE COURT: Well, but under the Freedom of  
24 Information Act, once Mr. Smith files the request---

1                   MR. HOUGH:    We have five days to respond, which  
2 we did each and every time.  But then to sue us and claim that  
3 we didn't respond is an outright lie.

4                   THE COURT:   Well, but what, what harm has been  
5 done to the county?

6                   MR. HOUGH:    Well, let's see.  If you are  
7 attorneys and you wish to make something appear to be a  
8 stonewall, sandbagging-attempt by the commissioners or the  
9 county clerk, not to respond, to fail to respond.

10                  THE COURT:   That's defamation, Mr. Hough, and  
11 we've already addressed that.  If somebody defames somebody,  
12 then they have a private cause of action called a lawsuit, to  
13 file a defamation.

14                  MR. HOUGH:   We, we haven't made a defamation  
15 claim.  All we've asked for is a section because it's a  
16 frivolous lawsuit, based on false allegations.  Rule 11 speaks  
17 directly to that, Your Honor.

18                  THE COURT:   Oh, I'm not going to do that.  I'll  
19 dismiss the matter with prejudice, and note and preserve all  
20 parties' objections and exceptions.

21                  MR. HOUGH:   Thank you, Judge.  Prepare the  
22 Order?

23                  THE COURT:   State will prepare the order.

24                  MR. HOUGH:   Yes, Your Honor.  Thank you.

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THE COURT: Dismissed and stricken.

*[Nothing further being had, the matter was  
concluded at this time.]*

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