Ex. A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTION TO MAGISTRATE JUDGE'S ORDERS

INTRODUCTION

Defendants Gailon Arthur Joy and Robert Pickle ("Pickle and Joy") assert that the MidCountry Bank records — consisting of private financial records of Plaintiff Danny Lee Shelton, founder of Plaintiff Three Angels Broadcasting Network, Inc. ("3ABN") — will support their baseless allegations against the Plaintiffs. In effect, they want to continue gathering private information about the Plaintiffs more than a year after the suit was dismissed. Plaintiffs have contended throughout that the MidCountry records were never relevant. Now that the case is over but for Defendants' appeal, even the Defendants cannot articulate a plausible or even coherent reason for this information.

The suit was dismissed without reference to the MidCountry records. The documents had been produced pursuant to a third-party subpoena issued out of the U.S.

has focused on the Court itself. Their objections to Judge Hillman's decisions should be overruled because the rulings are not clearly erroneous.

LEGAL ARGUMENT

I. 28 U.S.C. § 636(b)(1)(A) requires a district judge to apply the "clearly erroneous" standard of review when reconsidering a magistrate judge's order.

Pickle and Joy have objected under Fed. R. Civ. P. 72(a) to Magistrate Judge Hillman's January 29, 2010 electronic orders: (1) denying their December 9, 2009 motion to forward copies of the MidCountry Bank records to the First Circuit Court of Appeals; and (2) denying their December 18, 2009 motion to compel Plaintiffs' counsel to return the MidCountry Bank records and to stay the pending appeals. (Electronic Order dated January 29, 2010). Under Rule 72(a), a magistrate judge may "hear and determine" non-dispositive pre-trial matters. This language is taken directly from 28 U.S.C. § 636(b)(1)(A) and implements the congressional mandate that certain matters be handled by magistrate judges.

Section 636(b)(1)(A) mandates that a district court review a magistrate judge's order under the "clearly erroneous" standard:

> A judge of the court may reconsider any pre-trial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

28 U.S.C. § 636(b)(1)(A). This standard is mirrored in this court's Rules for United States Magistrate Judges: "The district judge to whom the case is assigned will consider such objections and will modify or set aside any portion of the magistrate judge's order determined to be clearly erroneous or contrary to law." Rule 2 for United States

"following dismissal of the action is of little significance, and does not transform the motions from preliminary procedural matters into posttrial matters." *Id*. Thus, magistrate judges have the power to decide postjudgment matters that occurred pre-trial. *Id*. at n. 13.

Here, Pickle and Joy's requests concerning discovery documents were "pre-trial," even though their requests were made postjudgment. The discovery issue concerning the MidCountry Bank records are unconnected to any issue that might ultimately have been litigated at a future trial. Thus, Magistrate Judge Hillman's power to decide these matters was based in Section 636(b)(1)(1) and Rule 72(a). The district court's review, therefore, must be made under the "clearly erroneous" standard.

II. Pickle and Joy provide no legal basis for this Court to deem Judge Hillman's decisions "clearly erroneous."

Pickle and Joy's campaign of harassment has now focused on this Court. It began with the allegations of wrongdoing against the plaintiffs that necessitated the initiation of this lawsuit. Pickle and Joy have long made uncorroborated, unfounded allegations against Danny Shelton and 3ABN, including claims that they covered up allegations of child molestation against a 3ABN employee, financial mismanagement, and other misconduct that framed the original basis for Plaintiffs' lawsuit against them. In their Answer to the Complaint, they generally asserted that they were republishing information from a source which they then refused to reveal, claiming journalistic privilege. (Docket # 9 at ¶ 50). With respect to Plaintiffs' claim that Defendants' allegations of financial misconduct were false, Defendants asserted that they lacked information sufficient to

respond and indicated an intention to obtain information supporting their allegations through discovery. (*Id*.) In other words, they took the position that they did not presently have unprivileged information to support these allegedly defamatory statements, but intended to find such evidence through discovery.

Frustrated by delays they encountered as this Court considered what sort of protective order and limits on the scope of discovery would be appropriate, Defendants circumvented this Court and obtained subpoenas from sister courts in Minnesota, Illinois, Michigan and elsewhere in the hope of finding something to prove the truth of their assertions, which Plaintiffs contended were baseless. Magistrate Judge Hillman ultimately put a stop to that activity and ordered that all subpoenas on third parties be pre-approved. (Docket # 106 at 5).

The subpoena for the MidCountry Bank records at issue in this motion was issued from the U.S. District Court for Minnesota. (Docket #208, Ex. A at Ex. F). The records are the personal financial records of Plaintiff Danny Lee Shelton. (*Id*.). Shelton resisted the subpoena on the basis that the information sought was personal and was not relevant to the case. (Docket #208, Ex. B). The Minnesota judge ordered the records produced to Judge Hillman under seal. (Docket #208, Ex. C). The case was voluntarily dismissed before anybody ever had occasion to look at the records. (Docket #139).

Plaintiffs continue to contend that Defendants want these records for reasons unrelated to this litigation – they are simply snooping into Shelton's personal life in order to find something with which to discredit him. Their contention that the records contain anything unflattering is pure conjecture because they have never seen them. Pickle and

Joy contend that their currently unsupported allegations *might* be proven through these documents, which were filed under seal and never reviewed by the court or the parties. Pickle and Joy have waged an internet campaign of harassing commentary about Plaintiffs' counsel, and went so far as to bring a baseless motion alleging a violation of Fed. R. Civ. P. 11, which was properly denied. And now their venom is aimed at this Court. Pickle and Joy have made unfounded allegations of misconduct against Judge Saylor, forcing him to recuse himself. (*Affidavit of Robert Pickle*). These allegations of misconduct also are directed at court staff. (*Id*.). Not surprisingly, Judge Hillman also recused himself after ruling on the motions. (Electronic Order dated January 29, 2010). Although Pickle and Joy do not directly allege misconduct against Judge Hillman, they cannot resist stating that, "the extreme brevity of the January 29 orders . . . leads one to suspect that, rather than ruling on the motions, the magistrate judge should have also recused himself . . ." (Def. Brf. at 2-3). Thus, the thinly-veiled threats continue.

The unfounded allegation that Judge Hillman's decisions are suspect is no basis for finding his decisions clearly erroneous. In fact, this Court cannot overturn Judge Hillman's decisions even if the district court would have exercised discretion differently. *Gioia*, 853 F.Supp. at 26. Pickle and Joy's paranoia and suspicion is not a legal basis for finding Judge Hillman's decisions clearly erroneous.

The remainder of Pickle and Joy's brief is a rehash of the original briefings, containing no new argument. (Def.'s Brf. at 3-5). Plaintiffs, therefore, incorporate the facts and argument contained in its original briefings in opposition to Pickle and Joy's motions. (Docket # 207, 216). Nevertheless, several points prompt a brief response.

the fact is disingenuous, given that they never voiced disagreement with the order when it issued.

Finally, there will be no irreparable harm based upon plaintiff's counsel's storage of Danny Shelton's personal financial records. Plaintiff's Counsel has stated under oath that the documents are in a sealed box and will be maintained until the conclusion of this litigation. (Docket #208 at ¶ 8). Pickle and Joy's absurd suggestion that these documents contain the district court's or its administrative staff's "notes" on these exhibits is unfounded, and would not materially change the analysis and make these documents relevant anyway.

CONCLUSION

Because Pickle and Joy provide no legal argument that would render Magistrate Judge Hillman's January 29, 2010 orders clearly erroneous, their objections to these decisions must be rejected.

Respectfully submitted,

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s/ M. Gregory Simpson

M. Gregory Simpson, Esq., MN # 204560
Meagher & Geer, P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Telephone: (612) 338-0661