

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
 : May 15, 2009
FAMILIES THRU INTERNATIONAL : 9:36 o'clock a.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
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APPEARANCES: (Continued)

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1 (The following occurred in open court at 9:36
2 o'clock a.m.)

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

6 This is in the matter of Allen versus Families Thru
7 International Adoption, Inc., et al. Case Number 08-4614.
8 Let's begin by having counsel for the plaintiff place his
9 appearance on the record.

10 MR. HUNN: Your Honor, good morning, it's Robert
11 Hunn.

12 MR. HABER: Good morning, your Honor, this is Steve
13 Haber, I've made a special, limited appearance on behalf of
14 the plaintiff, as well. Also on the line with me is David
15 Bilz from Atlanta, who is plaintiff's personal attorney.

16 MR. BILZ: Good morning, your Honor, David Bills.

17 THE COURT: Good morning. For defendant?

18 MR. COFSKY: Yes, Donald Cofsky, representing
19 Families Thru International Adoption.

20 MS SMITH: Jeannene Smith, pro se.

21 THE COURT: Ms. Smith, could you state your name one
22 more time?

23 MS SMITH: Jeannene Smith, representing herself.

24 THE COURT: Okay and I would ask each time you
25 speak, Ms. Smith, if you could just speak up.

1 MS SMITH: Okay, thank you.

2 MR. BARATZ: Good morning, your Honor, Alan Baratz,
3 for the law firm, Weiner and Lesniak. I represent third
4 party defendant, Adagio Health and it's trade name.

5 THE COURT: All right. Presently before the Court
6 is a motion to withdraw by plaintiff counsel, Mr. Hunn. Now,
7 Mr. Haber, you've entered a limited appearance to represent
8 the plaintiff in connection with the motion to withdraw. Are
9 you on behalf of the plaintiff, object to Mr. Hunn
10 withdrawing from this case?

11 MR. HABER: That's right, your Honor.

12 THE COURT: And the plaintiff also has personal
13 counsel. Mr. Bills, you're not admitted pro hac in this
14 case, are you?

15 MR. BILZ: I am not, your Honor, I was asked to
16 participate by Mr. Haber, in this call and I have some -- an
17 updated report that I'd like provide to the Court, if you
18 please.

19 THE COURT: All right, does it resolve the motion to
20 withdraw?

21 MR. BILZ: It does not completely resolve the
22 motion, your Honor, but it foreshadows, hopefully, an
23 impending resolution of the motion. Specifically, as of
24 yesterday afternoon, I'm pleased to report that I have
25 substitute counsel, who is potentially prepared, subject to

1 the client's approval, to make an appearance in the case on
2 the plaintiff's behalf, which would moot the motion and we
3 are at the final stages of arranging a meeting between
4 counsel and the clients. And you know, fully updating them
5 on the status and so on. And it's my intention to strongly
6 recommend to the plaintiffs or my clients and have been for
7 almost two years now, that they retain this proposed
8 substitute counsel.

9 THE COURT: And when do you anticipate that decision
10 being made?

11 MR. BILZ: I expect, your Honor, it may take several
12 weeks, possibly, simply to arrange for the meeting and have a
13 meeting take place, because of scheduling issues and travel
14 issues. And as I believe we had indicated in a letter to
15 your Honor, the mother, Faith Allen, is involved with an
16 elderly relative and she's really unable to travel very
17 conveniently, at all, because of that. It's the end of the
18 school year, so, her daughter is involved in whatever she's
19 involved in and so, there's some mechanics involved in
20 actually arranging a meeting. Obviously, I'm dealing with
21 other busy attorneys, as well. But hopefully, in the next
22 several weeks, two to three weeks, we'll have all this ironed
23 out and new counsel would be making an appearance in the case
24 and be ready to proceed.

25 THE COURT: Mr. Hunn, do you have any objection to

1 postponing resolution of your motion to withdraw in light of
2 the fact that it may be mooted out if there's substituted
3 counsel?

4 MR. HUNN: Your Honor, I do not, so long as we have
5 an understanding that, generally, we're going to stand still
6 until that time. And at which time, new plaintiff's counsel
7 gets involved, then the case proceeds in its normal course.

8 THE COURT: All right.

9 MR. BARATZ: Alan Baratz for Adagio Health and duly
10 pled third-party defendant. The opportunity to stand
11 somewhat still for a few weeks, given the breadth of the
12 information that my office is currently digesting,
13 summarizing to the carrier and arranging in preparation for
14 an initial client interview out in Pittsburgh, would be a
15 wonderful opportunity for my client, also.

16 THE COURT: All Mr. Baratz, did you file an answer?

17 MR. BARATZ: Yes, I did, Judge, just recently. I'm
18 sorry, I don't have it before me, Judge.

19 THE COURT: And have -- it looks like it was April
20 21st and have you received any Rule 26 disclosures?

21 MR. BARATZ: No, I have not, your Honor.

22 THE COURT: Have Rule 26 disclosures been served in
23 this case?

24 MR. HUNN: Your Honor, Robert Hunn, for the
25 plaintiff. We did make an initial Rule 26 disclosure. I

1 will get what we've submitted over to Mr. Baratz today.

2 THE COURT: Mr. Cofsky, do you have any objection to
3 a short stay in this matter, pending resolution of the motion
4 to withdraw?

5 MR. COFSKY: No objection, your Honor, I think it's
6 appropriate.

7 THE COURT: Ms. Smith, do you have any objection?

8 MS SMITH: No.

9 THE COURT: Okay, so, I will enter an order staying
10 the proceedings as follows, for a period of 30 days. Except,
11 anyone who has served Rule 26 disclosures shall send a copy
12 to Mr. Baratz, who represents the third-party defendant that
13 recently entered an appearance. And Mr. Baratz, your Rule 26
14 disclosures should be served and anyone else who hasn't done
15 Rule 26 disclosures, shall serve them no later than June
16 15th.

17 MR. BARATZ: Fair enough, your Honor.

18 THE COURT: And what I will do is schedule a
19 in-person conference the end of June. At that conference, we
20 will discuss discovery issues, we will resolve the motion to
21 withdraw, if it's still pending and if it's not pending, then
22 we'll have the new counsel here and go through a proposed
23 schedule for completion of discovery.

24 MR. BARATZ: Alan Baratz, again, Judge, for Adagio
25 Health. I thank the Court for its consideration and would

1 only ask that in rescheduling the end of June in-person
2 conference, I have long-standing plans with my family to be
3 away the 25th and 26th of June are my only bad days.

4 THE COURT: All right, we will work around those
5 dates.

6 MR. BARATZ: Thanks, Judge.

7 THE COURT: One last issue, if the motion to
8 withdraw is not resolved within the next three weeks, then
9 the issue that the Court needs to determine, is the basis
10 upon which the motion to withdraw has been made and I don't
11 have the benefit of what appears to be planned in camera
12 submissions. Is that correct, Mr. Hunn?

13 MR. HUNN: That is correct. At this time, you do
14 not, your Honor.

15 THE COURT: All right, so, if a week before the
16 hearing date, the motion still is pending, then I would
17 request that any party that has some information that they
18 wish the Court to consider, should file it with the Court.
19 To the extent that the party believes that it should be ex
20 parte or for in camera review, they can submit the
21 information, with a copy of a cover letter, to their
22 adversaries and a motion to seal. And if any party objects
23 to the sealing of the information, they can file a response
24 thereafter. All right?

25 MR. BILZ: What would be the deadline on that,

1 again, your Honor? Excuse me, this is David Bilz.

2 THE COURT: Well, Mr. Bilz, you said you needed two
3 to three weeks, right?

4 MR. BILZ: Yes, ma'am.

5 THE COURT: Okay, so, by two to three weeks, today
6 is May 15th, by June 5th or 10th, you should know whether
7 this matter is going to resolve, the motion to withdraw,
8 right?

9 MR. BILZ: Yes, I think that's quite reasonable,
10 your Honor.

11 THE COURT: All right. So, by June 19th is when I
12 would want the submissions and then hearing would be in the
13 last week of June.

14 MR. BILZ: Very good.

15 THE COURT: Okay. Is there anything else we should
16 do today?

17 MR. HABER: Your Honor, this is Steve Haber. If, in
18 fact, that hearing does take place, I'd also ask that June
19 29th not be that.

20 THE COURT: All right, we'll work around that date.
21 Are there any other requests?

22 MR. COFSKY: No, your Honor.

23 MS SMITH: Could you just repeat what the hearing is
24 going to be for -- discovery, for the motion to withdraw.
25 Will the motion to dismiss be heard by then, as well?

1 THE COURT: Ms. Smith, that motion is presently
2 pending before the District Judge and so, any questions
3 concerning when that motion will be heard, whether there will
4 be argument should be directed to Judge Rodriguez.

5 MS SMITH: Okay, so, that won't be a part of that?

6 THE COURT: That's correct.

7 MS SMITH: Okay.

8 MR. HABER: Your Honor, this is Steve Haber again,
9 are those motions subject to your stay order?

10 THE COURT: No, the motions are not subject, they're
11 fully briefed, aren't they?

12 MR. HUNN: This is Robert Hunn, yes, they are, your
13 Honor.

14 THE COURT: Now, let me just, there's a motion for
15 default judgment, a motion to strike the answer, the motion
16 to, I guess, those are the two motions, right?

17 MR. HUNN: Yes, your Honor.

18 MR. COFSKY: I believe Ms. Smith has filed motions
19 of her own.

20 THE COURT: There's a motion to dismiss by Ms.
21 Smith, as well.

22 MR. COFSKY: Yes.

23 THE COURT: Okay. Now, in the event the District
24 Judge refers the motions to me, I will clarify, Ms. Smith and
25 revise what I just said to you about what will be heard at

1 the end of June. If the motions are still pending, you
2 should be prepared to address them to the extent that I'm
3 going to handle those motions, okay?

4 MS SMITH: Okay, thank you.

5 THE COURT: All right. Is there anything further?

6 MR. COFSKY: No, your Honor.

7 MR. HUNN: No, your Honor, for the plaintiff.

8 THE COURT: Let me just be clear, so that there's no
9 confusion. My order will say a stay of discovery, so, that
10 it's clear. Because I think I said earlier, a stay of
11 proceedings. We're not going to stay the pending motions.
12 We'll just stay the discovery and then, revisit discovery
13 deadlines at our in-person hearing/conference, okay?

14 MR. HUNN: Fine, thank you, Judge.

15 THE COURT: All right, is there anything further for
16 the plaintiff, Mr. Hunn?

17 MR. HUNN: Your Honor, no and thank you for your
18 time this morning.

19 THE COURT: Mr. Haber?

20 MR. HABER: No, thank you, your Honor.

21 THE COURT: Mr. Bilz?

22 MR. BILZ: No, your Honor, thanks very much.

23 THE COURT: Mr. Cofsky?

24 MR. COFSKY: No.

25 THE COURT: Ms. Smith?

1 MS SMITH: No, thank you.

2 THE COURT: Mr. Baratz?

3 MR. BARATZ: With my thanks, no, your Honor.

4 THE COURT: All right, everyone have a nice weekend,
5 we are adjourned, thank you.

6 (Proceeding adjourned 9:49 o'clock a.m.)

7 * * *

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