

# United States Court of Appeals For the First Circuit

## DOCKETING STATEMENT

No. 08-2457

Short Title: Three Angels Broadcasting et. al. v. Joy et. al.

### Type of Action

- Civil  
 Criminal/Prisoner  
 Cross Appeal

#### A. Timeliness of Appeal

1. Date of entry of judgment or order appealed from October 31 and/or November 3, 2008
2. Date this notice of appeal filed November 13, 2008.  
If cross appeal, date first notice of appeal filed \_\_\_\_\_
3. Filing date of any post-judgment motion filed by any party which tolls time under Fed. R. App. P. 4(a)(4) or 4(b) \_\_\_\_\_
4. Date of entry of order deciding above post-judgment motion \_\_\_\_\_
5. Filing date of any motion to extend time under Fed. R. App. P. 4(a)(5), 4(a)(6) or 4(b) \_\_\_\_\_  
Time extended to \_\_\_\_\_

#### B. Finality of Order or Judgment

1. Is the order or judgment appealed from a final decision on the merits?  Yes \*  No
2. If no,
  - a. Did the district court order entry of judgment as to fewer than all claims or all parties pursuant to Fed. R. C. P. 54(b)?  Yes  No  
If yes, explain \_\_\_\_\_
  - b. Is the order appealed from a collateral or interlocutory order reviewable under any exception to the finality rule?  Yes  No  
If yes, explain \_\_\_\_\_

#### C. Has this case previously been appealed? Yes No

If yes, give the case name, docket number and disposition of each prior appeal  
\_\_\_\_\_

#### D. Are any related cases or cases raising related issues pending in this court, any district court of this circuit, or the Supreme Court? Yes No

If yes, cite the case and manner in which it is related on a separate page. If abeyance or consolidation is warranted, counsel must file a separate motion seeking such relief.

\* See attached note.

- E. Were there any in-court proceedings below?  Yes  No  
 If yes, is a transcript necessary for this appeal?  Yes  No  
 If yes, is transcript already on file with district court?  Yes  No (Some are, some aren't)

F. List each adverse party to the appeal. If no attorney, give address and telephone number of the adverse party. Attach additional page if necessary.

1. Adverse party Three Angels Broadcasting Network, Inc. and Danny Lee Shelton  
 Attorney Kristin L. Kingsbury, Wm. Christopher Penwell, M. Gregory Simpson \*  
 Address 100 Washington Avenue South, Suite 1300, Minneapolis, MN 55401  
 Telephone (612) 337-6100; (612) 339-6591 (fax)  
 \* also Gerald Duffy & Jerrie M. Hayes
2. Adverse party Three Angels Broadcasting Network, Inc. and Danny Lee Shelton  
 Attorney John P. Pucci, J. Lizette Richards  
 Address 64 Gothic Street, Suite 4, Northampton, MA 01060  
 Telephone (413) 584-8067; (413) 585-0787 (fax)
3. Adverse party \_\_\_\_\_  
 Attorney \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_

G. List name(s) and address(es) of appellant(s) who filed this notice of appeal and appellant's counsel. Attach additional page if necessary.

1. Appellant's name Gailon Arthur Joy, pro se  
 Address P.O. Box 37, Sterling, MA 01564  
 Telephone (978) 333-3067  
  
 Attorney's name \_\_\_\_\_  
 Firm \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_
2. Appellant's name Robert Pickle, pro se  
 Address 1354 County Highway 21, Halstad, MN 56548  
 Telephone (218) 456-2568  
  
 Attorney's name \_\_\_\_\_  
 Firm \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_

Will you be handling the appeal? (In criminal cases counsel below will handle the appeal unless relieved by this court.)  Yes  No

Fed. R. App. P. 12(b) provides that each attorney who files a notice of appeal must file with the clerk of the court of appeals a statement naming each party represented on appeal by that attorney. 1st Cir. R. 12.0 requires that statement in the form of an appearance.

A copy of this docketing statement must be served on all other parties to the appeal. In civil cases it must also be served on First Circuit Settlement Counsel, Civil Appeals Management Program, 1 Courthouse Way, Suite 3440, Boston, MA 022210. Proof of service must be attached.

Signature /s/ Gailon Arthur Joy

Signature /s/ Robert Pickle

Date November 24, 2008

**ATTACHED NOTE FOR ANSWER TO B(1)**

The order(s) being appealed granted in its several parts a motion for voluntary dismissal without prejudice. The First Circuit reviews orders granting voluntary dismissal. *Doe v. Urohealth Systems, Inc.* 216 F.3d 157 (1st Cir. 2000); *Puerto Rico Maritime Shipping Auth. v. Leith*, 668 F.2d 46 (1st Cir. 1981). Most circuits hold that voluntary dismissals are appealable final orders. *John's Insulation, Inc. v. L. Addison & Assocs. Inc.*, 156 F.3d 101, 107 (1st Cir. 1998).

The fact that the dismissal was without prejudice does not make the dismissal unappealable, for the dismissal ended the suit so far as the District Court was concerned. *Mirpuri v. ACT Manufacturing* 212 F.3d 624, 628 (1st Cir. 2000); *United States v. Wallace & Tiernan Co.*, 336 U.S. 793, 795 n.1 (1949).

Spoilation of evidence consisting of documents critical to the defense would arguably result from the order(s). Later review would be impossible, or irreparable injury would result, and the order(s) is/are appealable on those grounds if upon no other. *Cohen v. Beneficial Indus. Loan Corp.*, 1949, 337 U.S. 541, 69 S.Ct. 1221, 1225, 93 L.Ed. 1528; *Sears, Roebuck & Co. v. Mackey*, 1956, 351 U.S. 427, 441, 76 S.Ct. 895, 903, 100 L.Ed. 297.

**CERTIFICATE OF SERVICE**

I, Bob Pickle, hereby certify that on November 24, 2008, I served copies of this docketing statement on the following parties/attorneys by way of First Class U.S. Mail:

M. Gregory Simpson, attorney for Danny Lee Shelton  
and Three Angels Broadcasting Network, Inc.

**Siegel, Brill, Greupner, Duffy & Foster, P.A.**  
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Minneapolis, MN 55401

First Circuit Settlement Counsel  
Civil Appeals Management Program  
1 Courthouse Way, Suite 3440  
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Dated: November 24, 2008

/s/ Bob Pickle

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Bob Pickle