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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

vs. ) CA No. 07-40098

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  
May 7, 2008

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

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P R O C E E D I N G S

THE CLERK: All rise.

Court is now open. You may be seated.

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

Counsel, please note your appearance for the record.

MS. HAYES: Thank you. Your Honor, Jerrie Hayes with Siegel, Brill, Greupner, Duffy & Foster here on behalf of Danny Shelton and Three Angels Broadcasting.

MS. RICHARDS: Attorney Lizette Richards from the firm of Fierst, Pucci & Kane, here on behalf of the plaintiffs.

THE COURT: Good afternoon.

Mr. Joy.

MR. JOY: Gailon Arthur Joy, pro se.

THE COURT: All right. And Mr. Pickle.

MR. PICKLE: Robert Pickle, pro se.

THE COURT: All right. Good afternoon. All right. This is a status conference in this case. I had set a -- a discovery schedule, as I recall, that called for discovery to be complete July the 30th; is that right? And I think I wanted to check in with you all before we get too far down the path to see how matters were going.

Ms. Hayes, where do things stand from your perspective?

1 MS. HAYES: Yes, your Honor. Pointing directly to the  
2 discovery matters, discovery has been proceeding. We did have,  
3 I would say, not an instrumental delay, but a considerable  
4 delay in receiving an order on the motion for a protective  
5 order that plaintiffs submitted to the Court in early December  
6 of last year. We did receive that order almost four months to  
7 the day after the motion was made.

8 THE COURT: Was that my fault? Did I -- you can say  
9 yes.

10 MS. HAYES: I really don't know, your Honor. I think  
11 it took two, maybe three months for it to be assigned to  
12 Magistrate Judge Hillman --

13 THE COURT: All right.

14 MS. HAYES: -- at that point.

15 THE COURT: That's -- every now and then, and I  
16 apologize, it's unfortunate, things fall through the cracks for  
17 no good reason. If that happens, you shouldn't be shy about  
18 pestering the Court, more specifically the clerk, about where  
19 things stand, okay, because we are -- we are managing a lot of  
20 planes that take off and land here, and sometimes some of them  
21 crash, to stick with my unfortunate metaphor. So I apologize.

22 MS. HAYES: Well, your Honor, the Court was very  
23 responsive. We did eventually call. It was just a matter of a  
24 few days when the matter was assigned to Magistrate Hillman.  
25 We got a hearing fairly quickly, and he took a few weeks, which

1 was finally issued on April the 17th.

2 After that delay, we did sort of come back into the  
3 discovery mode. Things had sort of, I guess, gone into stasis  
4 during the pendency of that, since it went into the core of  
5 production or dissemination of the materials to be produced.  
6 However, that motion strictly went to the issue of  
7 confidentiality of relevance and to produce documents. That  
8 motion was not made concerning what are disputed to be relevant  
9 requests, only to issue in confidentiality. We have moved  
10 forward with our 26(a)(1) disclosures. The last of those that  
11 did fall within the confidentiality order were mailed out the  
12 end of last week, and we have also moved ahead with -- I've  
13 conferred with my client regarding production of additional  
14 documents that go not to the 26(a)(1) disclosures that were  
15 specifically addressed in the orders, but now to the general  
16 requests for production of documents, which were served on the  
17 defendants in this case some months ago.

18 We have not had what I would consider our rule  
19 requisite good faith discussions concerning the parties'  
20 disputes as to the request for production of documents that are  
21 currently outstanding.

22 Mr. Pickle has sent some e-mails sort of wanting to  
23 talk scheduling and when there might -- an inspection may take  
24 place; but at this point, plaintiffs believe that most of the  
25 requests for production of documents that were served by Mr.

1 Pickle go -- are grossly overbroad, almost indecipherably  
2 overbroad, and that they go to issues not relevant to the very  
3 narrow claims of financial and administrative impropriety that  
4 were -- that are at issue in the underlying defamation case.

5           So we believe that further discussion and actual  
6 negotiations concerning that dispute will probably take place  
7 over the next week or two. Given the difficulty of  
8 negotiations in this case with the pro se litigants on other  
9 issues, I don't foresee that those disputes will be resolved;  
10 however, much to my apparent chagrin, I remain Pollyanna, and  
11 will give it our best try, but at least from our perspective, I  
12 want to be candid with the Court that what we anticipate are  
13 two discovery motions probably coming up within the next month:  
14 One, a motion for a protective order not relating to  
15 confidentiality, but instead relating to the scope of discovery  
16 and what we believe are irrelevant and ancillary and  
17 undiscoverable issues; and then a second motion, a motion to  
18 compel for information identifying the person or persons who  
19 provided Mr. Pickle and/or Mr. Joy with the statement that they  
20 now allege they did not make up on their own accord, but simply  
21 republished. They were defamatory, now claiming in defense  
22 that those were statements made by others. They have to date  
23 refused to disclose those persons. We have engaged in some  
24 negotiation concerning that. I don't believe we've reached an  
25 absolute impasse. I think there's still some room to talk on

1 those issues, but if it does turn out that the quote/unquote  
2 confidential informant defense that Mr. Pickle and Mr. Joy are  
3 continuing to put forth does not get resolved then we would  
4 likely be making a motion to compel on that ground.

5 At this point, the discovery schedule from plaintiffs'  
6 perspective is still very workable. We don't have expert  
7 disclosures until following the July 30th fact discovery  
8 deadline, and I don't foresee making requests at least at this  
9 time for just a blanket extension of the discovery schedule or  
10 the case schedule. What I would probably be doing on behalf of  
11 the plaintiffs is submitting, and at the same time resubmit one  
12 or both of these motions, a request for an extension of the  
13 case calendar to go only as long as it takes to get a decision  
14 from the Court on those pending motions.

15 I don't want to put the Court in a position of giving  
16 us a five-month extension when it's something that's going to  
17 be resolved in six to eight weeks. On the other hand, I want  
18 to make sure to have enough time for the Court to take a look  
19 at those motions and give us a decision. So, from a discovery  
20 perspective, that's sort of how I see things going, and the  
21 schedule seems fine with me.

22 THE COURT: Okay. All right. Mr. Joy, do you have  
23 anything you wish to say in that regard?

24 MR. JOY: Yes, your Honor. Let me point out at the  
25 discussion that we had on December 14th, the Court had made it

1 very clear that they did not want the confidentiality issue to  
2 end up in stopping this process; and, in fact, at every turn we  
3 found that as we proceeded, particularly with third-party  
4 discoveries, we ran into this confidentiality issue that each  
5 of the respondents maintained came from the people defending  
6 Three ABM, or representing Three ABM. So it effectively did  
7 indeed bring the discovery process to a halt until we can work  
8 out this confidentiality agreement.

9           The second thing I would like to point out, your  
10 Honor, is that you had made it very clear to these people that  
11 they needed to come up with a narrowly-defined confidentiality  
12 agreement; and, in fact, we got this ridiculously overbroad  
13 agreement that practically put the entire case under seal  
14 again. And, of course, the issue finally went forward to the  
15 magistrate, at which point both sides produced proposals. The  
16 magistrate came up with what I felt was a reasonable  
17 confidentiality agreement. He didn't cover some things, but on  
18 the other hand, it certainly -- from our standpoint, it's  
19 certainly workable.

20           The other thing I would like to point out is the issue  
21 of obstruction in this case is becoming a serious one. These  
22 people repeatedly claim that we're the ones that are  
23 uncooperative. Your Honor, we have produced everything under  
24 the sun to them. We have produced thousands of e-mails. We  
25 have produced about everything you could possibly ask for, and



1 if it's -- if the answers to their questions are not in those  
2 things then they're probably not readily available.

3 THE COURT: Well --

4 MR. JOY: The amazing --

5 THE COURT: -- I don't mean to cut you off, but two  
6 points. In terms of what has happened in terms of the  
7 protective order, that issue has been resolved, as I understand  
8 it. Again, I'm sorry it took so long, but as the -- I think  
9 it's Vince Gill has a song that goes, "there ain't no future in  
10 the past." Let's not rehash things that have already been  
11 discussed.

12 On a going-forward basis, I can't decide anything in  
13 the abstract. I'm not going to try to work through any issues.  
14 It's both parties, all three parties, have responsibility  
15 to -- to confer and to see if you can either work it out or  
16 narrow the field of disputes; and things that can't be resolved  
17 are going to be brought to the attention of the Court, and you  
18 know, beyond that, there's not really much I can say.

19 MR. JOY: Well, your Honor, the -- the representation  
20 has been made that we have been unwilling to work with them on  
21 those conference calls. One date, and frankly, I arranged the  
22 conference call from my own phone lines, so I assume they have  
23 documentation of it. We took several hours to go over these  
24 issues related to relevancy and privilege and all the other  
25 things that they allege, and we specifically answered case

1 after case after case why they were relevant, why they were not  
2 privileged, and on and on and on. The problem is that these  
3 people filed a lawsuit, your Honor. They allege specifics in  
4 that lawsuit; and when we go to attempt to produce evidence  
5 that supports the defense of this claim, they suddenly  
6 determine that it's not relevant. Now, we need that  
7 information in order to defend ourselves, and what we're  
8 finding is that these people are constantly being obstructive.  
9 They haven't produced a thing that's worth ten cents in terms  
10 of their disclosures they were supposed to -- well, that they  
11 were compelled to disclose.

12 In addition to that, the confidentiality agreement has  
13 now been completed for what, almost three weeks. And your  
14 Honor, we haven't seen document one covered even by  
15 confidentiality that they took that they have claimed. We have  
16 got a serious problem of obstruction here is what we really  
17 have, and I think the Court needs to address that and issue  
18 that --

19 THE COURT: Let me -- here's the way this works. If  
20 you can't work it out with the other side -- and you have an  
21 obligation to confer in good faith -- you should file a motion,  
22 some sort of motion to compel discovery, a motion for  
23 sanctions, if you think they engaged in improper behavior.  
24 We'll take it up. But, again, I'm not going to decide any  
25 issue in the abstract.

1 MR. JOY: I understand that, your Honor, and we'll do  
2 that. The thing is we did file a motion to compel, and now  
3 they're rearguing the motion to compel is what we're dealing  
4 with here.

5 Let's see. We are in the process of finally  
6 proceeding on, but again as I pointed out, what has happened  
7 here is that particular third party parties, who  
8 are -- third-party subpoenas that we have actually requested  
9 the information from have also decided to be obstructive, and  
10 so that is taking the process of us having to go and file  
11 appropriate motions to compel in the appropriate state courts.  
12 That -- the point of that is, your Honor, that is going to take  
13 a substantial period of time to resolve those one at a time and  
14 will obviously require additional time for discovery, because  
15 at this point we are still trying to discover documents. We're  
16 trying to get production of documents here, not to mention any  
17 depositions that would have to be had after the fact to clarify  
18 whatever needs to be clarified.

19 THE COURT: If I am convinced that the parties are  
20 attempting to move forward in good faith and notwithstanding  
21 whatever disputes you have and the deadlines are not workable,  
22 because, you know, the work simply can't be done in the time  
23 allowed given all the circumstances, I'm willing to entertain a  
24 motion for a reasonable extension of time, but that's -- right  
25 now, the discovery deadline is July 30th. That's still a

1 better part of three months away. Let's see how this goes; and  
2 if we need to file a motion, I'll hear you.

3 MR. JOY: Thank you, your Honor.

4 THE COURT: All right. Mr. Pickle.

5 MR. PICKLE: Yes, your Honor, I believe the deadline  
6 for requests to produce such is the end of this month, and I  
7 think at this point that is not going to be workable. So,  
8 that's one point I would like to make.

9 THE COURT: Hold on. Let me pull my scheduling order  
10 here.

11 MS. HAYES: Your Honor, if I may speak to it.

12 THE COURT: Yes.

13 MS. HAYES: The scheduling order states that RFA's and  
14 RPD's need to be served by May the 28th.

15 THE COURT: May 28th, all right, as amended.

16 MS. HAYES: Correct, under the amended scheduling  
17 order, and both parties have served -- well, I take that back.  
18 Plaintiffs have served their requests for production of  
19 documents on both defendants. Mr. Pickle has served RFA's or  
20 RPD's on the plaintiffs. We have received no written discovery  
21 independently from Defendant Joy, but again, that's a deadline  
22 for service only, and I don't think, at least from the  
23 plaintiffs' perspective, it won't be an issue with that  
24 deadline.

25 THE COURT: Mr. Pickle, this is simply a request.

1 It's not necessarily a response.

2 What is the reason you can't get your request on file  
3 by May 28th?

4 MR. PICKLE: Well, for one thing, your Honor, I  
5 haven't had any response. I haven't had any responsive  
6 documents served upon me yet from these requests to produce  
7 that I served at the end of November and early December.

8 In order to know what to ask further, we really need  
9 to have responsive documents from each.

10 THE COURT: All right. Ms. Hayes, what's your  
11 response to that?

12 MS. HAYES: Your Honor, my response to that is that  
13 the RPD's were served on the plaintiffs in December, and Mr.  
14 Pickle has made no effort whatsoever to move forward with any  
15 kind of -- the good faith effort to resolve the dispute broke  
16 down. There has been no follow-up on that from Mr. Pickle  
17 maybe for four or five months.

18 THE COURT: Well, surely, if he has asked for  
19 documents from the plaintiff, even if those requests are  
20 overbroad, it seems to me that clearly there must be a core of  
21 documents you think are relevant that could be produced to get  
22 the process rolling. In other words, if he asks for A through  
23 Z, and you believe that only A through G are relevant, I don't  
24 know why you couldn't produce A through G and preserve your  
25 rights about H through Z and fight about that.

1 MS. HAYES: And I do appreciate that, your Honor. I  
2 think if we were looking at somewhat more traditional requests  
3 for admissions and interrogatory -- requests for production of  
4 documents and interrogatories, it would be possible for the  
5 plaintiffs to discern and disseminate from those written  
6 requests items we could and could not produce, but that was  
7 part of a multihour discussion that was held when these were  
8 originally served that they are so -- the requests extend for  
9 paragraphs; and in some cases, pages, your Honor. The  
10 definitions go on for half a page to a page. It's -- it's  
11 almost impossible to untangle the components of each request in  
12 order to know what would and wouldn't be in a traditional  
13 situation, what would and wouldn't be producible or responsive.  
14 We did, in that discussion, attempt to parse out the various  
15 requests, which is probably why it took so long, and that  
16 proved unsuccessful, because every time we sort of got down to  
17 the crux of the issue, and Mr. Pickle would identify the exact  
18 type or nature of information that he was looking for, it  
19 always ended up being information that was -- that was  
20 irrelevant to the claims or defenses, or that was covered by  
21 the confidentiality order.

22 We have since, as I said, produced items in response  
23 to 26(a)(1) disclosures, over 10,000 pages and two CDs of  
24 material. We have, also in response to Mr. Pickle's letter  
25 have talked about scheduling with my client in terms of the

1 production of the nonconfidential information. We would expect  
2 that that would be done by the end of the month. I don't have  
3 any issue moving that deadline back by another two weeks or a  
4 month, if that's -- if Mr. Pickle feels that's necessary.  
5 I -- I don't know that that would be an issue in any event, as  
6 again these discovery motions are likely to be filed.

7 THE COURT: Here's what I'm going to do in that  
8 regard. Just to allow a little more breathing room here, I'm  
9 going to extend the deadline for service or request for  
10 production of documents, requests for admissions, by two weeks  
11 to June the 11th, but I do expect that this matter, one way or  
12 another, needs -- will get resolved shortly, that is, either a  
13 motion to compel or a motion for a protective order or some  
14 formalized way of bringing this issue to closure. It can't  
15 simply dangle forever. This has got to be resolved, and --

16 MR. PICKLE: Your Honor, I have a question.

17 THE COURT: Yes.

18 MR. PICKLE: As far as the discovery deadlines go and  
19 third-party subpoenas, would that be, you know, as part of the  
20 schedule would that fall within the May 28th deadline or the  
21 July deadline?

22 THE COURT: The July deadline. That is a third-party  
23 subpoena for -- it's either going to be a deposition or a  
24 subpoena duces tecum that requires the parties to produce  
25 records, but that's -- I would deem that to be within the

1 July 30th deadline.

2 MR. PICKLE: Another matter I have. I guess once I  
3 get -- finally get the material that, you know, the rest of the  
4 initial disclosures, I guess I'll be able to see how  
5 substantial those are and whether they indeed have given us all  
6 their initial disclosures. I'll look forward to receiving  
7 that.

8 What we did get, she mentioned that 12,000 pages on  
9 two CDs, and there really wasn't much in there, but a matter  
10 that is important, of importance to us. We served a subpoena  
11 on Mid Country Bank, a third-party subpoena duces tecum in  
12 mid-January, and the bank was going to comply with that, and  
13 the plaintiff or plaintiff Shelton opened up a miscellaneous  
14 case in the District of Minnesota to quash that subpoena on  
15 February 6th and 7th. And in part, part of the rationale for  
16 halting this is that subpoena was because there was this  
17 pending motion for a protective order. Okay. So the -- the  
18 magistrate in Minnesota issued an order enforcing the subpoena.  
19 He did that prior to Magistrate Hillman issuing the  
20 confidentiality order, and so what the terms of his order were  
21 that upon payment to the bank of nearly \$3,700 they would  
22 produce the bank statements. That wouldn't include any checks  
23 or deposit slips. He gets the bank statements, which is  
24 all that subpoena asks for. Upon payment by us through the  
25 bank, the bank would produce those bank statements under seal



1 to Magistrate Hillman.

2 Well, now we have the confidentiality order, and we  
3 would like to see -- we would like to have those -- those bank  
4 statements produced directly to us. It wouldn't make much  
5 sense to me to spend \$3,700 to get bank statements if I don't  
6 know I can even see them. The bank has had no problem  
7 producing these documents to us.

8 THE COURT: Is this -- I can't modify an order entered  
9 by a judge in Minnesota, if that's the question.

10 MR. PICKLE: Okay.

11 THE COURT: You can go maybe back in front of that  
12 judge and seek modification there, but I don't have any  
13 authority over that judge.

14 MR. PICKLE: Okay.

15 THE COURT: And again, this is -- that sounds to me  
16 like a -- like a -- an issue which in the normal course, the  
17 parties would confer and agree on whatever makes the most sense  
18 in terms of logistics and economics; and again, I would expect  
19 all the parties to confer in good faith on any issue of that  
20 sort. The magistrate judge is much more likely to be receptive  
21 to a joint request for a modification than one that's  
22 unilateral or disputed. So, why don't you see if you can't  
23 come to some common ground there.

24 MR. PICKLE: Okay. We'll see what we can do on that.  
25 Given the track record thus far, I don't know, but we'll give

1 it a try.

2 THE COURT: All right. Anything further we ought to  
3 talk about?

4 Ms. Hayes?

5 MS. HAYES: No, I don't believe so, your Honor.

6 THE COURT: Mr. Joy.

7 MR. JOY: I think that will do it, your Honor.

8 THE COURT: Mr. Pickle.

9 MR. PICKLE: I can't think of anything, your Honor.

10 THE COURT: All right. When -- what is the next event  
11 that we have scheduled? Do I have another status conference?  
12 Why don't I set it for a status conference the end of July,  
13 beginning of August. The week of July 28th.

14 July the 31st at two o'clock, does that work for  
15 everyone?

16 MS. HAYES: Yes, your Honor.

17 THE COURT: All right. July the 31st at two o'clock  
18 for a further status conference.

19 In the event that the -- if we wind up moving that  
20 July 30th discovery deadline, for example, suppose that were to  
21 be pushed back 30 or 60 days, it might make sense to push that  
22 status conference back as well, but we can talk about that if  
23 and when the time comes. Okay.

24 All right. Thank you. We'll stand in recess.

25 (At 4:19 p.m., Court was adjourned.)

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C E R T I F I C A T E

I, Marianne Kusa-Ryll, Certified Realtime Reporter, do hereby certify that the foregoing transcript, consisting of 18 pages inclusive, is a true and accurate transcription of my stenographic notes in Case No. 07-40098, Three Angels Broadcasting Network, Inc., and Danny Lee Shelton versus Gailon Arthur Joy and Robert Pickle, before F. Dennis Saylor, IV, on May 7, 2008, to the best of my skill, knowledge, and ability.

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