No. 09-2615

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

THREE ANGELS BROADCASTING NETWORK, INC.,
an Illinois Non-Profit Corporation;
DANNY LEE SHELTON,

Plaintiffs-Appellees,

v.

GAILON ARTHUR JOY; ROBERT PICKLE,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 07-40098

DEFENDANTS' REPLIES TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SANCTIONS

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REPLY, BY GAILON ARTHUR JOY

Mr. Simpson, without a single citation or supporting document, or even a quote in proper context from the record, writes what amounts to a modern day blog built upon the "Simpson view," a view replete with artful distortions of the REAL record, suppression of the truth, and gross misrepresentations of even the basis for the underlying litigation, all from this prince of ethics.

These "ecclesiastical journalists" clearly and concisely turned up the rug and uncovered a filthy, dirty, 501(c)3 tax-exempt, television ministry that was largely the fiefdom of a founder who treated the ministry as a closely held corporation. That founder perpetually abused the law, lied under oath, suborned perjury, engaged in gross nepotism, utilized broadcast ministry staff and assets to support his philandering lifestyle and personal "gentleman's farm," and protected the felonious pedophilic activity of a brother that was clearly employed in utter disregard of risk to a program called "Kid's Time." All this was to achieve the founder's largely hypocritical, personal, ecclesiastical political agenda with other people's money via "sacrificial" donations entrusted for a specific purpose, but converted to his own deceitful, unlawful purposes.

When the board of his friends (there is no membership) refused to act and the truth was published, the founder hired a Minnesota law firm to crush the opposition. While Mr. Simpson was a johnny-come-lately in the litigation, he has proven to be a better perpetrator of the great lie than some of his predecessors. His

most deliberate example of cunning deceit, and what he hoped would be close to the last, was misleading a southern Illinois magistrate judge to believe that issues of scope and relevance were still unresolved, dismissal was anything but imminent, and Plaintiffs were about to produce documents. Yet Mr. Simpson knew the board had already authorized a dismissal, and filed for dismissal the very next day, giving notice that Plaintiffs would not comply with the court-ordered production deadline after all. But this was destined not to be the last example of his challenged ethics as this Court continues to observe.

While it has never been clear whether Mr. Simpson is simply so late into the game that he never really got his arms around this case, was overburdened with work, or simply elected to utilize cunning and deceit to achieve his clients' purposes, he continues to grossly misrepresent the language in the Confidentiality Order, and seems unable to read and discern the proper language of various orders that he repeatedly misapplies. Whether this is deliberate or simply intellectually challenged, we leave for this Honorable Court to determine in its best judgment. But challenged it most decidedly is, and determined to suppress the TRUTH.

Mr. Simpson continues to perpetrate the premise that WE used for "extra-litigation purposes" the "defamation *per se*" litigation his firm initiated, when in fact Defendants had already published the allegations based upon our own corroborated and documented sources. Mr. Simpson's clients' perpetual failure to produce substantive discovery at every turn required Defendants to develop, based

upon aggressive discovery, a "beyond a reasonable doubt" defense in preparation for a trial upon the merits, a standard we self imposed for jury presentation. Mr. Simpson cannot cite a single example of "confidential" documents that Defendants have ever published, and complains because we follow the rules of civil procedure and appellate procedure to demonstrate the *ad nauseum* "vexatiousness" of Plaintiffs' deliberate attempts to suppress the record and the TRUTH from the view of this Honorable Appellate Court.

Defendants' plain, simple purpose is to obtain a "dismissal with prejudice," or to have opportunity, untainted by a spoliated record, to defend themselves at bar, concepts Plaintiffs find untenable and go to great lengths to prevent, as demonstrated by Plaintiffs' own "vexatious" record of suppressing the TRUTH.

The reality Plaintiffs are having clear difficulty grasping is that the lawsuit is not ended until, at the very least, the appeal is decided, and that the Confidentiality Order gives clarity as to how documents are to be managed during appeals and thereafter. One must ask, has Mr. Simpson read that Confidentiality Order? Or is he engaged in the ethically challenged effort to suppress the TRUTH?

We must now focus upon Plaintiffs' "Facts" that are simply not factual, as Plaintiffs even admit "[u]pon investigation." But Plaintiffs' "investigation" becomes extremely tortured and twisted in detail, leaving the facts once again distorted, misrepresented, or factually challenged on the record. And since when did defense "analysis" become "tortured" when supported by facts and citation?

Particularly when compared to Plaintiffs' distortions and misrepresentations, unsupported by actual quotes, citations, supporting documents, or even a supporting affidavit? When Mr. Simpson so declares it to be? Nay, never!!!

Mr. Simpson's arrogance on this matter is clarified by his "expropriation" of bank statements from the courthouse in violation of the district court's order, pretending these documents to be Plaintiffs' property (the U.S. District Court in Minnesota had decided otherwise), but which clearly should have been "returned" to the bank AFTER APPEAL, not expropriated by Plaintiffs, a clear example of the boldness of Plaintiffs' brazen counsel in their effort to suppress the TRUTH.

Mr. Simpson would have us believe that all motions properly filed with the district court after HIS motion to dismiss are not a part of the record, a preposterous notion given the purpose of the appeal and the issues at bar.

Mr. Simpson claims Defendants made no affirmative claims of any kind, presumably referring to counterclaims. However, the *per se* allegations required exhaustive discovery to exonerate Defendants' published reports of wrongdoing based upon supported eye-witness leaks and reliable, corroborated sources, all discovered as part of Defendants' TIMELY Rule 26(a)(1) delivery. Plaintiffs' pretentiousness is exposed when Plaintiffs' counsel expressed concern to the presiding district court judge that Defendants intended to file suit against Plaintiffs and their counsel. This proved successful in persuading the presiding district court judge from "dismissing with prejudice" to avoid an "element" for "malicious

prosecution," despite the fact we were nearing the close of discovery, which clearly required a dismissal with prejudice (the root of the appeal). While Mr. Simpson refers to properly cited claims as "the ranting of these appellants," we would declare the distorted, misrepresenting, and factually challenged statements of the ethically challenged "Simpson view" as last ditch efforts to preserve himself and his clients from the claims of damaged Defendants by suppressing the TRUTH.

Mr. Simpson finishes his preposterous argument claiming Defendants set the timing of this "skirmish" for his 30-day response brief period, yet another example of gross distortion and misrepresentation. The cause of Defendants' motion was Mr. Simpson himself, a lawyer presumably with substantial resources and legal assistance to easily manage, at three hundred ($300) dollars an hour, his own decision to "skirmish" over the record on appeal. Via proper citation, we clearly and concisely documented our motion to be appropriate, and the TRUTH.

One must ask a vital question: just what is it about the truth that these Plaintiffs so clearly abhor? After all, the purpose of litigation at bar is to find the TRUTH. That search for TRUTH must never be inhibited by distortion, misrepresentation, and deliberate actions by either party to suppress the TRUTH. And the Court must search diligently for the TRUTH, the WHOLE TRUTH, and nothing but the TRUTH, so help us God.

Defendants stand on their properly stated, properly cited, and properly documented response to Plaintiffs' motion for unwarranted and unsupported

sanctions, and again pray the Honorable Appellate Court to see with clarity the real issues and grant Defendants' prayer for appropriate sanctions to punish Plaintiffs' continued distortion, misrepresentation and suppression of TRUTH.

REPLY TO PLAINTIFFS' FACTS, BY ROBERT PICKLE

A. Sealed Exhibits ("SE") 1–33. Defendants' Motion to File under Seal ("DMSeal") *in its very first paragraph* identified SE 1–33 as part of Record on Appeal Docket Entry # ("RA") 93, later restating that identification in bold print. (DMSeal pp. 1, 5–6). Plaintiffs' counsel's feigned or real confusion over RA 93 (PRSanc[1] pp. 3–4, 8–9) is remarkable, since he requested in writing and paid for a second copy of RA 93 from Defendants. (Affidavit of Robert Pickle p. 1, Ex. A).

B. SE 34–153. SE 34–153 were produced by Remnant Publications, Inc. ("Remnant") ("Remnant documents"), and are not the documents concerning employees wrongly terminated for blowing the whistle on Leonard Westphal ("Westphal") ("Westphal documents"). (DMSanc[2] p. 2; cf. PRSanc p. 5).

C. Re: "The Pickle Affidavit." Plaintiffs' counsel's October 7, 2008, email clearly instructed Defendants to file any descriptions of "confidential" documents, such as "the Pickle Affidavit," under seal. (RA 127-5; cf. PRSanc p. 7).

D. Contrary Evidence Offered or Filed Below (PRSanc p. 5). SE 156–158 were offered below. (RA 173 p. 1). The following were filed below: (a)

[1]Plaintiffs' Response to Defendants' December 31, 2010, Motion for Sanctions.

[2]Defendants' December 31, 2010, Motion for Sanctions.

The California DFEH's right-to-sue notice stating that the investigation was closed because of "[n]o jurisdiction," *not* insufficient evidence. (RA 171-22; RA 220 pp. 36–37). (b) The EEOC's right-to-sue notice stating, "This does not certify that the respondent is in compliance with the statutes." (RA 171-23). (c) Statements by multiple employees and former employees showing probable cause. (RA 127-20 to 127-27). (d) The record of Westphal's arrest for felonious spousal battery, showing that his rage issues are nothing new. (RA 127-29; RA 127 p. 5).

E. Lower Court's Confidentiality Order. The Confidentiality Order has procedures for redacting and for using "confidential" material in court filings and depositions, but not for challenging confidentiality designations; it explicitly permits challenges after the case has concluded. (RA 60 pp. 1–6; cf. PRSanc p. 12)

F. Lower Court's September 11, 2008, Order. The lower court denied Plaintiffs' second motion for a protective order "[i]n all other respects" except for requiring *all* parties to obtain leave before issuing subpoenas; Defendant Pickle was ordered to serve revised requests to produce in response to his motion to compel, *not* in response to Plaintiffs' motion. (RA 107 p. 5; cf. PRSanc p. 4).

G. Lower Court's October 30, 2008, Order. Only one order below, not two, ordered the return of documents, and then only if the Confidentiality Order so required. (RA 141 pp. 12, 14–15; cf. PRSanc p. 2).

H. re: This Court's December 4, 2009, Order. On February 18, 2010, Plaintiffs misrepresented below the Honorable Judge Selya's order as being

but "an administrative order from the Chief Deputy Clerk." Yet, citing "Order dated 12/4/09 in Case No. 08-2457," Plaintiffs still admitted, "The Clerk stated that [the Remnant and Westphal documents] would be part of the record on th[e instant] appeal. (*Id.*)." (RA 231 pp. 8–9; cf. PRSanc p. 9). The December 4 order did not deny Defendants' motion to file under seal in Case No. 08-2457. (cf. PRSanc p. 9).

I. re: Defendants' Due Diligence. Plaintiffs cannot have it both ways. (PRSanc pp. 6, 9). Either the December 4, 2009, order ruled that the Remnant and Westphal documents are part of the record in the instant appeal, or it did not.

J. RA 93 and Motion to File Under Seal. Plaintiffs' designation for appendix "expressly *excludes* any materials filed in the District Court under seal," by which Plaintiffs can only mean RA 93. Plaintiffs then threatened sanctions if Defendants didn't file a motion to file under seal before including in the appendix material filed under seal below. (Affidavit of Robert Pickle (filed 12/16/2010) at p. 2 of Ex. B). Yet Plaintiffs now assert that Defendants should have filed SE 1–33 without filing a motion to file under seal! (PRSanc pp. 8–9).

K. Plaintiffs' Ongoing Campaign of Harassment and Concealment.

Defendants raised the issue of Plaintiffs' abusive confidentiality designations many times, even in opposition to Plaintiffs' motion to dismiss. (e.g. RA 63-28 p. 1; RA 80 p. 3; RA 81 pp. 7–8; RA 126 p. 9; cf. PRSanc p. 12). Defendants' motion for sanctions lists documents that don't qualify for protection under the Confidentiality Order. (DMSanc pp. 8–9). Plaintiffs make absolutely no attempt to

explain why any of the listed documents warrant protection. (PRSanc pp. 11–12).

REPLY TO PLAINTIFFS' ARGUMENT, BY ROBERT PICKLE

I. Plaintiffs' Arguments in Less-Than-Three-Page Argument Section.

Clearly, Defendants cited not this Court's December 4, 2009, order but "20 *Moore's* § 310.10[2][c]; *Waldorf v. Shuta*, 142 F.3d 601, 620 (3rd Cir. 1998)" as "established precedent" that "'[e]xhibits offered to but excluded by the district court are part of the record on appeal.'" (DMSanc p. 10; cf. PRSanc pp. 12–13).

Plaintiffs assert that Defendants' cited cases apply only to evidence excluded from admission during trial (PRSanc p. 13), yet Plaintiffs fail to cite cases applying specifically to denials of LR, D.Mass 7.2(e) motions to file under seal. Since Plaintiffs used admissibility arguments to oppose Defendants' LR 7.2(e) motions below (RA 158 p. 3; RA 174 pp. 4–5), Defendants' citations must apply.

Plaintiffs insist that this Court review only Defendants' description below of the documents in question (PRSanc p. 13), raising yet again due process concerns, since Defendants could not explicitly describe those documents except under seal.

Plaintiffs fraudulently refer to "tax records" produced in discovery (PRSanc p. 13), knowing full well that Danny Lee Shelton produced none, and that 3ABN's tax records are statutorily open to public inspection. (RA 103 p. 10; DMSeal p. 7).

II. Plaintiffs' Arguments in Their Facts Sections.

Plaintiffs dispute RA 93's relevance. (PRSanc pp. 4–5). But Defendants cited RA 93, or argued issues supported by the contents of RA 93, in filings related

to the orders under appeal. (e.g. RA 170 p. 9; RA 182 p. 4; RA 184 p. 18 n.7; RA 126 pp. 12–13; RA 127 pp. 2–3, 8; RA 127-34; RA 127-35; RA 161 p. 13).

Plaintiffs now assert that the word "submitted" in the December 4, 2009, order shows that this Court believed that the Remnant and Westphal documents were filed below. (PRSanc p. 6). But both Defendants' motion (p. 5) and Plaintiffs' opposition (p. 3–4, 8) leading up to that order made clear otherwise, and that order itself shows that this Court knew that Defendants' motions to file these documents below had been denied, and that those denials were now under appeal.

CONCLUSION

Plaintiffs give no clear, coherent arguments to rebut Defendants' showing that Plaintiffs' December 27, 2010, response and motion were, at the time of filing and viewed objectively, frivolous, unreasonable, vexatious, and interposed for an improper purpose. Defendants' motion for sanctions should therefore be granted.

Respectfully submitted,

Dated: January 18, 2011

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CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that on January 18, 2011, I served copies of this reply with accompanying affidavit and exhibit on the following registered parties via the ECF system:

John P. Pucci, J. Lizette Richards
Attorneys for Danny Lee Shelton
and Three Angels Broadcasting Network, Inc.

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

And on the following party by way of First Class U.S. Mail:

Gerald Duffy
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I certify that I served Gerald Duffy since this Court's service list still contains his name, even though Plaintiffs' counsel has now repeatedly failed to serve the same.

Dated: January 18, 2011

s/ Bob Pickle
Bob Pickle