

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting)	
Network, Inc., and)	
Danny Lee Shelton,)	
Plaintiffs,)	
)	
)	
vs.)	Case No. 07cv40098-FDS
)	
)	
Gailon Arthur Joy,)	
and Robert Pickle,)	
Defendants.)	

BEFORE: The Honorable F. Dennis Saylor, IV

Status conference

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
September 11, 2008

Marianne Kusa-Ryll, RDR, CRR
Official Court Reporter
United States District Court
595 Main Street, Room 514A
Worcester, MA 01608-2093
508-929-3399
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 (via telephone)
3 Siegel, Brill, Greupner, Duffy & Foster, P.A.
4 M. Gregory Simpson, Esquire
5 Kristin L. Kingsbury, Esquire
6 100 Washington Avenue South, Suite 1300
7 Minneapolis, Minnesota 55401
8 for the Plaintiffs, Three Angels Broadcasting Network, Inc.,
9 and Danny Lee Shelton

6 Fierst, Pucci & Kane, LLP
7 J. Lizette Richards, Esquire
8 64 Gothic Street, Suite 4
9 Northampton, Massachusetts 01060
for the Plaintiffs, Three Angels Broadcasting Network, Inc.,
and Danny Lee Shelton

10 (via telephone)
11 Gailon Arthur Joy
12 P.O. Box 1425
Sterling, Massachusetts 01564
Pro Se

13 (via telephone)
14 Robert Pickle
15 1354 County Highway 21
Halstad, Minnesota 56548
Pro Se

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

THE CLERK: Case No. 07-40098, Three Angels
Broadcasting versus Joy.

Counsel and defendants, please identify yourself for
the record.

MR. SIMPSON: On behalf of the plaintiffs, Greg
Simpson -- Greg Simpson and Kristin Kingsbury on behalf of
Three Angel -- Three Angels Broadcasting Network, Inc. and
Danny Lee Shelton, the plaintiffs.

MS. RICHARDS: And also Lizette Richards on behalf of
Three ABN and Danny Shelton, the plaintiffs.

THE COURT: All right. Good afternoon.

MR. JOY: Gailon Arthur Joy, pro se, defendant.

THE COURT: Good afternoon.

MR. PICKLE: Bob Pickle, pro se, defendant.

THE COURT: All right. Good afternoon. All right.
This is a status conference in this matter. All counsel, but
Ms. -- and parties but Ms. Richards are appearing by telephone.
If I can ask everyone not only to speak up and to speak
clearly, but to identify yourselves before you speak so the
stenographer can keep track who is speaking.

And Mr. Simpson, I think we're on speaker phone on
your end. You were breaking up a little bit. I may ask you to
pick up the receiver at some point, if we continue to have

1 trouble.

2 MR. SIMPSON: That's fine. Just let me know, Judge.

3 THE COURT: All right. Let me begin with there are
4 some motions pending, which I think the time for response has
5 not yet run, and I have quickly reviewed an order from
6 Magistrate Judge Hillman, which was issued today.

7 What I'm going to do is to -- the motion for discovery
8 that was filed on September 8th, Docket entry 98, appears to be
9 moot, because an amended motion for discovery was filed on
10 September the 9th, Docket No. 104.

11 Docket -- motions -- the motion for discovery, leave
12 to cause subpoena to be served on U.S. Attorney Courtney Cox
13 and upon the Fjarli Foundation, if I'm pronouncing that right,
14 No. 94, and the amended motion for discovery, leave to cause
15 subpoena to be served upon a port director and upon Delta
16 Airlines, will be referred to the magistrate judge for
17 resolution once a response from plaintiffs has been filed.

18 And as an aside, I didn't realize Courtney Cox was a
19 U.S. Attorney.

20 Is Jennifer Aniston now a United States Attorney?

21 MR. SIMPSON: I wondered that.

22 THE COURT: Don't answer that.

23 The motion for extension of time filed by defendants,
24 No. 101, to extend the deadlines for discovery of 90 days, what
25 I'm going to do is this: I'm going to also refer that to the

1 magistrate judge and -- and grant him authority to extend
2 discovery from zero to 90 days, such as he thinks is
3 appropriate. It's hard for me to answer that in the abstract
4 without having a handle really on where matters stand
5 and -- and without really having time to digest this order.
6 So, if he does extend discovery, we will -- I will have
7 Mr. Castles adjust the remainder of the calendar as well, but
8 he -- he will have plenary authority to enter such orders as he
9 sees fit up to an extension of 90 days on all discovery
10 deadlines. And I think that takes care of the pending motions.

11 Counsel for the Plaintiff, Mr. Simpson, have I hit all
12 the motions that are pending? I think it's just those three at
13 this point.

14 MR. SIMPSON: The only thing that you didn't mention,
15 Judge, is the request for sanctions to Pickle's motion -- Mr.
16 Pickle's motion to extend discovery, and that was briefed in
17 document -- ECF documents 72 and 73.

18 What that relates to, Judge, is the fact that
19 Mr. Pickle, Mr. Joy, and I spent several days -- several hours
20 over several days, hashing out a resolution to the discovery
21 dispute that we believed we had reached an agreement that
22 called for them to withdraw the motion without prejudice. We
23 would then admit -- well, we were in the process of reviewing
24 and Bates stamping and screening for privilege and
25 confidentiality thousands of documents, which we ultimately

1 produced, and we agreed on a timetable to do that; and as part
2 of that, they were going to withdraw the pending motion without
3 prejudice, and we were going to agree to extend discovery. We
4 reached an agreement on it. Mr. Pickle asked me when would I
5 get the draft stipulation put together. I said, by Friday, the
6 close of business. And I did fax it to him Friday before the
7 close of business, and it was -- I was very surprised to find
8 him file the motion that -- that the very next week for an
9 extension and blaming it all on me and not mentioning the fact
10 that we had actually worked out an agreement, which has forced
11 me to file a responsive -- basically a joinder, and
12 that's -- that's the basis for that, and I did request that my
13 clients be reimbursed for their -- an hour or two of my time.

14 THE COURT: And I'm sorry -- this is No. 72?

15 MR. SIMPSON: Yes.

16 THE COURT: All right. The -- the reason it hasn't
17 been picked up is in the electronic filing world if it isn't
18 captioned as a motion, even if it seeks relief, it sort of can
19 fall through the cracks.

20 What I'm going to do is I'm also going to refer that
21 to the magistrate judge for resolution; but again, if
22 you're -- in the future, if you're requesting relief, even in
23 passing, even if it's relatively minor, it needs to be called a
24 motion just to make sure it gets on my radar screen and -- and
25 Mr. Castles' as well, okay?

1 MR. SIMPSON: Yes.

2 THE COURT: But I'll refer that request for resolution
3 to the magistrate judge.

4 MR. SIMPSON: Thank you, Judge.

5 THE COURT: All right.

6 MR. JOY: Your Honor, I would like to speak to that --

7 THE COURT: Yes, you don't need to respond on the
8 merits, because I'm not going to rule on them and have no basis
9 for accepting or rejecting what was said, but I will let you
10 respond.

11 MR. JOY: Well, your Honor, it may be significant
12 here.

13 THE COURT: This is Mr. Joy? I'm sorry. This is --

14 MR. JOY: Yes, sir.

15 THE COURT: Okay.

16 MR. JOY: Yes. Okay. The very simple fact is that in
17 a subsequent communication with us, Mr. Simpson did indeed
18 claim that he had supposedly faxed it to us, and then also
19 mailed them to us. Neither myself nor Mr. Pickle ever received
20 the mail that was supposedly sent. Neither of us also received
21 the fax, which goes to a common fax server. He then explained
22 or attempted to explain that it went to a wrong phone number.
23 We contacted the detective agency that recorded the receipt of
24 that, and found out that, in fact, they also had not received
25 such a fax. So I just wanted to put that on the record to make

1 it clear that we believe it was actually a Rule 11 issue here.

2 THE COURT: All right. I -- I -- let's -- again, I'm
3 not going to resolve it now. What you say on the record here
4 doesn't -- I mean if you don't respond to something, it doesn't
5 constitute a waiver, so I'm going to let Magistrate Judge
6 Hillman work that out.

7 MR. PICKLE: Your Honor, could I -- I just have one
8 quick question on that. I know at least regarding some
9 sanction of time for relief here, where a party is ordered to
10 pay costs, an opportunity to be heard must be had. Now in this
11 case, where there is no motion filed asking for relief, how do
12 we have the opportunity to be heard?

13 THE COURT: Well, let me do the following. It's, I
14 guess, a reasonable point.

15 Mr. Simpson, how quickly can you recast that in the
16 form of a motion, which is probably just putting a caption on
17 your request and calling it a motion?

18 MR. SIMPSON: Well, just a matter of two days.

19 THE COURT: All right. Why don't you do that.
20 I'll -- I'll give you until September the 15th, I think, next
21 Tuesday; is that right?

22 MR. PICKLE: I think that's Monday.

23 THE COURT: Monday, September the 16th, to get that on
24 file, and then call that a motion. It will be referred to the
25 magistrate judge.

1 And then, Mr. Joy and Mr. Pickle, you'll have the
2 usual amount of time in which to respond and submit affidavits
3 or exhibits or whatever it is you think you need to do in
4 response, okay?

5 MR. PICKLE: Thank you, your Honor.

6 MR. JOY: Thank you, sir.

7 THE COURT: All right. Is there anything else that we
8 can attend to here?

9 I think what I'm going to do is I'm going to set it
10 for a further status conference, really as a place holder. I
11 don't quite know what Magistrate Judge Hillman is going to do
12 in terms of the timetable, but I would like to set it for a
13 status conference, even expecting that it may be moved just so
14 that I'm -- I have something in the calendar where I'll see
15 you, and that we can talk about the timetable.

16 Putting that aside for the moment, is there anything
17 else that we ought to talk about now?

18 Mr. Simpson?

19 MR. SIMPSON: I think you covered everything, Judge.
20 That was what my agenda was.

21 THE COURT: Mr. Joy.

22 MR. JOY: I think relatively our problem, of course,
23 is that we still have very reluctant discovery, and every time
24 we make a move, they oppose, and we get hung up in waiting for
25 Judge Hillman to respond; and you know, it just becomes

1 problematic, we not being able to proceed, but the bottom line
2 is we will leave that, I guess, for Judge Hillman.

3 THE COURT: Okay. Mr. Pickle.

4 MR. PICKLE: I think that's about it, your Honor.

5 THE COURT: All right. What I'm going to do then is
6 I'm going to set it for a status conference in -- I think, late
7 October sounds about right at this stage; and again, it's a
8 place holder. It doesn't need to be that far out. If I need
9 to see you sooner, and it can be moved back if, for example,
10 discovery is extended into November, we probably ought to wait
11 until the close of discovery before further status.

12 All right. Let me get something on the calendar.

13 (The Court conferred with the clerk.)

14 THE CLERK: Three o'clock on October the 30th, will
15 that work?

16 MR. SIMPSON: I'm checking my calendar, Judge. This
17 is Greg Simpson. October 30th looks fine.

18 THE COURT: Is that all right with you, Mr. Joy and
19 Mr. Pickle?

20 MR. PICKLE: I believe so, your Honor.

21 THE COURT: Okay.

22 MR. JOY: Yes, sir, your Honor.

23 THE COURT: All right. October 30th then, status
24 conference again. Nothing magic about the date, but I
25 want -- ideally I would see you very shortly after the close of

1 discovery, so I'm not sure there's much point to me seeing you
2 if discovery is still ongoing at this point and you still have
3 matters before the magistrate judge.

4 So, I'll leave the ball in your court, particularly
5 yours, Mr. Simpson, as representing the plaintiff to -- to come
6 up with a more appropriate date, if it looks like that ought to
7 be put off or moved up. All right.

8 MR. SIMPSON: Judge, this is Greg Simpson. If -- if
9 Magistrate Hillman moves the discovery deadline zero to 90 days
10 such that -- what -- what procedure should we follow to get the
11 status conference moved out again?

12 THE COURT: Well, let me give you some scenarios.
13 What I don't want is for the case to simply sit there with
14 nothing happening. If -- if he says, for example, that
15 discovery will be cut off on October 29th, I'll see you
16 October 30th. That would work out nicely. If he says
17 discovery should continue until November 15th, let's put it out
18 until November 16th or 18th, or somewhere in that time frame;
19 and probably the easiest thing to do would be for you to
20 contact Mr. Joy and Mr. Pickle, agree on a date that's
21 convenient to all of you, and then contact Mr. Castles,
22 and -- and move the date.

23 MR. SIMPSON: Sounds good.

24 THE COURT: All right. And again, these are kind
25 of -- obviously, the case could take different twists and

1 turns. I don't want to go too long without seeing you again or
2 speaking to you again; but as long as discovery disputes are
3 ongoing, and discovery is still being exchanged, I think, at
4 least from my perspective, there's no immediately obvious
5 reason why we need to -- why I need to see you.

6 Okay.

7 MR. SIMPSON: Thank you, your Honor.

8 MR. PICKLE: Your Honor --

9 THE COURT: All right. Unless there's any questions
10 or other issues, we'll stand in recess.

11 MR. PICKLE: Your Honor, I guess I do have a question.

12 THE COURT: Yes.

13 MR. PICKLE: This is Mr. Pickle.

14 THE COURT: Yes.

15 MR. PICKLE: Okay. Until Magistrate Judge Hillman
16 rules on the -- a motion to extend discovery, then discovery is
17 just kind of halted at present?

18 THE COURT: Well, I -- I'm not sure I know the answer
19 to that, but I think it may be yes, but let me suggest the
20 following: If either side has outstanding discovery requests
21 that have not been responded to, they ought to be responded to.
22 In other words, something that should have been filed, or
23 provided rather, before the expiration of whatever deadline may
24 exist, that obligation continues. And, of course, you always
25 have an ongoing obligation to supplement discovery responses,

1 if they become incomplete when made. So -- but I'm going to
2 leave the timing of it up to Magistrate Judge Hillman.

3 MR. SIMPSON: Judge, this is Greg Simpson.

4 THE COURT: Yes.

5 MR. SIMPSON: Mr. Pickle's client raises
6 another -- it's the same point really that we have attempted to
7 schedule Mr. Pickle and Mr. Joy for deposition -- for their
8 depositions; and as of last week, they took the position that
9 they didn't want to produce themselves for deposition while the
10 document discovery is un -- is outstanding, even though I don't
11 see a relationship between those two issues. I would like to
12 take their depositions, so I'm anticipating we're going to have
13 a dispute, unless they're willing to produce themselves. They
14 wouldn't give any dates that they were available, so I was just
15 going to have to pick some and then bring a motion if they
16 didn't show up, and I prefer not to do that.

17 Can you give us some guidance on that.

18 MR. PICKLE: Your Honor, that is false.

19 MR. JOY: That is false.

20 MR. PICKLE: Totally false.

21 THE COURT: Hold on, hold on, everyone. Without
22 characterizing anything, Mr. Pickle and Mr. Joy are going to be
23 deposed. I'm not going to -- without something in front of me,
24 without an opportunity for both sides to weigh in, I'm not
25 going to characterize it, but whatever else happens in

1 discovery from this point forward, whatever deadlines are set,
2 Mr. Pickle and Mr. Joy will -- the plaintiffs will have an
3 opportunity to depose them; and if -- if you all can work that
4 out so that it happens before Magistrate Judge Hillman has
5 issued a ruling on the motion to extend the deadline, that's
6 fine, as far as I'm concerned.

7 If you feel you need to file a motion to compel, or a
8 motion for a protective order, we'll take that up in due
9 course.

10 MR. SIMPSON: Fair enough.

11 THE COURT: Okay.

12 MR. JOY: Your Honor.

13 THE COURT: Certainly, there's no possibility that I
14 will let this case go forward much longer without the key
15 players being deposed.

16 Yes, sir.

17 MR. JOY: Your Honor, frankly, we did not -- we did
18 not say we were not going to be deposed. We suggested that we
19 schedule the deposition following the current scope and
20 relevance motion responses from the judge.

21 THE COURT: Again, this is not a dispute I need to
22 resolve. If you -- if you think the matters are resolved, and
23 you can come up with a convenient date, that's great. If the
24 matters are not resolved, and you have a dispute, the aggrieved
25 party is going to have to file a motion.

1 MR. PICKLE: Your Honor, just to finish up with the
2 concern I was kind of thinking of when I was starting to ask
3 the question. Yes, our position has been, and I guess we
4 relayed this in the status conference in May. You know, we
5 raised it at different times that we really feel we need to get
6 the documents that we've requested before we can
7 do -- effectively do depositions, so that we know what -- what
8 questions, you know, we can make sure that our questions really
9 deal with the evidence we're looking at.

10 And I'm just a little concerned that it's that we
11 might -- you know, depending on how long it takes for some of
12 these decisions to be handed down and how long it takes for us
13 to get the documents that we may have trouble getting the
14 depositions scheduled after getting the documents we've
15 requested.

16 THE COURT: Again, I'm going to leave this for the
17 time being in the hands of the magistrate judge. If it comes
18 back to me in some form or another, my response is going to be
19 you -- you have the right to depose Mr. Joy and Mr. Pickle, as
20 they have a right to depose Mr. Shelton, or whoever it is, you
21 know, are the key players on the other side. You have the
22 right to do so with a full document, or reasonably full
23 document production in hand; and I would like, you know, this
24 case to move, but I -- because I am not immersed in the ins and
25 outs of the disputes, I'm going to leave that in his hands, and

1 we'll take it from there, okay.

2 MR. PICKLE: Thank you, your Honor.

3 THE COURT: I -- I'm -- at the end of the day, I'm
4 going to try to do the rational thing, and the rational thing
5 is to have both sides exchange documents and then take the
6 depositions of the key people once they have the documents in
7 hand. And I would like that to happen in some reasonably
8 prompt time frame, but I'm going to leave that to him in the
9 first instance.

10 MR. PICKLE: Thank you, your Honor.

11 MR. SIMPSON: From the plaintiffs' perspective, that
12 sounds like a good resolution. I think Magistrate Hillman has
13 a good grasp of the case, so...

14 THE COURT: All right. And again to state the
15 obvious, no matter how tempers may flare or
16 disputes -- whatever disputes may come up, everyone needs to be
17 reasonably professional and -- and attempt to work together
18 to -- to accommodate one another's schedules and so forth,
19 and -- and to be as reasonable as you can under the
20 circumstances.

21 MR. SIMPSON: We'll take that to heart, Judge.

22 THE COURT: Okay.

23 MR. SIMPSON: All right.

24 THE COURT: All right. Anything further?

25 MR. SIMPSON: Nothing from the plaintiffs' side,

1 Judge. This is Greg Simpson.

2 THE COURT: Mr. Joy. Mr. Pickle.

3 MR. JOY: Nothing from here, sir.

4 MR. PICKLE: Nothing from here, sir.

5 THE COURT: Okay. Thank you.

6 MS. RICHARDS: Thank you very much.

7 (At 4:07 p.m., court was adjourned.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, Official Court Reporter, do hereby certify that the foregoing transcript, consisting of 18 pages, is a true and accurate transcription of my stenographic notes in Case No. 07cv40098-FDS, Three Angels Broadcasting Network, Inc., and Danny Lee Shelton versus Gailon Arthur Joy and Robert Pickle, before F. Dennis Saylor, IV, on September 11, 2008, to the best of my skill, knowledge, and ability.

/s/ Marianne Kusa-Ryll
Marianne Kusa-Ryll, RDR, CRR
Official Court Reporter