

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

CURTIS J. NEELEY, JR.

PLAINTIFF

V.

CASE NO. 5:09-cv-05151

NAMEMEDIA, INC.;
and GOOGLE, INC.

DEFENDANTS

**NETWORK SOLUTIONS' OBJECTION TO PLAINTIFF'S
REQUEST FOR LEAVE TO FILE FOURTH AMENDED COMPLAINT**

Network Solutions, LLC ("Network Solutions") objects to Plaintiff's Request for Leave to File Fourth Amended Complaint. (DOC #167). Plaintiff's request is untimely, prejudicial and futile. By Orders dated May 20, 2010 (DOCS ##125-126), this Court dismissed all claims against Network Solutions and denied Plaintiff leave to file a Third Amended Complaint. At that point in time, all claims against Network Solutions were dismissed, ending its involvement in this action. Plaintiff then filed motions seeking additional relief in this Court, and he further appealed the Court's rulings dismissing Network Solutions to the United States Court of Appeals for the Eighth Circuit. By Per Curiam Order dated August 12, 2010, the Eighth Circuit dismissed Neeley's appeal and affirmed this Court's rulings denying Neeley's claims for injunctive relief. See Exhibit A. Judgment was therefore entered at the Eighth Circuit. See Exhibit B. The Eighth Circuit Mandate issued on September 3, 2010. See Exhibit C. As alleged by Plaintiff, he now has sought Certiorari and a Writ of Mandamus from the United States Supreme Court.

Nevertheless, Neeley has continued to file pleadings in this District Court during the pendency of his Eighth Circuit and United States Supreme Court appeal efforts. Putting it mildly, Neeley's filings have included incendiary statements demonstrating utter lack of respect for the judiciary, the Defendants, and Defense counsel. Network Solutions has opted not to directly address these scandalous and spurious statements by way of formal motions.

Plaintiff's Request for Leave to File a Fourth Amended Complaint should be denied and dismissed as untimely, repetitive, cumulative, prejudicial, and – most importantly – futile. After the dismissal of Network Solutions, the remaining parties conferred pursuant to Fed. R. Civ. P. 26 and submitted their Joint Rule 26 Report. (DOC #144). Therein, the Plaintiff agreed that the deadline for adding additional parties or amending pleadings should be June 30, 2010. The pending Request for Leave to File a Fourth Amended Complaint was filed approximately three months beyond the deadline Plaintiff agreed to for adding additional parties or amending pleadings.

In light of Network Solutions' prior dismissal, it has not participated in any discovery or exchange of documents. Accordingly, it should not be drug back into this litigation until or unless an appellate court were to so rule (which Network Solutions firmly asserts will not happen). In his request for leave, Plaintiff alleges that "discovery is already complete . . ." (DOC #167). If that is in fact true, the exhaustion of discovery, as well as the passage of the deadline for amending pleadings, dictate that the pending Motion to file yet another amended complaint should be denied. For the same reasons set forth in the Court's previous ruling, the request for leave to amend should be dismissed based upon the factors set forth in *Dennis v. Dillard Department Stores, Inc.*, 207 F.3d

523, 525 (8th Circuit 2000). Network Solutions therefore requests that the Court deny and dismiss the pending Request for Leave to File Fourth Amended Complaint.

Respectfully submitted,

NETWORK SOLUTIONS, LLC,
Defendant

By: /s/ John M. Scott
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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following:

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I hereby certify that I have mailed the document by the United States Postal Service to the following non CM/ECF participants:

Curtis J. Neeley, Jr.
2619 N. Quality Lane, Apt. 123
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/s/ John M. Scott

John M. Scott

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 10-2255

Curtis J. Neeley, Jr.,

Appellant,

v.

NameMedia, Inc.; Network
Solutions, Inc.; Google, Inc.,

Appellees.

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Appeal from the United States
District Court for the
Western District of Arkansas.

[UNPUBLISHED]

Submitted: July 26, 2010
Filed: August 12, 2010

Before COLLOTON, HANSEN and GRUENDER, Circuit Judges.

PER CURIAM.

Curtis Neeley, Jr., filed this interlocutory appeal from the district court's¹ grant of the defendants' motions to dismiss and for partial summary judgment. Neeley brought suit alleging a conspiracy by the defendants to "cybersquat" on two domain names that he had previously registered. *See* 15 U.S.C. § 1125(d)(1)(A). Neeley's domain registrations expired in 2003, while he was hospitalized, and NameMedia, Inc., purchased the domain names on the day the registrations expired. He further

¹The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas.



alleges that the defendants ignored his alleged trademark rights. *See* 17 U.S.C. § 106. Neeley seeks injunctive relief and monetary damages. NameMedia has counterclaimed, alleging that Neeley's registration of namemedias.com constitutes cybersquatting. *See* § 11 U.S.C. § 1125(d).

On March 1, 2010, the district court granted summary judgment for NameMedia on some, but not all, of Neeley's claims and dismissed certain claims against Google, Inc. On May 20, 2010, the court dismissed Neeley's claims against Network Solutions, Inc., including his claims for injunctive relief.² Neeley filed this appeal from the March 1 and May 20 orders. The defendants filed a motion to dismiss the appeal, arguing that we lack jurisdiction because the appeal is interlocutory in nature.

Subject to certain limited exceptions, federal courts of appeals only have jurisdiction over "final decisions of the district courts of the United States." 28 U.S.C. § 1291. "A final decision generally is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Clos v. Corr. Corp. of America*, 597 F.3d 925, 928 (8th Cir. 2010) (quoting *McAdams v. McCord*, 533 F.3d 924, 927 (8th Cir. 2008)). One exception to the final judgment rule is set out in 28 U.S.C. § 1292(a)(1), which grants the courts of appeals jurisdiction over interlocutory appeals from orders refusing to grant an injunction.

The orders from which Neeley appeals are indisputably not final decisions under § 1291. *See Huggins v. FedEx Ground Package Sys., Inc.*, 566 F.3d 771, 773 (8th Cir. 2009) ("[W]e generally consider only orders that dispose of all claims as final and appealable under § 1291."). However, the district court's denial of Neeley's claims for injunctive relief falls within § 1292's exception to the final judgment rule.

²In a separate order on the same day, the district court reconsidered parts of its March 1 order and reinstated some of Neeley's claims.

We therefore have jurisdiction over Neeley's appeal of that portion of the district court's order. *See Izaak Walton League of Am., Inc. v. Kimbell*, 558 F.3d 751, 763 (8th Cir. 2009). To the extent Neeley appeals other portions of the district court's orders, we grant the defendants' motion to dismiss. We review the district court's denial of Neeley's claims for injunctive relief for abuse of discretion. *See Coyne's & Co., Inc. v. Enesco, LLC*, 553 F.3d 1128, 1131 (8th Cir. 2009). We agree with the district court that Neeley has not shown irreparable harm or any likelihood of success on the merits. *See General Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 316 (8th Cir. 2009) (outlining the requirements for injunctive relief). We find no abuse of discretion and affirm. *See* 8th Cir. R. 47B.

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

No: 10-2255

Curtis J. Neeley, Jr., MFA

Plaintiff - Appellant

v.

NameMedia, Inc.; Network Solutions, Inc.; Google, Inc.

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:09-cv-05151-JLH)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in part, the motion to dismiss is granted in part and denied in part in accordance with the opinion of this Court.

August 12, 2010

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans



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

No: 10-2255

Curtis James Neeley, Jr., MFA

Appellant

v.

NameMedia, Inc., et al.

Appellees

Appeal from U.S. District Court for the Western District of Arkansas - Fayetteville
(5:09-cv-05151-JLH)

MANDATE

In accordance with the opinion and judgment of 08/12/2010, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

September 03, 2010

Clerk, U.S. Court of Appeals, Eighth Circuit

