IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

SCOTT ROTHSTEIN, individually and BRADLEY J. EDWARDS, individually,

Defendants/Counter- Plaintiffs.
_____/

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S OBJECTION AND RESPONSE TO IMPROPER FILING OF SUPPLEMENTAL AUTHORITY

INTRODUCTION

In December 2009, Jeffrey Epstein ("Epstein") filed suit against Scott Rothstein ("Rothstein") and Bradley J. Edwards ("Edwards"). In response to Epstein's lawsuit, Edwards filed a Counterclaim, alleging therein two causes of action against Epstein; abuse of process and malicious prosecution. Both causes of action were premised upon Epstein's initial filing of his lawsuit against Edwards. Epstein filed his Motion for Summary Judgment, asserting therein that both the abuse of process claim and the malicious prosecution claim filed by Edwards against Epstein were barred by the litigation privilege. Epstein's Motion was argued before this Court on January 27, 2014, at which time this Court, after extensive argument and review of all written submissions

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and case law, granted Epstein's Motion. Days later, Edwards filed a Motion for Reconsideration. Three months later, Edwards has filed this purported "supplemental authority" in support of his initial Motion for Reconsideration. However, this "supplemental authority" does nothing more than establish the fact that another trial court, just as this Court did in the case at hand, properly applied and followed the decision in *Wolfe v. Foreman,* 38 Fla. L. Weekly D1540 (July 17, 2013). Accordingly, with no change in the law or facts since the Court's original ruling, and with Edwards simply restating his disagreement with this Court's findings, reconsideration is improper. Furthermore, Edwards' Motion for Reconsideration relies almost exclusively on his "broad survey of the laws and court decisions in fifty states and the District of Columbia," which are inapposite to this matter. *See Edwards's Motion for Reconsideration,* p. 2. The remainder of Edwards's Motion reiterates cases that he already presented, briefed, and argued to this Court; arguments that this Court rejected. Accordingly, the Court should neither reconsider its ruling nor entertain this "supplemental authority" submitted by Edwards.

ARGUMENT

This Court's prior ruling was clear and unequivocal. After extensive briefing and a lengthy hearing, this Court ruled that the litigation privilege barred Edwards's causes of action against Epstein. The Court, in applying the Florida Supreme Court binding precedent as espoused in *Levin, Middlebrooks, Moves & Mitchell, v. U.S. Fire Ins. Co.,* 639 So. 2d 606, 608 (Fla. 1994) and *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380 (Fla. 2007), as well as reviewing the application and analysis of those cases in *Wolfe v. Foreman,* 38 Fla. L. Weekly D1540 (July 17, 2013), correctly

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concluded that all actions occurring during the course of a judicial proceeding, so long as the actions bear some relation to the proceeding, are absolutely privileged. Further, during the hearing before this Court, Counter-Plaintiff Edwards candidly conceded that all of the allegations upon which he relied for both his abuse of process claim and his malicious prosecution claim against Epstein were all acts that occurred during the course of the judicial proceeding. Edwards, still failing to distinguish this binding case relies, yet again, on cases that were decided *before* the *Wolfe* decision; cases which Edwards has already argued to the Court.

In *Wolfe*, the Third District Court of Appeal affirmed the trial court's order granting a motion for judgment on the pleadings in an abuse of process and malicious prosecution action, finding that the litigation privilege applied to, and barred, **both** causes of action. *Id*. (emphasis added). The court's focus was on "whether the acts alleged 'occurred[ed] during the course of a judicial proceeding.'" *Id.* (citing Levin, 639 So. 2d at 608). The court, relying upon Florida Supreme Court Cases, held that because the acts that formed the basis of the suit occurred ***after*** the complaint was filed and were ***related to*** the judicial proceedings; both causes of action were completely barred. *Id.* (emphasis added); *see also Echevarria, McCalla, Raymer, Barrett &Frappier v. Cole,* 950 So. 2d 380 (Fla.2007); *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co*., 639 So. 2d 606 (Fla. 1994); *DelMonico v. Traynor,* 2013 WL 535451 (Fla.2013); *Am. Nat'l Title & Escrow of Fla. v. Guarantee Title & Trust Co.*, 748 So. 2d 1054, 1055 (Fla. 4th DCA 2000) (affirming the trial court's order granting summary judgment in an action for abuse of process on the basis of absolute immunity and on the authority of Levin). As such, this Court was correct in granting Summary Judgment in

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favor of Epstein.

Edwards, despite his interminable filings, has not identified *one* Florida case decided either after the *Wolfe* decision or the above-referenced Florida Supreme Court cases upon which the *Wolfe* court relied in rendering its ruling that establishes that this Court erred. Nor does his "supplemental authority." Instead of accepting the Court's ruling, Edwards invites this Court to hold that the Third District Court of Appeal committed error in *Wolfe*. The Florida Supreme Court, however, stated unequivocally that a "trial court may not overrule or recede from the controlling decision of" an appellate court. *See System Components v. FDOT,* 14 So. 3d 967, 973 n.1 (Fla. 2009); *see also State ex rel. Reynolds v. White,* 24 So. 160, 315 (1898) ("There is and can be no authority in an inferior court to correct mistakes made by this court in its conclusions of fact or its interpretation of the law . . . If so, litigation would be interminable, the superior would be subordinated to the inferior, and the judgments of the superior could only be enforced when they coincided with the judgments of the inferior."). In *Systems Components,* the Florida Supreme Court found that it was "improper" for a party to do what Edwards seeks to do in the case at hand; argue that the Court ignore appellate court precedent. *Id*. at 973 n.1, 985. This Court correctly recognized that at the Summary Judgment hearing. *See Transcript of Motion for Summary Judgment hearing* p. 56; lines 1-4.

Each and every one of Edwards's arguments in his Motion for Reconsideration either relies upon decisions that pre-date *Wolfe* (2013), *Echevarria* (2007), and *Levin* (1994), or decisions from other States. *See Edwards's Motion for Reconsideration,* p. 9, citing *Wright v. Yurko*, 446 So. 2d 1162 (5th DCA **1984**); *Kalt v. Dollar Rent-A-Car*,422 So. 2d 1031, 1032 (Fla. 3d DCA **1982**); *Graham-Eckes Palm Beach Academy, Inc. v.*

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Johnson,573 So .2d 1007 (4 DCA **1991**) (emphasis added); *Edwards's Motion for Reconsideration*, pp. 3-8, citing cases from the fifty states and the District of Columbia. Additionally, Edwards's most recent Notice of Filing Supplemental Authority contains no new law or fact, but rather attempts to influence this court to improperly "recede from the controlling decision of" an appellate court. *System Components v. FDOT,* 14 So. 3d 967, 973 n.1 (Fla. 2009). The appellate brief upon which Edwards relies was filed in a case (Steinberg v. Steinberg) in which the trial court, much like this Court, properly followed the precedent in *Wolfe*. This is not, however, grounds upon which this Court can reconsider. Furthermore, the arguments raised therein were already submitted to, and properly rejected by, this Court.

Moreover, the facts surrounding the malicious prosecution claim in *Steinberg* are readily distinguishable from the case at hand, as the malicious prosecution claim therein culminated from an underlying domestic violence action that was resolved in favor of the Defendant. This *Steinberg* case appears to be analogous to the *Olson* case upon which Edwards relied in his argument against Summary Judgment; an argument which was rejected by this Court. *Transcript of Motion for Summary Judgment hearing*, p. 58. The *Olson* case, just as this Court correctly stated, "deals with prelitigation statements made by an individual who is accusing Olson of stalking," just as seems to be the issue in *Steinberg*. *Transcript of Motion for Summary Judgment hearing*, p. 59; lines 6-7.

Conversely, in the instant case, just as in *Wolfe*, there were no "prelitigation" actions taken by Epstein at issue in Edwards's case. Indeed, Edwards conceded at the Summary Judgment hearing that he could not point to one action taken by Epstein in this matter that occurred "outside the process."

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THE COURT: Mr. King, anything that's being
10 alleged here that goes outside of the broad
11 spectrum that I have read into the record that has
12 its genesis in Echevarria and was quoted by the
13 Wolfe Third District Court of Appeal opinion?
14 **MR. KING: There's nothing alleged.**
15 Mr. Edwards' testimony, though, was that he was
16 being stalked by an investigator which gave him
17 the additional concern. **But that's not**
18 specifically alleged as a matter that, you know,
19 that forms the basis for the malicious prosecution
20 or the abuse of process claim. It's not
21 specifically set forth in the pleadings.

Transcript of Motion for Summary Judgment hearing, p. 54; lines 10-21 (emphasis added). Accordingly, litigation privilege bars Edwards's causes of action, this court correctly applied *Wolfe*, and Edward's Motion for Reconsideration should be denied.

CONCLUSION

WHEREFORE Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court deny Edwards's Motion for Reconsideration.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this May 11, 2014.

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