

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, MN,
Defendant – Appellee.

[**Greene Espel PLLP**
proposed to be added as
Creditor – Appellee]

CASE NO. 22-2183

Motion to add Greene Espel
PLLP as an Appellee and to
remove The Satanic Temple
as a party

COMES NOW Appellant Matthew A. Kezhaya, appearing *pro se*, on motions pursuant to FRAP 43(b) to (1) add as Creditor-Appellee the sole judgment creditor, Greene Espel PLLP; and (2) remove The Satanic Temple as a party.

1. FRAP 43(b) provides for substitution of parties for a reason other than death and incorporates the procedure set forth in FRAP 43(a) (substitution because of a death). In turn, FRAP 43(a) suggests that, while a proceeding is pending in the court of appeals, the

movant must file a motion addressing why substitution is proper and must serve the motion on the appropriate party's representative; or, if there is no appropriate representative, the movant may file a motion suggesting the need of a substitution so the Court may direct appropriate proceedings. See FRAP 43(a).

2. The purpose of prosecuting actions in the names of the real parties in interest is to enable the defendant to present his defenses against the proper persons, to avoid subsequent suits, and to proceed to finality of judgment. *Wright & Miller*, 6A Fed. Prac. & Proc. Civ. § 1541 (3d ed.). Additionally, it is important that the plaintiff proceed against only the defendants who may bear liability for the harm complained of. FRCP 19(a); *Wright & Miller*, 7 Fed. Prac. & Proc. Civ. § 1601 (3d ed.).

3. On appeal, the above policies continue with full force. *Trackwell v. B & J P'ship*, 416 F. App'x 571 (8th Cir. 2011); *Trackwell v. B & J P'ship, Ltd.*, No. 4:05CV3171, 2010 WL 4918727, at *1 (D. Neb. Nov. 24, 2010). In *Trackwell*, a panel of this Court granted a motion to substitute opposing counsel as the real party in interest on appeal

from a sanctions judgment, where the judgment was payable to the opposing counsel. This case presents the same fact pattern.

4. From *Trackwell*, the rule appears to be that the real beneficiary of a judgment (the “real party in interest”) has the right and duty to defend their judgment against the appellant’s assignments of error; and, if the judgment is reversed, to return any wrongful benefit from the judgment upon a remand. That opportunity to defend the judgment corresponds with being a named appellee.

5. The City is a proper appellee because it filed the motion at issue. R. Doc. 18, 19.

6. Greene Espel PLLP is a proper appellee because it is the judgment creditor. **EXHIBIT 1**; R. Doc. 59 at ¶ 4 (“The sanctions imposed by this Order shall be paid to Greene Espel PLLP). As the sole judgment creditor, Greene Espel PLLP will be the only party with standing to seek leave to withdraw the cash supersedeas bond from the Court Registry. See R. Doc. 61-69 (the District Court approved of a cash supersedeas bond and I deposited it timely).

7. Additionally, nothing of record suggests that Greene Espel

PLLP must remit my payment to the City. Neither the order at issue nor any contracts of record require as much, nor has the City's attorneys even represented as much. The judgment on appeal inures to the sole benefit of the City's attorneys, so the City's attorneys are necessary parties to the appeal.

8. The Satanic Temple is not a proper party because the sanctions order is collateral to the merits of the underlying controversy (*Satanic Temple v. Belle Plaine*, nos. 21-3079 and 21-3081) and because The Satanic Temple is not a judgment debtor. Inclusion of my client as a co-party requires me to consider all issues both from my own perspective, and with attention to the best interests of my client. That creates an unnecessarily complex ethical question about whether I have a conflict of interest. See Minn. R. Prof. C. 1.7(a)(2), cmt. [5] (is there a "significant risk" that this matter will "materially limit" my responsibilities to TST?); Ark. R. Prof. C. 1.7(a)(2), cmt. [5] (same). The Court should not have to evaluate those questions, I believe that I am barred from evaluate those questions, and my client should not have to hire another lawyer for this collateral case.

WHEREFORE the Court should direct that Greene Espel PLLP should be added as “Creditor–Appellee,” and should direct that The Satanic Temple shall be removed as “Plaintiff;” or the Court should otherwise direct the appropriate proceedings.

Respectfully submitted on June 21, 2022,

By: Matthew A. Kezhaya, appearing *pro se*



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CERTIFICATE AND NOTICE OF SERVICE

NOTICE IS GIVEN that I, Matthew A. Kezhaya, efiled the foregoing document by uploading it to the Court’s CM/ECF system on June 21, 2022 which sends service to registered users, including all other counsel of record in this cause.

Further, the Court’s CM/ECF system will issue automated service in compliance with FRAP 25 upon Katherine M. Swenson and Monte A. Mills. See FRAP 43(a)(1) (requiring Rule 25 service on the proposed appellee’s “representative”); FRAP 25(c)(2)(A).

In addition to being counsel of record for the City, both attorneys are “representatives” of Green Espel PLLP because they are employees at that firm. Being employees there, both bear a fiduciary duty to notify their principal with material facts pertaining to their employment duties. Restatement (Third) Of Agency § 8.11 (2006).

/s/ Matthew A. Kezhaya

CERTIFICATE OF COMPLIANCE

This motion to substitute complies with the type-volume limitations of FRAP 27(d)(2)(A) (5,200 word limit) because this motion contains **711** words, excluding the parts of the motion exempted by FRAP 27(a)(2)(B). This motion complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this motion has been prepared in a proportionally spaced typeface, Calisto MT, in sized 14pt font using MS Office 365. This motion has been scanned for viruses and is virus-free.

/s/ Matthew A. Kezhaya

UNITED STATES DISTRICT COURT
District of Minnesota

Satanic Temple, Inc., The

JUDGMENT IN A CIVIL CASE

Plaintiff(s),

v.

Case Number: 21-cv-00336-WMW-JFD

City of Belle Plaine, MN

Defendant(s).

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendant City of Belle Plaine, MN's motion for attorneys' fees, (Dkt. 49), is **GRANTED IN PART AND DENIED IN PART** as addressed herein.
2. 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.
3. Plaintiff The Satanic Temple, Inc.'s counsel—namely, Matthew A. Kezhaya, Jason Scott Juron, Robert R. Hopper, and their respective law firms—are jointly and severally liable, pursuant to Federal Rule of Civil Procedure 11(c), for the sanctions imposed by this Order.
4. The sanctions imposed by this Order shall be paid to Greene Espel PLLP within 14 days after the date of this Order.

Date: 5/25/2022

KATE M. FOGARTY, CLERK

Exhibit 1