

RICHARD B. ALLYN
612-349-8571

March 15, 2010

Clerk of Court
Hennepin County District Court
Hennepin County Courthouse
300 South 6th Street, Suite C-332
Minneapolis, MN 55487-0332

Re: *Christopher Roller v. Wagoner, Falconer & Judd, Ltd. (WFJ) via Prepaid Legal c/o Dan Smith, Honorable Judge Mark Boris via WFJ and Bosley and State of Minnesota, and Attorney Alexander Gese via Bosley*
Court File No.: 27-CV-09-22812

Dear Clerk of Court:

Enclosed for filing on behalf of Defendants Alexander Gese and Bosley, Inc., are:

1. Notice of Motion and Motion for Summary Judgment;
2. Memorandum of Law in Support of Alexander Gese's and Bosley, Inc.'s Motion for Summary Judgment;
3. Affidavit of Alexander Gese;
4. (Proposed) Order; and
5. Certificate of Service,

as well as our check for \$100 to cover the motion fee. Also enclosed is a courtesy copy for The Honorable Susan N. Burke.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.


Richard B. Allyn

RBA/sjw

Enclosures

cc: Christopher Roller
Mark J. Solheim

Clerk of Court
March 15, 2010
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bcc: Roger Aull
Alexander Gese

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Christopher Roller,
Plaintiff,

Court File No.: 27-CV-09-22812
Hon. Judge Susan N. Burke

vs.

Wagner, Falconer & Judd, Ltd (WFJ) via
Prepaid Legal c/o Dan Smith

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT

Honorable Judge Mark Boris via WFJ and
Bosley and State of Minnesota

Attorney Alexander Gese via Bosley,

Defendant.

To: Plaintiff Christopher Roller, 14086 Queen Avenue South, Savage, MN, *Pro Se*;
and Mark A. Solheim, Larson King, LLP, 2800 Wells Fargo Place, 30 East
Seventh Street, St. Paul, MN 55101, Attorneys for Defendants Wagner, Falconer
& Judd, Ltd.

NOTICE OF MOTION

PLEASE TAKE NOTICE that on April 12, 2010, at 8:30 a.m., at the Hennepin County
Government Center, Courts Tower, 300 South Sixth Street, Courtroom 757, before the
Honorable Susan N. Burke, Defendants Alexander Gese and Bosley, Inc., will move the
Court for summary judgment dismissing Plaintiff's Complaint with prejudice.

MOTION FOR SUMMARY JUDGMENT

Defendant's Alexander Gese and Bosley, Inc., move this Court for summary judgment dismissing with prejudice all claims asserted in Plaintiff's Complaint. This motion is based on Minn. R. Civ. P. 56.02 on the grounds that the pleadings, discovery and affidavits of record show there is no genuine issue as to any material fact and that these moving defendants are entitled to a judgment as a matter of law.

Dated this 15th day of March, 2010.

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: Richard B. Allyn
Richard B. Allyn (#1338)
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402-2015
(612) 349-8571

**ATTORNEYS FOR DEFENDANTS
ALEXANDER GESE AND BOSLEY, INC.**

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Christopher Roller,

Plaintiff,

vs.

Wagner, Falconer & Judd, Ltd (WFJ) via
Prepaid Legal c/o Dan Smith

Honorable Judge Mark Boris via WFJ and
Bosley and State of Minnesota

Attorney Alexander Gese via Bosley,

Defendant.

Case File No.: 27-CV-09-22812
Hon. Judge Susan N. Burke

**MEMORANDUM OF LAW IN
SUPPORT OF ALEXANDER
GESE'S AND BOSLEY, INC.'S
MOTION FOR SUMMARY
JUDGMENT**

INTRODUCTION

Defendants Alexander Gese and Bosley, Inc., submit this Memorandum of Law in Support of their Motion for Summary Judgment. In accordance with Minn. R. Civ. P. 56.02, this motion should be granted on the grounds that the pleadings and Memorandum of Law with Affidavit of Alexander Gese (Exhibit A) show there is no genuine issue as to any material fact and that these defendants are entitled to a summary judgment as a matter of law. There is no evidentiary or factual support set forth in the Complaint for any legally cognizable claims.

STATEMENT OF ISSUES

1. Whether plaintiff's Complaint fails to allege facts to sufficient to support the essential elements of any legally cognizable civil cause of action in Minnesota?

2. Whether plaintiff has or can provide substantial legally cognizable evidence to support the speculative and outrageous accusations set forth in his Complaint?

STATEMENT OF DOCUMENTS RELIED UPON

1. Plaintiff's Amended Complaint;
2. Defendants Gese's and Bosley, Inc.,'s responses to plaintiff's discovery requests;
3. Court Order filed March 5, 2010; and
4. Affidavit of Alexander Gese with exhibits.

STATEMENT OF UNDISPUTED FACTS

Plaintiff Christopher Roller ("Roller") has filed this action against several separate unconnected defendants, (1) Wagner, Falconer & Judd Ltd law firm ("Wagner") and attorney Dan Smith, alleged to be a provider of "Prepaid Legal," which Roller says provided or denied him legal services, (2) the State of Minnesota, (3) the Honorable Judge Mark Boris, alleged to be a Conciliation Court Judge that ruled against Roller on his claim against Bosley, Inc., concerning "my hair transplants," (4) Bosley, alleged to be the provider of Roller's hair transplants,¹ and (5), attorney Alexander Gese, identified in the caption as "via Bosley."² Mr. Gese represented Bosley, Inc., in Roller's referenced conciliation court matter and was himself named as a defendant there.³

¹ Bosley refers to Bosley, Inc., the management company to the Bosley Medical Group affiliate that provided hair transplants.

² Complaint at p. 1. Although the Complaint pages are not numbered, reference is to the pages in their actual numerical order.

³ Roller initially sued Bosley Medical Group (Bosley, Inc.) for infringing his "pseudo-patent" in federal court. Alexander Gese represented Bosley and got Roller to voluntarily dismiss the Complaint. *Roller v. Bosley Medical Group*, U.S. Dist. Ct. (Minn.) Civil Action No. 07-01296. Subsequently, Roller brought a Conciliation Court claim against Bosley and Mr. Gese in Hennepin County seeking reimbursement for the cost of his hair transplants. Case No. 080327031. He was awarded no money against Bosley and the claim against Mr. Gese was dismissed with prejudice on July 22, 2008. Roller failed to file a demand for Removal to District Court in a timely fashion. Complaint at p. 1; affidavit of Alexander Gese, Exhibit A hereto.

Roller, who describes himself to be Jesus/God/Holy Spirit,⁴ states that his Amended Complaint is about “conflict of interest, attempted murder, and molestation, cases all against the defendants.”⁵ He repeatedly describes the conduct as “felony behavior.”⁶

Boiled down to some kind of rational essence, Roller lost a conciliation court claim and failed to appeal it on time. While conceding he may not have properly filed his appeal “in a timely manner,”⁷ Roller concludes that “there had been a huge conflict of interest with the attorneys for Bosley (Alexander Gese), WJF, Judge Boris, and administrators of the Burnsville post office for interrupting my quest for legal justice.” In addition, the named defendants are alleged to have “also been part of . . . plots to assassinate me,”⁸ and that (Roller) is “under the impression that my daughter has been molested by Dan Smith (an attorney at Wagner), Alexander Gese and (Conciliation Judge) Mark Boris during the past year, sometime, somehow, somewhere.”⁹ The last two wrongs are described as “felony behavior.”¹⁰

At the end of his Complaint, Roller sums up his claims and request for relief: He wants “answers to these felony accusations and to get compensated for the conflict of interest that prevented me from seeing justice.”¹¹

⁴ Complaint at p.1

⁵ Complaint at p. 1.

⁶ Complaint at e.g., pp.1, 6.

⁷ Complaint at p. 2.

⁸ Complaint at p. 4.

⁹ Complaint at p. 4.

¹⁰ Complaint at p. 6.

¹¹ Complaint at pp. 6, 7.

“I’m suing WFJ, and each of the parties involved, for \$1 trillion for fraud (conflict of interest), attempted murder of Chris Roller by the defendants, and the molestation of my daughter by the defendants.”¹²

As to defendants Gese and Bosley, Inc., the Complaint does not allege facts that would support the legally cognizable civil causes of action arising from the claimed wrongdoing. Nor does the Complaint allege facts or assert conclusionary claims for breach of fiduciary duty, assault, battery or intentional infliction of emotional distress.¹³

Alexander Gese has submitted a factual affidavit that eliminates any possible factual support for Roller’s speculative, inconsistent, and legally insufficient conclusions as they might apply to him or Bosley, Inc. Gese never represented Roller so there can be no claim of conflict of interest or breach of fiduciary duty and he has never threatened Roller with assault, committed a battery upon him, or attempted or conspired to “assassinate” Roller.¹⁴ Gese denies that he, by reckless and outrageous conduct, intentionally or recklessly caused severed emotional distress to another, such as Roller.¹⁵

Suffice to say, Roller has no possible factual evidence to support any civil claim against the corporate defendant, Bosley, Inc. Roller’s claim for recovery was defeated in the Conciliation Court and the time to appeal expired.¹⁶ He is barred by *res judicata* from proceeding directly or indirectly against Bosley regarding his dissatisfaction with his hair transplants.

¹² Complaint at p. 7.

¹³ Compare Complaint with Order Denying Defendants’ Motions to Dismiss, filed March 5, 2010.

¹⁴ Gese Affidavit at ¶14-15.

¹⁵ Gese Affidavit at ¶20.

¹⁶ Gese Affidavit at ¶11.

ARGUMENT

I. Plaintiff's Complaint Fails to State a Claim.

A. Legal Standard for considering Summary Judgment.

Minn. R. Civ. P. 56 is intended to allow a court to dispose of a case on the merits if there is no genuine dispute regarding material facts, and a party is entitled to judgment under the law applicable to such facts. This serves the goal of “securing a just, speedy, and inexpensive determination of an action.” *DLH, Inc., v. Russ, Cohn et al*, 566 N.W. 2d 60 (Minn. 1997). When a motion for Summary Judgment is made and supported, the nonmoving party must “present specific facts showing that there is a genuine issue for trial.” Minn. R. Civ. P. 56.05. “If the non-moving party does not so respond, summary judgment, if appropriate, shall be entered” against the moving party. *Id.* A genuine issue of material fact for trial “must be established by substantial evidence.” *Murphy v. County House, Inc.*, 307 Minn. 344, 351, 240 N.W.2d 507, 512 (1976). A moving party is entitled to summary judgment when “there are no facts in the record giving rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party’s case. *Nicollet Restoration, Inc., v. City of St. Paul*, 533 N.W.2d 845, 847-48 (Minn. 1995); The non-moving party fails if he cannot establish a prima facie claim for the wrongdoing alleged in his complaint. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

In the present case, Roller cannot even meet the lighter burden for avoiding a dismissal under Minn. R. Civ. Pro. 12.02(e) which requires a plaintiff to set forth a legally sufficient claim for relief. *Krueger v. Zeman Const. Co.*, 758 N.W. 2d 881 (Minn.

App. 2008). The statement of entitlement to relief must go beyond “labels and conclusions” or the “speculative” presentation of a claim. *Hebert v. City of Fifty Lakes*, 774 N.W. 2d 226, 235 (Minn. 2008). See also, *Bahr v. Capella University*, 765 N.W. 2d 428 (Minn. Ct. App. 2009).

B. Plaintiff Roller has not stated any cognizable civil claims.

1. Plots to assassinate Roller allegations

Plaintiff Roller’s unsubstantiated assertions that Alexander Gese has attempted to assassinate or murder him are wholly unsupported by any supporting facts. Assuming that such an infamous assertion was supported, it invokes a criminal remedy, not a civil cause of action. Further, there isn’t a hint of a threatened assault or battery or other related theory of recovery recognized in Minnesota. An assault is an unlawful threat to do bodily harm to another with the present ability to carry the threat into effect. Mere words or threats alone do not constitute an assault. *Dahlin v. Fraser*, 206 Minn. 476, 478, 288N.W. 851, 852 (1939). Obviously, a battery requires actual physical harm; a claim that not even Roller makes.

2. Molesting Roller’s daughter allegations

The same analysis applies to Roller’s wholly reckless and libelous assertion that Alexander Gese individually or collectively molested Roller’s daughter (if he has one). He says he is “under the impression” his daughter has been molested and that “I’m hoping that this lawsuit while documenting it publicly in a blog, that this case can get to discovery, to find out if this is actually happening.”¹⁷ He offers no facts whatsoever,

¹⁷ Complaint at p. 5.

much less “substantial evidence,” that would support his allegations and admits he doesn’t know if it occurred at all. This accusation of an alleged crime does not come close to presenting a civil cause of action recognized in Minnesota. Further, Roller lacks standing in his own right to bring a claim for damages to his daughter.

3. Conflict of interest allegations and suggestion of fiduciary duty breach

Lastly, Roller’s assertion that Alexander Gese (and, at most, inferentially Bosley, Inc.) has been a participant in a conflict of interest is entirely baseless. Roller fails to allege that Mr. Gese has ever represented him or in any other way owed him a duty of care related to legal representation. As pointed out in Exhibit A, the Alexander Gese affidavit, Gese has never been in an attorney-client relationship with Roller. A conflict of interest allegation in a legal representation context must be asserted pursuant to the rules of the Minnesota Lawyers Professional Responsibility Board and Minnesota Rules of Professional Conduct, or to a Court in which a legal proceeding is already pending. Alternatively, it might be the basis for a legal malpractice claim if the claimant was a client. There are no facts or allegations that even hint that any of these possible remedies may be invoked in the present matter.

Alexander Gese cannot be liable for breaching any sort of fiduciary duty for virtually the same reasons. Roller has never been in any kind of relationship with Alexander Gese that would give rise to any such duty.

4. Intentional infliction of emotional distress

The Court has suggested the possibility that Roller has stated a claim for intentional infliction of emotional distress. See Order Denying Motions to Dismiss. As to Mr. Gese and Bosley, Inc., however, there are no factual allegations in the Complaint to support such a civil claim. There are four required elements:

- a. the conduct must be extreme and outrageous;
- b. the conduct must be intentional and reckless;
- c. it must cause emotional distress; and
- d. the distress must be severe.

Hubbard v. United Press Int'l, Inc., 330 N.W.2d 428, 438-439 (Minn. 1983) . “Extreme and outrageous conduct must be so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community.” *Id.* It has been noted that the Hubbard Court emphasized the narrow scope of the cause of action and its antipathy to fictitious and fraudulent claims. *Langeslag v. KYMN, Inc.*, 664 N.W.2d 860,(Minn. 2003).

C. The Complaint is entirely frivolous and presented for the improper purpose of harassment and incurring needless cost in violation of Minn. R. Civ. Pro. 11 and Minn. Stat. §549.211

Contrary to Minn. R. Civ. Pro. 11 and Minn. Stat. §549.211, Roller’s Complaint is unsigned and, on its face, is not presented for any proper purpose. By its content, it is intended to harass and embarrass Alexander Gese (and presumably, Bosley, Inc.), impugn his good name and cause him to incur needless costs of litigation. Without waiving the right to later do so, it should be noted that Alexander Gese has not brought a Rule 11 motion at this time despite ample grounds to do so. In the event that Roller

continues to pursue his so-called claims herein, Mr. Gese and Bosley, Inc., reserve the right to seek sanctions under Minn. R. Civ. Pro. 11 and Minn. Stat. §549.211.

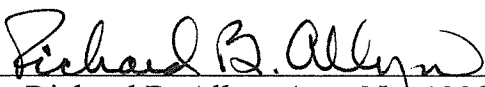
CONCLUSION

The Roller Complaint does not contain the required substantial factual allegations to support legally cognizable civil claims. Further, his frivolous and unsupported conclusions as to defendants Alexander Gese and Bosley, Inc., are rebutted and refuted by Mr. Gese's affidavit. No amount of amending or repleading can correct the flaws in his attempted claims. The Complaint should be dismissed with prejudice as to defendants Alexander Gese and Bosley, Inc.

Respectfully, submitted,

DATED: March 15, 2010

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

By: 
Richard B. Allyn, Atty. No. 1338
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
612-349-8500

**ATTORNEYS FOR DEFENDANTS
ALEXANDER GESE AND BOSLEY, INC.**

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL OTHER

Christopher Roller,
Plaintiff,

Court File No. 27-CV-09-22812
Hon. Judge Susan N. Burke

vs.

AFFIDAVIT OF
ALEXANDER S. GESE

Wagner, Falconer & Judd, Ltd. (WFJ)
Via Prepaid Legal c/o Dan Smith

Honorable Judge Mark Boris via WFJ land
Bosley and State of Minnesota

Attorney Alexander Gese via Bosley,
Defendant.

1. He is an attorney admitted in Minnesota.
2. He was counsel of record for Bosley Medical Group, defendant in *Christopher A. Roller vs. Bosley Medical Group*, Civil Action No. 07-02196, U.S. District Court, District of Minnesota (“federal suit”), commenced in May, 2007.
3. In the federal suit, Christopher Roller (“Roller”) alleged that Bosley’s hair transplantation procedure required the use of godly powers and, thereby, infringed Roller’s pseudo-patent.
4. Roller voluntarily dismissed his claim against Bosley which was filed on July 9, 2007.

5. On March 24, 2008, Roller commenced a conciliation court claim in Hennepin County against both Bosley Medical Institute and Attorney Alexander S. Gese (“Conciliation Court Claim”).

6. Roller’s Conciliation Court Claim sought \$5,673.00 for “Hair transplants (that did not work.” No reason or allegation was offered by Roller as to why he named Attorney Alex S. Gese as a defendant.

7. On July 21, 2008, a Conciliation Court hearing took place where Roller presented his claim. Alex Gese defended Bosley and himself.

8. On July 22, 2008, the Conciliation Court issued a Notice of Judgment awarding \$0 against Bosley Medical Institute.

9. On July 22, 2008, the Conciliation Court dismissed the claim against Alexander S. Gese, with prejudice.

10. Roller prepared a Demand for Removal of the Conciliation Court Claim against Bosley to the District Court for a trial de Novo by a jury in Hennepin County.

11. Roller did not file such a Demand for Removal against Alexander Gese and failed to perfect his Demand for Removal as to Bosley on time.

12. Roller’s time to appeal both adverse Conciliation Court judgments has expired.

13. Bosley, Inc., owns the Bosley Medical Institute.

14. He has never been in an attorney-client relationship with Roller.

15. He has never been in a fiduciary relationship with Roller.

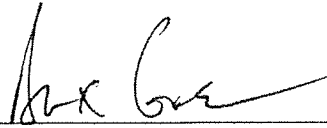
16. He has never had, nor been in, a legally cognizable conflict of interest with Roller.

17. He has no knowledge whatsoever of whether Roller has a daughter(s) or whether such a daughter is the victim of any alleged "molestation," and therefore denies the allegations in the Complaint.

18. He has never threatened Roller with assault and battery nor attempted or conspired to carry out such alleged conduct.

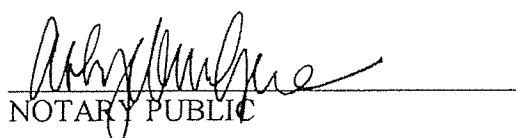
19. He has never done or uttered any action or communication concerning Roller Except within the bounds of advocating for his client Bosley in court argument and/or pleadings.

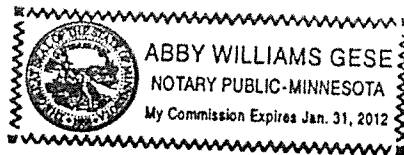
20. He has never, by reckless and outrageous conduct, intentionally or recklessly caused severe emotional distress to Roller.



ALEXANDER S. GESE

SUBSCRIBED and sworn to before me
this 15th day of March, 2010.



NOTARY PUBLIC

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

CASE TYPE: CIVIL OTHER

Christopher Roller,

Plaintiff,

vs.

Wagner, Falconer & Judd, Ltd(WFJ) via Prepaid
Legal c/o Dan Smith

Honorable Judge Mark Boris via WFJ and
Bosley and State of Minnesota

Attorney Alexander Gese via Bosley,

Defendant.

Court File No.: 27-CV-09-22812
Hon. Judge Susan N. Burke

ORDER GRANTING
ALEXANDER GESE'S AND
BOSLEY, INC.'S MOTION TO
FOR SUMMARY JUDGMENT
(Proposed)

The above-entitled matter came on before the undersigned on April 12, 2010, on Defendants Gese's and Bosley, Inc.'s Motion for Summary Judgment under Rule 56.02, Minnesota Rules of Civil Procedure. Plaintiff Roller appeared *pro se*. Defendants Gese and Bosley, Inc., appeared by Richard B. Allyn, Robins, Kaplan, Miller & Ciresi L.L.P. The Court, having considered the arguments of the parties, and upon the Memoranda of Law, affidavits, files, records and pleadings herein:

IT IS HEREBY ORDERED that Defendants Gese's and Bosley, Inc.'s Motion for Summary Judgment is **GRANTED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT

Dated: _____

Honorable Susan N. Burke
Judge of District Court