

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES L. RADTKE, JR.,)	JURY TRIAL DEMANDED
)	
Plaintiff,)	
)	
v.)	
)	
REBECCA WINZEN, et al,)	Case No. 4:13-00213-ERW
)	
Defendants.)	

MOTION TO STRIKE PORTIONS OF THE MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS BY APA AND FRANCES

Defendants have inserted one material falsehood and one prejudicial mischaracterization into their Memorandum in Support of their Motion to Dismiss, and Plaintiff requests that these falsehoods be stricken.

1. Contrary to Defendants’ version of a “STATEMENT OF FACTS”, Plaintiff’s parents never said to the St. Louis County Police that they believed Plaintiff was suicidal.

APA attempts to (falsely) construe paragraph 16 of the Amended Complaint to this effect. ECF No. 35-1, p.2. However that paragraph clearly refers only to Plaintiffs’ parents’ private feelings or fears, not to any statements they made to the police.

This is a critical distinction, because any such actual statements might have been justification for the police to evaluate Plaintiff as dangerous to himself. The obvious sense of the Amended Complaint in its entirety is that Plaintiff’s mother’s *unfounded*

fear of suicide, in connection with certain details of her own family history and perhaps her “educated” belief in the validity of *DSM* diagnoses as “genetic diseases”, was played upon cleverly by Defendant Winzen, to manipulate a perjured affidavit and coerce an involuntary psychiatric patient. But this was after the police had delivered the Plaintiff, unwilling, to Defendant Mercy’s emergency room and left the scene. Some such issue of fact regarding what Plaintiff’s parents may have told the police could conceivably be presented, but Plaintiff emphatically does not allege that his parents told the police he was suicidal. Rather, he zealously maintains that they did not do so.

2. Contrary to APA’s charge, Plaintiff has no affiliation with any group, either of mental illness believers or cynics, and he does not dispute the existence or reality of mental illness.

APA attempts to prejudice the Court against Plaintiff, by gratuitously and arbitrarily asserting that he belongs to some “*tiny minority of persons ... who dispute the very existence of mental illness in any form or presentation...*” and therefore that he is not part of “*the great majority who desire the benefits attendant to scientific study and references with respect to mental illness.*” ECF No. 35-1, p.16. The Amended Complaint does not say or imply any such thing: APA just made it up. Plaintiff has never belonged to any such faction or involved himself in any such dispute. The only possible effect of this characterization would be to cast the Plaintiff as a natural subject for stigma and animus, or as some kind of an extremist, in the eyes of any finder of fact.

In this connection, however, it is worth noting that there currently is a very substantial minority, and perhaps a majority of mental health professionals, who dispute the validity of the *DSM* system, as scientific medical diagnosis. Widely published statements by Defendant Frances need only be supplemented with those of the Director

of the National Institute of Mental Health, to appreciate that even if Plaintiff did dispute mental illness itself (which he does not), he could hardly be far from the mainstream of ongoing public and professional discussion about the subject.

WHEREFORE, Plaintiff respectfully requests that the Court order that the falsehood about his parents' statements to police (ECF No. 35-1, p.2, first sentence of the second paragraph, specifically, the words, "...and said they believed he was suicidal") be stricken. Plaintiff further respectfully requests that the gratuitous and arbitrary negative characterization of the Plaintiff's affiliations and/or opinions about mental illness (ECF No. 35-1, p.16, second sentence of the first paragraph, specifically, the words, "...tiny minority of persons, such as..." and the words, "..., who dispute the very existence of mental illness in any form or presentation, over the great majority who desire the benefits attendant to scientific study and references with respect to mental illness") be stricken.

Respectfully submitted,

/s/ S. Randolph Kretchmar

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CERTIFICATE OF SERVICE

I, S. Randolph Kretchmar, certify that on June 18, 2013, I electronically filed Plaintiff's **Consent Motion for Extension** with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to the following:

Kenneth W. Bean kbean@sandbergphoenix.com, jlicavoli@sandbergphoenix.com
(for Defendant Arturo Taca)

Mark Sableman msableman@thompsoncoburn.com, sstoeckel@thompsoncoburn.com
(for Defendant American Psychiatric Association)

Michael E. Hughes mhughes2@stlouisco.com
(for Defendants St. Louis County and Amanda Wilhelm)

James C. Thoele jthoele@brinkerdoyen.com
(for Defendants Mercy and Rebecca Winzen)

I further certify that on June 19, 2013, a true and correct copy of the foregoing was served on Defendant Allen Frances, M.D., by mail to:

Dr. Allen Frances, M.D.
1820 Avenida Del Mundo
Coronado, CA 92118
allenfrances@vzw.blackberry.net

/s/ S. Randolph Kretchmar