

No. 08-2457; 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' MOTION TO STAY OR
HOLD IN ABEYANCE DEFENDANTS' APPEALS**

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Defendants hereby request that this Court hold in abeyance or stay Defendants' pending appeals until this Court receives a certified supplemental record from the district court consisting of bank records Defendants subpoenaed from MidCountry Bank ("MidCountry") ("MidCountry records").

The December 4, 2009, ruling on Defendants' motion to enlarge the record made clear that the documents Defendants were seeking by that motion to include in the record are already part of the record on appeal for Case No. 09-2615. This ruling prompted Defendants to research further under what circumstances the record includes materials not described in the docket as formally filed.

Upon further reflection, Defendants believe that the MidCountry records which Defendants paid dearly for are part of the record on appeal. Defendants have filed a motion, memorandum, affidavit, and exhibits in the district court (attached hereto as Exhibits 1–4), asking the district court to certify and forward a supplemental record consisting of a copy of the MidCountry records.

The March 28, 2008, order of Magistrate Judge Boylan of the District of Minnesota ordered the MidCountry records to be produced under seal to Magistrate Judge Hillman of the District of Massachusetts to ensure that the records complied with Magistrate Judge Hillman's yet unissued confidentiality order. (Record on Appeal docket entry ("RA") 63-36 pp. 2–3). These records were produced by MidCountry on September 8, 2008, delivered to the federal courthouse in Worcester, Massachusetts, on September 12, 2008, and signed for by

a clerk of court. (Ex. 4 pp. 1–5).

Since by court order the MidCountry records were presented to the district court for review, and since they were received by the clerk on September 12, 2008, Defendants believe the MidCountry records are considered filed with the district court and thus constitute part of the record on appeal for both appeals. *In re Arthur Andersen & Co*, 621 F.2d 37, 39 (1st Cir. 1980); *Hernandez v. C Aldridge III*, 902 F.2d 386, 388 (5th Cir. 1990).

On September 11, 2008, Magistrate Judge Timothy Hillman denied Plaintiffs' request to conduct an *in camera* review of the MidCountry records. (RA 75 pp. 16–17; RA 107 p. 5). Thus Plaintiffs' last legal roadblock to Defendants obtaining the MidCountry records was removed, and Defendants should have been able to obtain these records.

However, Defendants were told by individuals at the district court that the MidCountry records could not be found. (Ex. 3 pp. 2–4). Even Plaintiffs' counsel could not confirm their location, and thus, on October 1, 2008, Plaintiffs' counsel contacted Defendants to see whether Defendants had obtained the MidCountry records from the district court. (Ex. 3 p. 4; Ex. 4 p. 22).

On December 9, 2008, this Court declared the record on appeal for Case No. 08-2457 to be complete. (Briefing schedule filed on December 9, 2008). A docket entry entered in the district court on December 23, 2008, concerning a receipt dated December 16, is the first indication Defendants had from the district court

that the district court had located the MidCountry records. (RA 160). The withholding of the evidence in the MidCountry records from Defendants, whether inadvertent or not, impacted Defendants' litigation efforts, including Defendants' October 30, 2008, response to Plaintiffs' motion to dismiss.

Defendants believe that the MidCountry records speak to a number of issues in both of Defendants' appeals. (Ex. B pp. 8–12).

WHEREFORE, Gailon Arthur Joy and Robert Pickle pray the Court to hold in abeyance or stay Defendants' appeals until this Court receives a certified supplemental record from the district court consisting of a copy of the MidCountry records.

Respectfully submitted,

Dated: December 9, 2009

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CERTIFICATE OF SERVICE

I, Bob Pickle, hereby certify that on December 9, 2009, I served copies of this motion with accompanying exhibits 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.*

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

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Dated: December 9, 2009

s/ Bob Pickle
Bob Pickle