

FILED
04-30-2024
CIRCUIT COURT
DANE COUNTY, WI
2024CV001288
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

MARK WHALEN
and JAKE WHALEN,
1612 Bellewood Drive
Waunakee, WI 53597,

Plaintiffs,

Case No. _____
Case class 30107

v.

DANA MACKENZIE (in his individual capacity),
1425 Shenandoah Drive
Waunakee, WI 53597,

and

TYLER SELK (in his individual capacity),
1004 Millies Way
Waunakee, WI 53597,

Defendants.

SUMMONS

THE STATE OF WISCONSIN:

To each person named above as a Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action. Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes.

The answer must be sent or delivered to the Court, whose address is Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703 and to GINGRAS, THOMSEN & WACHS, LLP, plaintiff's attorneys, whose address is 8150 Excelsior Drive, Madison, WI 53717. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 30th day of April, 2024.

GINGRAS THOMSEN & WACHS, LLP
Attorneys for Plaintiffs Mark Whalen and
Jake Whalen

By: Electronically signed by /s/ Robert J. Gingras
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Defendants.

COMPLAINT

NOW COME the plaintiffs, Mark Whalen, and Jake Whalen by their attorneys Gingras, Thomsen & Wachs, LLP, by attorneys Robert J. Gingras and Paul A. Kinne, and hereby state the following as their Complaint in the above-referenced matter.

NATURE OF PROCEEDINGS

1. This civil action is brought pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution, to redress the retaliatory treatment of plaintiffs by Defendants Selk and MacKenzie.

PARTIES

2. At all times relevant hereto, Mark Whalen (M. Whalen) has been an adult resident of the State of Wisconsin. He presently resides within the Western District of Wisconsin.

3. At all times relevant hereto, Jake Whalen has been a resident of the State of Wisconsin. He presently resides in the Western District of Wisconsin, and is now an adult.

4. Defendant Dana MacKenzie (MacKenzie) is the former head basketball coach for the Waunakee Community School District (WCSD) high school boys basketball team. All conduct attributable to him described in this complaint was undertaken intentionally and committed within the scope of his employment and under color of law.

5. Defendant Tyler Selk (Selk) is presently the head basketball coach for the Waunakee Community School District (WCSD) high school boys basketball team. All conduct attributable to him described in this complaint was undertaken intentionally and committed within the scope of his employment and under color of law.

FACTUAL ALLEGATIONS

6. M. Whalen's son, Jake Whalen, played basketball for the WCSD boys basketball team. Jake Whalen is a senior at Waunakee High School: he is scheduled to graduate in 2024.

7. Selk and MacKenzie ran basketball camps for youth players.

8. Selk and MacKenzie, via an email and online sign-up portal, gave the appearance that money spent on camps ran by them went to the Waunakee youth basketball program, "Waunakee Hoops." In fact, a large percentage of the funds went directly to Selk and MacKenzie.

9. Prior to the 2023-2024 academic year, Selk was an assistant coach for the Waunakee Boys Basketball team.

10. WCSD charges for the use of its basketball courts, but because MacKenzie and Selk were coaches for WCSD, they were not charged to use the courts.

11. In running their private camps from which they profited, MacKenzie and Selk used WCSD courts for no charge, thus depriving the district of revenue to which it was entitled to the financial benefit of MacKenzie and Selk.

12. During the 2021-2022 basketball season, Jake Whalen was on the Waunakee Junior Varsity Boys Basketball team. He was one of leading players on the team, earning the praise of his coach that season.

13. During that same season, a group of parents including M. Whalen, began an effort to remove MacKenzie as head coach of the Waunakee High School (WHS) Boys Basketball team at least in part because of the misconduct described above. Although M. Whalen was a part of the group, the identities of the group members was not made public initially.

14. When the group of parents learned that MacKenzie was to be retained as coach for the 2022-2023 season, in October 2022, M. Whalen addressed the Waunakee School Board about MacKenzie's (and Selk's) misconduct described above. By this time,

MacKenzie knew that M. Whalen was a leader of the parents bringing forward their concerns about him.

15. Jake Whalen made the varsity basketball team for the 2022-2023 season. He started the season receiving a fair amount of playing time, but as M. Whalen persisted with his free speech, MacKenzie gradually reduced Jake Whalen's playing time until, by the end of the season, Jake Whalen was barely playing at all.

16. WCSD did not renew MacKenzie's contract after the 2022-2023 season. Selk, however, remained affiliated with the program.

17. At all times relevant hereto, MacKenzie and Selk were friends and fellow supporters.

18. The Wisconsin Interscholastic Athletic Association (WIAA) allows a short summer basketball season whereby the regular season coaches can work directly with high school basketball players. Play in the summer league impacted a player's chances of making the varsity team in the fall.

19. Selk led Waunakee's summer program. He was the key figure in setting teams and determining playing time.

20. At an optional tournament in June 2023, Jake Whalen sat on the bench for the entire game even though he was objectively a better player than many of the players who did get playing time.

21. Selk denied Jake Whalen playing time as a means to retaliate against his father, M. Whalen, for M. Whalen's exercise of free speech.

22. MacKenzie and his entourage were present at the June 2022 game. MacKenzie and his entourage confronted M. Whalen at the game, making reference to the fact that Jake did not get to play. A member of MacKenzie's entourage said to M. Whalen, "Karma's a bitch, isn't it?"

23. A fall league was established for players who were not on the football team. Jake Whalen was not on the football team, so he joined the league. Success in the fall league impacted a player's chances of making the varsity team.

24. Selk was instrumental in putting together the fall league teams. Selk intentionally placed Jake on the inferior teams as a means to retaliate against M. Whalen.

25. In fall 2023, WCSD named Selk as the new head coach.

26. On or about October 18, 2023, Jake Whalen met with Waunakee Principal Brian Borowski, Selk, and the assistant coaches on the team. The ostensible purpose of the meeting was to determine if Selk would treat Jake Whalen fairly during the upcoming season. Jake Whalen told Selk and Borowski that Selk was retaliating against him because of M. Whalen's speech, and that the retaliation was unfair.

27. On or about November 5, 2023, Selk led a preseason meeting for prospective team members. At that meeting, he said something to the effect of, "We got our boat tipped over last year but no water got in," and "I feel bad for our old coach, but I am still here. He got non-renewed," and "You are either all in or all out, and we are going to get rid of the toxic parents."

28. The reference to “toxic parents” was a reference to M. Whalen and his free speech.

29. Shortly after the meeting, tryouts were held for the 2023-2024 team. Jake Whalen performed very well at the tryouts.

30. Even though Jake Whalen met every requirement for the team, and objectively speaking, he was a better player presently and historically than several boys who made the team, Selk cut Jake Whalen from the WHS Boys 2023-2024 basketball team.

31. Selk knew that by cutting Jake Whalen, it would be devastating for him. A young man only has one chance to play his favorite sport for his high school, and Selk had robbed Jake Whalen of that opportunity.

32. Selk further knew that M. Whalen cared deeply about Jake Whalen, so hurting Jake Whalen would also hurt M. Whalen.

33. Selk was correct: watching Jake Whalen’s sadness and disappointment caused M. Whalen emotional harm.

34. Selk cut Jake Whalen from the team in retaliation aimed at M. Whalen because of M. Whalen’s protected speech.

35. Moreover, Selk intended to drive a wedge between M. Whalen and Jake Whalen. Selk intended to cause Jake Whalen to resent his father because it was M. Whalen’s speech that resulted in Jake Whalen being cut from the team.

36. MacKenzie also intended to drive a wedge between M. Whalen and Jake Whalen. MacKenzie intended to cause Jake Whalen to resent his father because it was M. Whalen's speech that resulted in Jake Whalen having his minutes cut to nearly zero.

FIRST CAUSE OF ACTION AGAINST SELK AND MACKENZIE
VIOLATION OF FIRST AMENDMENT RIGHTS

37. The plaintiffs reallege and incorporate the preceding paragraphs as if set forth fully herein.

38. By engaging in the conduct set forth above, MacKenzie violated Jake Whalen's and M. Whalen's rights when he reduced Jake Whalen's playing time to nearly zero minutes.

39. By engaging in the conduct set forth in this Complaint, Selk violated M. Whalen's rights to free speech when Selk cut Jake Whalen from the team.

40. By engaging in the conduct set forth in this Complaint, Selk violated Jake Whalen's rights to free speech when Selk cut Jake Whalen from the team.

41. Said violation has caused M. Whalen and Jake Whalen emotional harm.

SECOND CAUSE OF ACTION AGAINST SELK AND MACKENZIE
VIOLATION OF SUBSTANTIVE DUE PROCESS RIGHTS -
INTERFERENCE WITH FAMILIAL ASSOCIATION

42. The plaintiffs reallege and incorporate the preceding paragraphs as if set forth fully herein.

43. By engaging in the conduct set forth above, MacKenzie violated Jake Whalen's and M. Whalen's rights when he reduced Jake Whalen's playing time to nearly zero minutes.

44. By engaging in the conduct set forth in this Complaint, Selk violated M. Whalen's rights to familial association when Selk cut Jake Whalen from the team.

45. By engaging in the conduct set forth in this Complaint, Selk violated Jake Whalen's rights to familial association when Selk cut Jake Whalen from the team.

46. Said violation has caused M. Whalen and Jake Whalen emotional harm.

WHEREFORE, the plaintiffs demand the following relief:

A. An award of compensatory damages against the defendants that will justly compensate the plaintiffs for their losses.

B. An award of punitive damages against Selk and MacKenzie for the willful, wanton and reckless acts they have committed against the plaintiffs;

C. An award of plaintiffs' reasonable attorneys' fees and costs incurred in this action;

D. Pre- and post-judgment interest; and

E. Such other relief as the Court deems just and appropriate.

JURY DEMAND

The plaintiffs respectfully request that this matter be tried before a jury of six (6) competent persons.

(Signature on following page)

Dated this 30th day of April, 2024.

GINGRAS THOMSEN & WACHS, LLP
Attorneys for Plaintiffs Mark Whalen and
Jake Whalen

By: Electronically signed by /s/ Robert J. Gingras
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