

PARTIAL OPINION (EDITED BY RICOACT.COM LLC)

969 F.3d 604
United States Court of Appeals, Sixth Circuit.

Todd COURSER, Plaintiff-Appellant,
v.
Keith ALLARD; Benjamin Graham;
Joshua Cline, Defendants-Appellees.

No. 20-1038

Argued: July 29, 2020

Decided and Filed: August 10, 2020

OPINION

[KAREN NELSON MOORE](#), Circuit Judge.

Todd Courser was a member of the Michigan House of Representatives. His affair with fellow-representative Cindy Gamrat and his related misconduct lost him that office. Courser, however, does not see himself as the source of his misfortunes and instead alleges that the Defendants—Keith Allard, Benjamin Graham, and Joshua Cline—conspired together and with the Michigan House of Representatives to remove him from office. Each Defendant *613 worked for Courser and Gamrat as their legislative aides. Two of them, Allard and Graham, went to the press to expose Courser’s and Gamrat’s affair, Courser’s attempted coverup, and Courser’s misuse of his public office for political and personal purposes.¹ The *Detroit News* coverage prompted the Michigan House of Representatives to issue a report and hold a hearing on the allegations. Courser resigned before he could be expelled.

This case is one of several that Courser and Gamrat have filed against various persons that they believe conspired against them to end their political careers. For the reasons that follow, we **AFFIRM** the district court’s judgment of dismissal of all claims against all Defendants.²

I. BACKGROUND

Courser is a former Republican member of the Michigan House of Representatives. While in office, Courser had an affair with another representative, Gamrat. Defendants were legislative aides assigned to Courser and Gamrat. Worried that he and Gamrat eventually would be caught, Courser concocted a plan to get ahead of the story by sending out an anonymous email to his constituents accusing himself of having an affair with Gamrat, but including outlandish allegations against himself of further

escapades. That way, when the real story broke about Courser’s and Gamrat’s affair, it would seem too incredible to believe.

Courser asked Graham to meet with him so that he could ask Graham to send the coverup email to Courser’s constituents. They met on May 19, 2015, and unbeknownst to Courser, Graham recorded their conversation. During the meeting, Courser explained his plan to create a “controlled burn” to “inoculate the herd” with the coverup email. Graham refused to participate, so Courser found someone else to send the email.

Meanwhile, Graham and Allard reported Courser’s affair and misuse of their time for political and personal tasks to higher-ups in House leadership. In retaliation, Courser directed the House Business Office to fire Allard and Graham. After they were fired, Allard and Graham again tried to expose the affair to Republican leaders, but were unsuccessful. So they went to the *Detroit News* with the recording. Once the *Detroit News* published the story exposing Courser’s affair and misconduct on August 7, 2015, the House investigated Courser and Gamrat. On August 31, 2015, the House Business Office issued a report concluding that Courser and Gamrat had engaged in misconduct. On September 9, 2015, the House held the Select Committee Hearing on Courser’s misconduct. During the hearing, Courser admitted that he “listened to the tape” that Graham had made on May 19, 2015, and that “it sounds like a complete record.” R. 12-1 (House Select Committee Hr’g Tr. at 12) (Page ID #95). He also admitted that he improperly used his staff for political and personal matters. *Id.* at 4 (Page ID #87). Courser resigned before the House could expel him. He was criminally charged and pleaded no contest to willful neglect of duty by a public officer. He now claims that the recording Graham made on May 19, 2015, was altered and distorted the truth. He also claims that Allard and Graham unlawfully surveilled him.

Cline allegedly was involved in gathering information on Courser as well, but to a lesser degree. Cline quit his position as a legislative aide on April 14, 2015, before the “inoculate the herd” conversation and most of the alleged unlawful surveillance took place. On similar facts, the district court granted Cline judgment on the pleadings in a lawsuit brought by Gamrat against Cline for wiretapping, eavesdropping, civil stalking, and civil conspiracy. *See Gamrat v. Cline*, No. 1:16-CV-1094, 2019 WL 3024599, at *4-5 (W.D. Mich. July 11, 2019).³

Separate from Defendants’ alleged conduct, Courser received texts from Joe Gamrat, Cindy Gamrat’s husband,

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and his friends harassing him over the affair. Courser alleges that Defendants were somehow involved in feeding information to Joe Gamrat to fan the flames of these “extortion texts.”

Courser initially filed a lawsuit against multiple defendants, including Allard and Graham, on September 8, 2016. *See Courser v. Allard*, No. 1:16-cv-01108 (W.D. Mich.), R. 1 (Compl.) (Page ID #1). He voluntarily dismissed that action on December 12, 2016. *Id.*, R. 123 (Voluntary Dismissal) (Page ID #4545). Then, on August 6, 2018, he filed two new lawsuits making similar claims but splitting up the defendants. One of those lawsuits was this case, brought against Allard, Graham, and Cline. *See* R. 1 (Compl.) (Page ID #1). The other lawsuit was against the Michigan House of Representatives and individual representatives and staff members (collectively, the “House defendants”). *See Courser v. Mich. House of Representatives*, No. 1:18-cv-00882 (W.D. Mich.) (the “Michigan House case”), R. 1 (Compl.) (Page ID #1).⁴ The operative complaints filed in each case are virtually identical. *Compare id. with* R. 17 (1st Am. Compl.) (Page ID #172). The only meaningful difference is that there are three counts that are alleged in the House case that are not alleged in this case: an unconstitutional vagueness challenge to [Article IV, § 16 of the Michigan Constitution](#), a request for indemnification, and fraudulent misrepresentation claims alleged solely against two House defendants. Every count alleged in this case appears in the Michigan House case.

Allard and Graham filed a motion to dismiss before Courser filed his First Amended Complaint. *See* R. 11 (Mot. to Dismiss) (Page ID #56). After Courser amended his complaint, Allard and Graham filed a motion to strike. *See* R. 18 (Mot. to Strike) (Page ID #1821). Cline did not file anything. On July 30, 2019, the district court denied as moot Allard’s and Graham’s motion to dismiss, denied Allard’s and Graham’s motion to strike, and dismissed *sua sponte* most of Courser’s claims. *See* R. 22 (Order of 07/30/19 at 4) (Page ID #1846).

Citing its own decisions in related cases, the district court *sua sponte* dismissed Counts 1 ([42 U.S.C. § 1983](#)), 2 ([42 U.S.C. § 1985](#)), 3 (violation of the Fair and Just Treatment Clause of the Michigan Constitution), 5 (state and federal computer fraud), 6 (libel, slander, and defamation), 7 (civil stalking), 9 (tortious interference with business relationships), 11 (negligence and negligent infliction of emotional distress), 12 (RICO) and 13 (RICO conspiracy), 14 (intentional interference with or destruction of evidence/spoliation), and 15 (conspiracy). *Id.* at 2–4 (Page ID #1844–46). Courser did not object in the district court to the *sua sponte* nature of the dismissal.

With respect to the remaining claims—Counts 4 (violation of the Federal Wiretapping Act and Michigan’s Eavesdropping Statute), 8 (invasion of privacy and intrusion upon seclusion), and 10 (intentional infliction of emotional distress)—the district court instructed Allard and Graham to file a motion to dismiss within twenty-one days, before the end of August. *Id.* at 4 (Page ID #1846). Allard and Graham missed that deadline and, asking for forgiveness rather than permission, filed their second motion to dismiss in October. *See* R. 26 (Second Mot. to Dismiss) (Page ID #1853). The district court accepted their motion in spite of the delay, noting that their oversight was “understandable in light of the procedural history and circumstances of the case.” *See* R. 29 (Order of 10/08/19 at 2) (Page ID #1873). Courser made no objections to the extension in the district court. Instead, he jointly stipulated with Defendants to a briefing schedule. *See* R. 30 (Stipulation at 1) (Page ID #1874). All parties, with the exception of Cline, fully briefed the second motion to dismiss before the district court issued a ruling.

Before dismissing any of Courser’s claims, the district court entered default against Cline for failing to plead or defend. R. 15 (Entry of Default 12/21/2018) (Page ID #170). Courser never moved for entry of default judgment, and Cline never moved for the district court to set aside the default.

The district court issued its final opinion and judgment in this case on December 19, 2019, granting Allard’s and Graham’s second motion to dismiss the remaining claims against them. R. 36 (Final Op. at 4–5) (Page ID #1938–39); R. 37 (Judgment) (Page ID #1940). In the same order, the district court exercised its discretion to set aside the entry of default against Cline and dismissed Courser’s claims against Cline. R. 36 (Final Op. at 5) (Page ID #1939). We have jurisdiction over Courser’s timely appeal from the district court’s opinion and order granting Defendants’ motion to dismiss and its order granting Allard’s and Graham’s motion for leave to file a second motion to dismiss.

II. ANALYSIS

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9. Counts 12 and 13 – RICO ([18 U.S.C. § 1961 et seq.](#)) and Conspiracy To Violate RICO

Courser claims that Defendants forced him to resign through their corrupt activity, in violation of RICO. The federal RICO statute creates a cause of action for “[a]ny person injured in his business or property by reason of a violation of [[18 U.S.C. § 1962](#)],” which prohibits persons from engaging in a pattern of racketeering. [18 U.S.C. §§](#)

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1964(c), 1962. To establish a claim under RICO, the plaintiff must allege “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) (footnote omitted). To prove a pattern of racketeering, a plaintiff “must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.” *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). For continuity to exist, there must be a threat of future criminal conduct. *See id.* at 242, 109 S.Ct. 2893; *Aces High Coal Sales, Inc. v. Cmty. Bank & Tr. of W. Ga.*, 768 F. App’x 446, 455 (6th Cir. 2019). If the alleged scheme involved a single scheme and a single goal, the continuity requirement is not met. *See Aces High Coal Sales, Inc.*, 768 F. App’x at 456–57.

The district court dismissed this claim because “Courser [could not] establish continuity to support a RICO claim.” R. 22 (Order of 07/30/19 at 3) (Page ID #1845). In the Michigan House case, “Courser allege[d] a scheme that lasted no more than nine months and had but a single purpose and victim—to remove Courser from office. The alleged scheme was complete once Courser resigned, as nothing else remained to be done.” *See Courser*, 404 F.

Supp. 3d at 1153. Thus, “[b]ecause the single purpose was accomplished, no threat of alleged future criminal activity remained.” *Id.* Because Courser presents his RICO claim in the same way here, it was appropriate for the district court to rely on its decision in the Michigan House case.

Courser additionally alleges a conspiracy to violate RICO. The district court dismissed this claim because “Courser cannot establish continuity to support a RICO claim.” R. 22 (Order of 07/30/19 at 3) (Page ID #1845). In the Michigan House case, the district court ruled that, “because Courser d[id] not establish a RICO claim, he also fail[ed] to establish a RICO conspiracy.” *See Courser*, 404 F. *Supp. 3d at 1153*. Applying the same ruling here was proper. *See Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 495 (6th Cir. 1990) (“Plaintiffs’ conspiracy claim cannot stand in light of the dismissal of their other RICO counts.”).

* * * *

III. CONCLUSION

We **AFFIRM** the district court’s judgment of dismissal of all claims against all Defendants.

Footnotes

- 1 The third defendant, Cline, was less involved, but is alleged to have surveilled Courser as well.
- 2 Additionally, we deny Courser’s motion to take judicial notice of certain documents that are not part of the record in this case, such as affidavits. To the extent Courser requests that we take notice of other materials properly in front of us, we have reviewed public filings, hearings, and decisions relevant to this case.
- 3 We recently affirmed the district court’s dismissal of Gamrat’s claims against Allard, Graham, and Cline in *Gamrat v. McBroom*, — F. App’x —, —, No. 19-2364, 2020 WL 4346677, at *3 (6th Cir. July 29, 2020).
- 4 Courser’s appeal from the district court’s dismissal of his claims in the Michigan House case is pending as appeal No. 19-1840.