

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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MASHA ALLEN, : CIVIL ACTION NO. 08-4614
Plaintiff :
 :
v. : Camden, New Jersey
 : April 6, 2009
FAMILIES THRU INTERNATIONAL : 4:07 o'clock p.m.
ADOPTION, et al, :
Defendant :
. :

TELEPHONE CONFERENCE
BEFORE THE HONORABLE ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

- - -

APPEARANCES:

For the Plaintiff: ROBERT N. HUNN, ESQUIRE
Kolsby, Gordon, Robin &
Shore, Esquires
One Liberty Place
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28th Floor
Philadelphia, PA 19103

For the Defendant FTIA: DONALD C. COFSKY, ESQUIRE
Cofsky & Zeidman, LLC
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For the Defendant Smith: JEANNENE SMITH, Pro Se
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1 (The following occurred in open court at 4:07
2 o'clock p.m.)

3 THE COURT: Good afternoon, this is Judge Donio, we
4 are on a telephone record. This conference is being
5 electronically recorded and I would ask that each time you
6 speak, you state your name for the record.

7 This is in Case Number 08-4614. May I have the
8 appearances, beginning with plaintiff's counsel?

9 MR. HUNN: Good afternoon, your Honor, it's Robert
10 Hunn for the plaintiff.

11 MR. COFSKY: Donald Cofsky representing Families
12 Thru International Adoptions.

13 MS SMITH: Jeannene Smith representing myself.

14 THE COURT: All right. Mr. Hunn, I did receive
15 correspondence from another attorney representing the
16 plaintiff, Mr. Bills, you've seen that letter?

17 MR. HUNN: Yes, your Honor, Mr. Bills is private
18 counsel to the plaintiff. He is actually the one who
19 initially engaged me and that has to do with a pending motion
20 of mine to withdraw as counsel for the plaintiff.

21 THE COURT: All right. And is it your understanding
22 that your client is retaining separate counsel to represent
23 her in connection with your motion to withdraw?

24 MR. HUNN: Yes, your Honor. This morning, I
25 received a telephone call from an attorney at the Obermayer

1 Rebmann law firm, who informed me that he will be entering
2 his appearance in this case, either today or tomorrow, for
3 the limited purpose of opposing my motion.

4 MR. COFSKY: This is Cofsky, this is the first time
5 I've heard of one of those, but be that as it may.

6 THE COURT: All right, well, then I think, at this
7 time, we need to have that issue resolved before we can take
8 any further action in the case, at least, from the Magistrate
9 Judge. Would the parties agree?

10 MR. HUNN: Yes, your Honor.

11 MR. COFSKY: I would.

12 MR. HUNN: That's Robert Hunn saying that.

13 MR. COFSKY: And Cofsky, also.

14 MS SMITH: And Jeannene Smith.

15 THE COURT: All right, now, Ms. Smith, you sent
16 another letter to the Court, we just placed it on the docket.
17 Has everyone seen that?

18 MR. HUNN: Yes, your Honor, for the plaintiff.

19 MR. COFSKY: Yes, your Honor.

20 THE COURT: Now, Mr. Hunn, if there's anything
21 further that you anticipate filing with response to your
22 motion to withdraw, will you be submitting any further
23 submissions?

24 MR. HUNN: It will depend on what this new attorney
25 submits. At this juncture, your Honor, you would need to

1 hear my reason and I'd need to provide that to you in camera,
2 ex parte.

3 THE COURT: All right, now, Ms. Smith, of course,
4 objects to that.

5 MR. HUNN: Yes.

6 THE COURT: So, I think we need to proceed as
7 follows. First, to the extent you want the Court to consider
8 something ex parte, you'll have to make an application,
9 submitting some legal authority for that type of review. All
10 right?

11 MR. HUNN: Okay.

12 THE COURT: And of course, Counsel, for your client,
13 can file whatever response to that, as can Ms. Smith and Mr.
14 Cofsky. Mr. Cofsky, do you have a position?

15 MR. COFSKY: I, yes. I mean, if he wishes to
16 withdraw, we're not opposing it. I am not requesting to be
17 present if he wishes to discuss those reasons. My concern in
18 that situation is simply that those reasons are things that
19 involve attorney/client privilege and which probably should
20 not be revealed to me. Not that I wouldn't want to know, but
21 I don't know if I really have that right.

22 THE COURT: All right, so, if that is your position,
23 can you place that in writing, as well?

24 MR. COFSKY: Sure.

25 THE COURT: All right.

1 MR. COFSKY: And also, I mean, it's one thing, it's
2 not like we're delaying trial. We're so early on in this,
3 but I don't really see a problem with it.

4 THE COURT: Okay. And what I will do is see what
5 papers are filed, if any, by the Oppenheimer firm.
6 Oppenmayer firm?

7 MR. HUNN: Obermayer.

8 THE COURT: Obermayer, right, okay, Obermayer firm
9 and we'll take it from there.

10 MS SMITH: Judge, this is Jeannene Smith. To
11 repeat, what documentation have your requested out of Mr.
12 Cofsky as to Mr. Hunn?

13 MR. COFSKY: It was at to what my client's position
14 is regarding his one, request to withdraw as counsel for the
15 plaintiff. And then, two, I would assume with regard to his
16 position that his reasons should be directed to the Court ex
17 parte. I think those were the two issues.

18 MS SMITH: Was that something that needed to be
19 filed?

20 THE COURT: Ms. Smith, what I said to Mr. Hunn was,
21 if he wishes to submit some additional information to the
22 Court and he wants to make that ex parte, meaning that you
23 don't receive a copy and Mr. Cofsky doesn't receive a copy,
24 he's going to have to provide me authority, case law or
25 citations that would support his position that the Court can

1 consider that application.

2 MS SMITH: Okay.

3 THE COURT: Mr. Hunn, what would be the basis upon,
4 if you have it now, for your submission for an in camera
5 review?

6 MR. HUNN: Well, it would be attorney/client
7 privilege, your Honor.

8 THE COURT: All right. Okay, so, what I'm going to
9 do is just reconvene with another conference call. This
10 conference call was scheduled by order dated March the 3rd.
11 Mr. Hunn, when did you file your motion?

12 MR. HUNN: My motion was filed with the return date
13 of April 6th, so, it would have been 16 days, 24 days.

14 THE COURT: So, you filed your motion after the
15 Court scheduled today's telephone conference?

16 MR. HUNN: Correct.

17 THE COURT: All right, so, we will reconvene with
18 another conference and I'm not sure whether it will be in
19 person or by phone, but we'll make that decision once I
20 receive these supplemental submissions and/or any response
21 from the new firm that would be entering its appearance.

22 MR. COFSKY: Very good and your Honor, I just wanted
23 to bring -- this is Donald Cofsky, bring to your attention.
24 I had served Addagio, a third-party defendant out in
25 Pittsburgh and I did receive back an executed waiver of

1 service of summons. And only because I couldn't scan it in
2 by PDF, I did a certificate of service and referenced that
3 and I'm sending the original in to the Court.

4 THE COURT: All right.

5 MR. COFSKY: I have not heard anything else from
6 them, other than they've executed the waiver.

7 THE COURT: Okay, is there anything further from any
8 of the parties?

9 MR. HUNN: From the plaintiff, no, your Honor.

10 MR. COFSKY: I assume the motions that have been
11 filed by Mr. Hunn, relating to Ms. Smith's filings are either
12 still being carried over. I don't think they were ruled on,
13 were they?

14 THE COURT: They're still pending.

15 MR. COFSKY: Yeah, okay. Nothing further on my
16 behalf for Families Thru International Adoption.

17 MS SMITH: And you will, Judge, this is Jeannene
18 Smith, you will notify us a new hearing for the motions that
19 were filed on my behalf?

20 THE COURT: The motion to dismiss --

21 MS SMITH: Yes.

22 THE COURT: -- is before the District Judge. So, if
23 you have any questions with respect to the motion to dismiss,
24 you will need to address that to the District Judge.

25 MS SMITH: Thank you.

1 MR. COFSKY: And Ms. Smith, was that your motion to
2 dismiss based upon something with -- was it Mr. Marsh or the
3 guardianship?

4 MS SMITH: I was given more reasons stated. But
5 yes, that was one of them.

6 MR. COFSKY: Okay. And then, I think Mr. Hunn has
7 motions also.

8 THE COURT: There's a motion to dismiss, it's Number
9 16 on the docket. There's a motion to strike the answer.

10 MR. COFSKY: Yes.

11 THE COURT: And that's Number 26. And there is a
12 motion for default judgment, that's Number 24.

13 MR. COFSKY: And they're all still pending, I
14 assume?

15 THE COURT: They are all still pending.

16 MR. COFSKY: Okay. All right.

17 THE COURT: All right, is there anything further?

18 MR. HUNN: Your Honor, yes, one thing. I have seen
19 the errors of my ways with respect to that motion for entry
20 of default. I read Part B and apparently, I must have missed
21 part one. I have corrected that error with reaching out to
22 International Adoptions and Child Promises. So, the only
23 thing now left is whether the Court will now consider what I
24 have filed against Ms. Smith as an entry of judgment and Ms.
25 Smith's filing as an entry -- as a motion to open that entry.

1 MR. COFSKY: You mean an entry of default?

2 MR. HUNN: Entry of default, correct.

3 THE COURT: Well, I'm not going to judge that issue,
4 at this time. That's all set forth in your papers, correct?

5 MR. HUNN: Correct.

6 THE COURT: And Ms. Smith has filed her motions, as
7 well.

8 MR. HUNN: Correct.

9 THE COURT: And we'll just address them in due
10 course.

11 MR. HUNN: Okay, thank you, your Honor.

12 THE COURT: Anything further?

13 MR. COFSKY: Not on my part, Cofsky, that is.

14 MR. HUNN: Nothing for the plaintiff, your Honor.

15 MS SMITH: Nothing from me.

16 THE COURT: All right, well, have a nice day. We
17 are adjourned.

18 MR. COFSKY: Thank you, your Honor.

19 (Proceeding adjourned 4:17 o'clock p.m.)

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* * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

s:/Geraldine C. Laws, CET
Laws Transcription Service

Dated 9/16/10