

In The
United States Court of Appeals
For The First Circuit

No. 08-2457 & 09-2615

Three Angels Broadcasting Network, Inc.,
an Illinois Non-Profit Corporation;
Danny Lee Shelton,

Appellees,

v.

Gailon Arthur Joy and Robert Pickle,

Appellants.

MOTION TO STRIKE DEFENDANTS' STATUS REPORTS

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Appellees Three Angels Broadcasting Network, Inc. and Danny Lee Shelton (“Appellees”) submit this Motion to Strike Defendants’ Status Reports and state in support of the Motion the following:

1. The District Court granted Plaintiffs’ motion for voluntary dismissal by an order entered on November 3, 2008. (Doc. 129). The District Court imposed conditions on the dismissal including (1) that if Plaintiffs subsequently desired to bring the same or related claims against Defendants, they would have to do so before the same District Court; and (2) Defendants were granted an opportunity to bring a motion for an award of their costs. (See Electronic Clerk Notes for proceedings held before Judge F. Dennis Saylor on October 30, 2008).

2. On November 13, 2008, the Defendants below, Appellants here, filed a Notice of Appeal that commenced this appeal. (Doc. 133). This Court assigned the appeal Docket No. 08-2457. On the same day, Defendants filed a motion in the District Court for an award of their costs. (Doc. 130).

3. On April 13, 2009, the District Court denied Defendants’ motion for an award of costs. (Doc. 166).

4. On April 27, 2009, Defendants filed a motion in the District Court for reconsideration and amendment of Judge Saylor’s order denying their motion for costs. (Doc. 169).

5. On August 19, 2009, the United States Court of Appeals for the First

Circuit issued an order vacating the submission notice dated May 29, 2009, and holding the appeal in abeyance “pending the disposition of the motion for reconsideration by the district court.” This Court directed that “In the event that defendants are dissatisfied with the district court’s ruling on their motion for reconsideration, they should file a new timely notice of appeal.”

6. The August 19 order of this Court further directed that “Defendants shall file a status report every sixty days and promptly inform this court once the motion for reconsideration has been decided by the district court.”

7. Defendants filed a status report with this Court on October 5, 2009. Instead of a report on the procedural developments in the District Court, as this Court’s order clearly contemplated by the term “status report,” Defendants submitted a 12-page screed that regurgitated the post-judgment arguments they had made to the District Court. Appellees had opposed those arguments in the District Court (and prevailed in every respect), but finding no rule authorizing a reply to a status report, they decided to ignore it even though it amounted to an unauthorized appellate brief.

8. On October 26, 2009, the District Court issued its order denying Defendants’ motion to reconsider and amend the judgment. (Doc. 193). Judge Saylor found that Defendants’ arguments lacked merit.

9. On November 23, 2009, Defendants filed a second Notice of Appeal.

(Doc. 196). The new appeal was assigned Docket No. 09-2615.

10. On February 5, 2010, Defendants filed a Second Status Report in this Court, which appears on the dockets of both appeals. The document began “Though not required to do so, Defendants hereby voluntarily present this status report to keep this Court abreast of developments in the district court.” The document then quotes Judge Saylor as stating that “his impartiality might reasonably be questioned,” omitting just enough context so that it appears as if Judge Saylor was admitting his prior rulings were issued due to partiality to the Plaintiffs. In context, Judge Saylor merely states that his partiality as to *future* rulings might be questioned because of the judicial misconduct complaint filed by these Defendants (which Appellees respectfully submit is frivolous). The document attaches as exhibits a highly objectionable and argumentative brief and an equally objectionable and argumentative affidavit. This unauthorized and uninvited “status report” amounted to yet another unauthorized appellate brief.

11. Most recently, on April 6, 2010, Defendants filed a Third Status Report in this Court, which also appears on the dockets of both appeals. The document again begins with the preamble: “Though not required to do so, Defendants hereby voluntarily present this third status report to keep the Court abreast of developments in the district court.” What follows is simply a regurgitated version of a new motion Defendants have recently made before the

District Court to try to expand the record there to include criminal charges recently filed against a non-party that Appellees respectfully submit are of no consequence to this appeal or to the motions pending below. Appellees believe the Third Status Report is simply another attempt to enlarge the appellate court record to include extraneous and irrelevant information that Defendants believe advances their cause by smearing their enemies. The Third Status report also includes out-of-context snippets taken from briefs filed by the undersigned, which Defendants characterize as “damaging admissions.” In context, they are nothing of the sort.

12. This appeal will be decided based on the record created in the District Court below. Defendants have become increasingly bold in using the mechanism of a “status report” to engage in argument before this Court and to enlarge the appellate court record. Not only is this argument and information unauthorized and uninvited, there is no procedural mechanism by which Appellees may respond.

13. Appellees therefore ask that this Court strike the so-called status reports filed by the Defendants in both appeals. Appellees are concerned that someone at the Court of Appeals will read the Defendants’ poisonous diatribes and take them seriously. To the extent they are needed to resolve appellate issues, they will be forwarded as part of the District Court record. As there is no continuing need for these so-called status reports, Appellees ask that they be stricken from the record and either physically destroyed or else marked in some manner so that

Court staff is made aware that they should not be reviewed or considered in connection with the appeal. Since Appellees have not had an opportunity to rebut them, it would be fundamentally unfair if the Court were to review or consider these materials in connection with the substantive issues on appeal.

14. Appellees also ask that this Court instruct Defendants to cease filing status reports (or extraneous information and argument under any other label) and strongly caution them against filing unauthorized documents.

15. Finally, Appellees ask that this Court order Defendants to pay Appellees \$1,000.00 as reasonable attorneys' fees incurred in connection with bringing this motion. The actual cost to Appellees exceeded that sum. This award is justified because the last two status reports were clearly unauthorized and were filed without notice to Appellees or opportunity to object. Defendants acknowledge in both reports that they were not required to file them, and so knew them to be unauthorized. Appellees should not have to bear the cost of this motion.

Respectfully submitted,

Dated: April 7, 2010

By s/ M. Gregory Simpson

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