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.

PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' STATUS REPORTS

M. Gregory Simpson
Meagher & Geer P.L.L.P.
33 South Sixth Street #4400
Minneapolis, MN 55402
Telephone: (612) 338-0661

John P. Pucci
J. Lizette Richards
Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060

Attorneys for Appellees

INTRODUCTION

Plaintiffs-Appellees' Three Angels Broadcasting Network, Inc. and Danny Lee Shelton (collectively "3ABN") submit this reply to Defendants-Appellants' response to 3ABN's motion to strike their status reports, electronically filed on April 18, 2010.

Appellants' reaction to 3ABN's motion illustrates exactly why it should be granted: A simple motion to strike unauthorized filings and award fees has engendered a 20-page opposition and spawned two new motions – four, if one considers that each motion has been filed in appellate file No. 08-2457 and 09-2615. Appellants now want to re-file each of their three objectionable "status reports" in *both* appellate court files, and also bring their usual motion for sanctions based on "material and intentional misrepresentations" by the undersigned, which in the parlance of these *pro se* Appellants means anything they disagree with.

Appellants' practice of piling motions on top of motions in order to avoid letting this case reach an end needs to stop. An irony of litigation is that parties who engage in vexatious litigation practices frequently seem to be unaware of it, and usually are the first to attack the integrity of everyone around them. Appellants here have repeatedly and baselessly attacked the integrity and ethics of 3ABN, its counsel, the district court judge, the magistrate judge, and even the courthouse staff. They have made a mockery of court rules in what has become more farce than litigation. After the case was voluntarily dismissed and there was no longer any possibility of meaningful relief being awarded to either party by continuing it, Appellants have *doubled* both the duration of this litigation

and the number of court filings. It has to stop. Granting 3ABN's motion and denying Appellants' will help.

I. MOTION TO STRIKE STATUS REPORTS.

Appellants make essentially two arguments in response to 3ABN's motion to strike their status reports: (1) This Court's August 19, 2009 order directing Appellants to file a status report every 60 days is still in effect; and (2) nothing prevents them from filing voluntary status reports if they feel like it. These are arguments are specious.

A. This Court Directed Appellants to File Status Reports Only Until the District Court Decided the Pending Motion for Reconsideration.

Appellants quote the relevant passage from this Court's order of August 19, 2009, which instructed them to file status reports every 60 days "and promptly inform the court once the motion for reconsideration has been decided." Anybody reading this order would understand that the requirement to file a status report extends only until the motion for reconsideration is decided. At that point, the case would be ready for appellate review, and status reports would no longer be needed.

Appellants now pretend that they understood this order to mean that they should file status reports every 60 days until the end of time. This position is demonstrably disingenuous because the Appellants did not act consistently with it. Their first status report was filed on October 5, 2009, which was 47 days after the order and therefore was timely. Their *second* status report, however, was filed on February 5, 2010 – 123 days after the prior status report. If they really believed that this Court had ordered them to file status reports every 60 days, their second report was 63 days late.

But Appellants' understanding of this Court's order is not merely discernable by deduction. Appellants *told* the Court what they believed it meant. The second status report begins with these words: "Though not required to do so, Defendants hereby voluntarily present this status report to keep the Court abreast of developments in the district court." Thus, they knew perfectly well that they were filing a document that was uninvited and unauthorized. Appellants' contention to the contrary is false.

Similarly, when Appellants filed their third "status report" – really more akin to a bucket of muck than a report – they knew full well that it was unauthorized and uninvited. They said as much in the first sentence: "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."

Finally, it should be noted that this Court's August 19, 2009 order directed Appellants to file status reports in Case No. 08-2457. It did not order them to file status reports in the subsequent appeal, Case No. 09-2615. It appears that they have filed status reports in both appeals. Appellants cannot claim that this Court invited them to clutter the docket of the current appeal with the irrelevant material contained in their second and third status reports. Without belaboring the point further, Appellants' position that the second and third status reports were required by this Court is not taken in good faith, and this Court has all the evidence it needs to find as much.

B. The Status Reports Are Not Authorized.

Appellants appear to argue as a fallback position that nothing in the rules affirmatively prohibits them from filing whatever they feel like filing. On the contrary,

the U.S. Court of Appeals for the First Circuit Rulebook, containing both the Federal Rules of Appellate Procedure and the First Circuit Local Rules, enumerate the briefs, memoranda and other documents that may be filed. There is no provision in those rules for uninvited status reports, which are in substance briefs intended to influence the merits of the appeal. The second and third status reports are unauthorized briefs, even if Appellants label them something else. Local Rule 38 authorizes this Court to award sanctions against a party who files document that is "frivolous or interposed for an improper purpose." It is established that the second and third status reports had no proper purpose. It is easily discernable from reviewing them that they are intended to prejudice this Court against 3ABN. Therefore, they may not be filed and sanctions may be awarded.

All three status reports are unnecessary, are essentially advance briefing on Appellants' positions, and should be stricken as unauthorized and immaterial.

II. 3ABN'S MOTION FOR SANCTIONS.

Appellants argue that 3ABN's motion for sanctions should be denied because there is no authority for it. On the contrary, Local Rule 38 authorizes an award of sanctions when a party "files a motion, brief or other document that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay, or unreasonably or vexatiously increases litigation costs." Appellants have engaged in an increasingly offensive and outrageous pattern of conduct that serves no purpose other than to vexatiously increase litigation cost to 3ABN, to harass its attorneys, and to delay the dismissal of this lawsuit.

The history of this case is easy to explain up to the point when Plaintiffs asked Judge Saylor to dismiss it because they felt they had achieved all of their non-monetary objectives, and it was clear that the defendants' financial condition made them judgment-proof. But after Judge Saylor granted the motion, Pickle and Joy commenced a campaign to resurrect 3ABN's claims against them by filing motion upon motion and appeal after appeal seeking to undo Judge Saylor's order granting dismissal. If they had succeeded, their prize would have been to expose themselves to a claim for damages, which was of little concern to them given their finances. Their claim that they hope to use the forum of this litigation to prove the truth of their allegedly defamatory statements "beyond a reasonable doubt" is specious. Their best-case-outcome was a judgment of non-liability, not a finding that their statements were true.

A review of the district court records shows that in the 19 months from the inception of this case to its dismissal in November of 2008, there were 129 electronic court filings in this matter. But since then, Appellants have managed to keep this case alive for an additional 17 months and over 200 electronic court filings in the District Court and the Court of Appeals. They have literally doubled the size, and nearly doubled the length, of this litigation by their meritless, duplicative and seemingly endless motions, motions to reconsider, motions to supplement, objections to rulings of the magistrate, and appeals when their motions are denied. Their efforts have achieved exactly nothing, unless the point was to waste an enormous amount of judicial and party resources and smear the reputations of everyone who comes into contact with them and this case.

If ever there was an example of vexatious litigation conduct intended to unnecessarily increase the cost of litigation, this case is it. The case will not end until Appellants are held accountable for their post-dismissal conduct by being ordered to absorb the cost of their frivolous litigation conduct.

Respectfully submitted,

Dated: April 21, 2010

By s/ M. Gregory Simpson

M. Gregory Simpson
Meagher & Geer, P.L.L.P.
33 South Sixth Street, Suite 4400
Minneapolis, MN 55402
Telephone: (612) 338-0661

John P. Pucci, BBO #407560
J. Lizette Richards, BBO #649413
Fierst, Pucci & Kane, LLP
64 Gothic Street
Northampton, MA 01060
(413) 584-8067

Attorneys for Appellees
Three Angels Broadcasting Network
and Danny Lee Shelton

7299301.1