

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

Matthew A. Kezhaya,

Movant–Appellant,

The Satanic Temple,

Plaintiff,

v.

City of Belle Plaine, Minnesota,

Defendant–Appellee

Case No. 22-2183

**APPELLEE’S OPPOSITION TO MOTION TO ADD
GREENE ESPEL PLLP AS AN APPELLEE AND
TO REMOVE THE SATANIC TEMPLE AS A PARTY**

Appellee City of Belle Plaine, Minnesota, (“the City”) opposes Movant–Appellant Matthew A. Kezhaya’s request to add, as Creditor–Appellee, the law firm of Greene Espel PLLP.¹

¹ Appellant’s motion also seeks to remove Plaintiff The Satanic Temple as a party to this appeal. The City takes no position on that request.

FACTUAL BACKGROUND

This appeal relates to the district court’s award of Rule 11 sanctions against counsel for Plaintiff The Satanic Temple (“the Satanic Temple”) for litigation misconduct. On September 15, 2021, the district court granted the City’s motion for sanctions and ordered the City to submit a motion and supporting evidence as to the dollar amount of attorney fees to be awarded as sanctions.² The City timely filed that motion and supporting evidence.³

On May 24, 2022, the district court reaffirmed its award of sanctions against the Satanic Temple.⁴ Specifically, the Satanic Temple failed to comply with court deadlines in a first lawsuit⁵ and “made an untimely attempt” to baselessly reassert in an amended complaint claims that the district court had dismissed in the first lawsuit.⁶ Then the Satanic Temple filed a second lawsuit:

² ECF No. 38 at 45–48. Unless otherwise noted, all citations are to the originating court docket entries in *Satanic Temple, Inc. v. City of Belle Plaine* (“*Satanic Temple II*”), 0:21-cv-00336 (D. Minn.), a complete listing of which was filed in this Court on June 6, 2022.

³ ECF Nos. 49–52.

⁴ ECF No. 58.

⁵ See *Satanic Temple v. City of Belle Plaine* (“*Satanic Temple I*”), 475 F. Sup. 3d 950 (D. Minn. 2020).

⁶ ECF No. 58 at 5–6.

Satanic Temple II.⁷ The complaint in *Satanic Temple II* asserted the same claims that the Satanic Temple unsuccessfully attempted to assert in its proposed amended complaint in *Satanic Temple I*.⁸ The district court awarded attorney fees “reasonably incurred in responding to the frivolous complaint in *Satanic Temple II*.”⁹

The district court specifically awarded the sanctions to the City, not the City’s legal counsel.¹⁰ Indeed, the City (not its legal counsel) moved for sanctions.¹¹ The district court granted the City’s motion and ordered the City to file a motion detailing “the attorneys’ fees *Defendant* incurred responding to the complaint and seeking sanctions in *Satanic Temple II*.”¹² The City (not

⁷ See ECF No. 1; ECF No. 58 at 5.

⁸ ECF No. 58 at 5.

⁹ ECF No. 58 at 6.

¹⁰ ECF No. 58 at 15.

¹¹ ECF No. 17.

¹² ECF No. 38 at 48 (emphasis added).

its legal counsel) then filed a motion for attorney fees.¹³ And the district court awarded the City (not its legal counsel) attorney fees.¹⁴

The district court's reasoning supports its decision to award attorney fees to the City. Indeed, the district court noted that the Satanic Temple's misconduct "resulted in a waste of resources, both for Belle Plaine and for the Court."¹⁵ While the district court ordered the sanctions to be paid to the City's legal counsel, the award was granted to the City. The City's legal counsel was to receive the sanctions award on behalf of its client.¹⁶

ARGUMENT

The City, not its legal counsel, is the real party in interest for this appeal because the City received the award. "A remedial award of attorney's fees as a sanction occurs when the fee is 'paid to the opposing party as compensation

¹³ ECF No. 49.

¹⁴ ECF No. 58 at 15 ("Defendant City of Belle Plaine, MN, is awarded reasonable attorneys' fees, pursuant to Federal Rule of Civil Procedure II(c), in the amount of \$16,943.40.").

¹⁵ ECF 38 at 47; ECF 58 at 5.

¹⁶ The district court granted the motion of the Satanic Temple's counsel to stay execution of the attorney fees judgment pending appeal, conditioned on the deposit of a supersedeas bond in the amount of the sanctions award (\$16,943.40). (ECF No. 66.) That amount was paid to into the district court on June 7, 2022. (ECF No. 69.)

for the attorney’s fees incurred as a direct result of the unethical behavior.” *Schlaflly v. Eagle Forum*, 970 F.3d 924, 937 (8th Cir. 2020) (quoting *Pls.’ Baycol Steering Comm. v. Bayer Corp.*, 419 F.3d 794, 808 (8th Cir. 2005)). That is precisely what the district court ordered here. The district court noted that the Satanic Temple’s misconduct “resulted in a waste of resources, both for Belle Plaine and for the Court.”¹⁷ Accordingly, the district court ordered that “Defendant City of Belle Plaine, MN, is awarded reasonable attorneys’ fees, pursuant to Federal Rule of Civil Procedure 11(c), in the amount of \$16,943.40.”¹⁸ That award of fees was directed to the City. The award was not to the City’s legal counsel. As an agent of its client, the City’s legal counsel may receive the payment on its client’s behalf without changing the fact that the award was to the City.

Appellant’s reliance on *Trackwell v. B & J Partnership*, 416 F. App’x 571 (8th Cir. 2011) (per curiam), to argue that the City’s legal counsel is the real party in interest, is misplaced. In *Trackwell*, this Court granted a “pending motion to substitute as appellee Cline, Williams, Wright, Johnson &

¹⁷ ECF No. 38 at 47; ECF. No. 58 at 5.

¹⁸ ECF 58 at 15.

Oldfather, L.L.P., the real party in interest with regard to the sanctions judgment.” 416 F. App’x at 571. In that case, however, the defendants affirmatively assigned their right and interest in the sanctions award to the Cline Williams law firm, which represented defendant B & J Partnership, Ltd., in the underlying litigation. *See, e.g., Trackwell v. B & J P’ship*, No. 4:05CV3171, 2010 WL 4918727, at *1 (D. Neb. Nov. 24, 2010) (“All defendants have assigned their right and interest in the sanctions to Cline Williams law firm, which represented defendant B & J Partnership, Ltd., in the underlying litigation.”). In the law firm’s motion to substitute itself as the appellee, the law firm emphasized that it was “the current holder and owner of the Sanctions Judgment, having acquired the original defendants’ rights to the same via assignment on October 25, 2007.” *Mary C. Wickenkamp v. B & J P’ship*, No. 10-3677, Motion to Substitute ¶ 3 (Mar. 7, 2011) (8th Cir. ID #3763440). In *Trackwell*, substitution made sense because the law firm owned the rights to the sanction judgment.

That is not the case here. The City has not assigned its rights to the sanctions judgment to its legal counsel. Accordingly, the City remains the real party in interest in this appeal. For all these reasons, Appellee the City of Belle Plaine respectfully requests that the Court of Appeals for the Eighth Circuit

deny the request to add, as Creditor–Appellee, the law firm of Greene Espel PLLP.

Dated: June 30, 2022

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned certifies that this motion complies with the type-volume limitations of Fed. R. App. P. 27(d). The motion was prepared using Microsoft Word in Office 365, which reports that the motion contains 1,125 words, excluding items listed in Fed. R. App. P. 32(f).

s/Katherine M. Swenson

Katherine M. Swenson

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Katherine M. Swenson

Katherine M. Swenson