

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
CIVIL DIVISION

JOHN DOE 18,
Plaintiff,

vs.

JOSEPH CLAZMER, and
DOWNLOADER 1- DOWNLOADER
100,
Defendants.

Case No.: 10-C-0992

DEFENDANT, JOSEPH CLAZMER'S,
RESPONSE TO PLAINTIFF'S MOTION TO PROCEED USING A
PSEUDONYM

Defendant Joseph Clazmer, by his Attorney, Mark D. Richards, maintaining all jurisdictional and other objections, hereby responds to Plaintiff's Motion to Proceed Using a Pseudonym as follows:

RELEVANT PROCEDURAL FACTS

On November 8, 2010, the Plaintiff filed a Complaint in this action, using the pseudonym "John Doe" for the Plaintiff. On January 24, 2011, the Defendant, Joseph Clazmer, filed his Answer to the Complaint. The Court ordered the matter dismissed on February 28, 2011, but left the Plaintiff 10 days to file an amended complaint or properly supported motion. On March 9, 2011, the Court entered Judgment formally dismissing the case without prejudice. On March 10, 2011, the Plaintiff filed a Motion to Allow Plaintiff to Proceed Using a Pseudonym and Brief in Support, including

Affidavits of Susan Phipps-Yonas and Patrick W. Noaker. Plaintiff also filed a Motion to Dismiss Defendant Downloaders 1-100. Defendant Clazmer filed a letter objecting the untimeliness of the motions on March 16, 2011. The Court then vacated judgment and permitted Defendant Clazmer until April 7, 2011 to respond.

RESPONSE

Defendant Clazmer objects to the Plaintiff's request to proceed using a pseudonym. Plaintiff argues that the "sensitive nature of the wrongs in this matter and the fact that it would [*sic*] mentally harmful to the Plaintiff to be required to publicly identify himself" should warrant his Court granting him the ability to proceed under a pseudonym.

However, as this Court knows, Fed. R. Civ. P. 10(a) requires a Complaint to contain the names of all parties to the suit and there is a "strong presumption against allowing parties to use a pseudonym." *Roe v. St. Louis University*, 2009 WL 910738, citing *W.G.A. v. Priority Pharmacy, Inc.*, 184 F.R.D. 616, 617 (E.D.Mo. 1999) (Plaintiff's Exhibit E to the Affidavit of Patrick Noaker in support of Plaintiff's Motion to Proceed Using a Pseudonym). The very case that Plaintiff sites as support for his position that he be allowed to proceed under a pseudonym, in fact, demonstrates the opposite. This case is dissimilar and distinguishable from the *Roe* case, and rather is similar to the cases cited in *Roe* where various circuit courts have denied Plaintiff's the ability to proceed under a pseudonym. The allegations in this case are regarding production and dissemination of alleged child pornography, allegations for which Plaintiff has no support.

Further, the only support for the contention that the Plaintiff would suffer any mental harm is the affidavit of Susan Phipps-Yonas, who has never even met the Plaintiff. Her six page affidavit contains information about research and other cases, not any specific information regarding this particular Plaintiff. Ms. Phipps-Yonas was specifically retained to provide her opinion regarding public disclosure of the Plaintiff's name, but she has had no contact with the Plaintiff, except for a telephone call. She is not his treating physician or psychiatrist, she has not personally counseled the Plaintiff, and anything she offers is mere and pure speculation.

The plaintiff has the burden of proof and persuasion on this point. Plaintiff has not made any showing of any substantial privacy right or any potential physical or mental harm as a result of being a named party in this litigation.

Defendant Clazmer would be prejudiced in defending plaintiff's allegations if this motion were granted. The public nature of lawsuits and the public interest inherent in the rights vindicated in courtrooms makes open and transparent proceedings imperative to equitable outcomes. See *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998) (holding that "Lawsuits are public events. A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some embarrassment is not enough.") (quoting *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992)). Defendant Clazmer has a right to defend himself against these allegations and seek vindication in a transparent proceeding with the full knowledge of the public.

For the foregoing reasons, Defendant Clazmer respectfully requests this Court deny Plaintiff's Motion to Proceed Using a Pseudonym.

Dated at Racine, Wisconsin this 6th day of April, 2011.

RICHARDS & HALL, S.C.
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