

REPORTER'S RECORD

VOLUME 3 OF 14

TRIAL COURT NO. 296-04376-07

HEATHER DOBROTT)	IN THE DISTRICT COURT OF
)	
VS.)	COLLIN COUNTY, TEXAS
)	
TIMOTHY S. DARNELL AND)	
JACK M. WEINZIERL)	296TH JUDICIAL DISTRICT

HEARING ON MOTION TO SHOW CAUSE

JANUARY 6, 2010

On the 6th day of January, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable John R. Roach, Jr., Judge Presiding, held in Collin County, Texas:

Proceedings reported by Computerized Machine Shorthand.

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P R O C E E D I N G S

January 6, 2010

THE COURT: Zena Karelin versus Advantage
Conferences.

MR. FOSTER: May we approach, Your Honor?

THE COURT: Yes.

All right. Good morning, Counsel. State your name
and the party you represent.

MR. SANDIFER: T. Randall Sandifer. I represent
Advantage Conferences, LLC.

MR. DARNELL: Tim Darnell, Defendant.

THE COURT: Are you representing yourself, Mr.
Darnell?

MR. DARNELL: Yes, I am.

MR. WEINZIERL: Jack Weinzierl representing myself.

MR. KITA: Matthew Kita representing the Respondent
to this motion, Heather Dobrott, who is not a party to this
proceeding.

THE COURT: All right.

MR. FOSTER: Thomas Foster representing the
Plaintiff, Zena Karelin.

THE COURT: What are we set for today?

MR. SANDIFER: Your Honor, I had a motion set for a
hearing on a Motion for New Trial on Summary Judgment, but my
client has filed for bankruptcy protection. I filed a notice

1 with the Court, so I think that part of the proceeding today
2 is stayed. And I am not involved in the rest of it.

3 THE COURT: Okay. What are we here on otherwise?

4 MR. FOSTER: Your Honor, we have Plaintiff's motion
5 to compel for attorney fees. And I have had conversations the
6 last couple of days with both defendants; and based on those
7 conversations, they have assured me that I'll be receiving
8 some documents in the next few days. So I am going to pass
9 that motion; and if I need to, I will bring it back next week
10 and I won't waste the Court's time.

11 THE COURT: So what else are we here on?

12 MR. KITA: Your Honor, if I may, Defendant, Mr.
13 Weinzierl, has filed a motion to show cause why Heather
14 Dobrott should not be found in contempt. You may want to get
15 into the substance of the motions beforehand. On behalf of
16 Ms. Dobrott, I just have a couple of procedural issues that I
17 think we should consider.

18 THE COURT: Okay.

19 MR. KITA: The first is that the rules plainly
20 require that when a nonparty is served with a motion for
21 contempt, it either has to come from the Court with an order
22 to show cause or it has to be personally served in accordance
23 with Rule 21 to establish jurisdiction over Ms. Dobrott. Mr.
24 Weinzierl here mailed Ms. Dobrott a copy one week ago today.

25 Second, even if this court would ignore the problems

1 with service, due process requires at least ten days advance
2 notice of a hearing. And that was again, one week, not even
3 including the fact that we had a holiday weekend. And then
4 finally, Your Honor, before a hearing can commence and get a
5 show cause order, the Defendant -- or the Movant in this case
6 would have to file a specific statement identifying specific
7 instances of allegedly contemptible conduct.

8 Here we have a conclusary affidavit and a dozen or
9 so pages of hearsay evidence that are completely
10 unauthenticated, undated, non-proven up in any respect; and
11 therefore, Defendants aren't entitled to have an evidentiary
12 hearing in the Court's presence before they've submitted the
13 necessary evidence accordingly.

14 THE COURT: All right. I can hold her in contempt,
15 though, and not put her in jail without being personally
16 served; do you agree with that?

17 MR. KITA: I think it would depend, Your Honor. I
18 mean if the allegedly contemptible conduct occurred in your
19 presence, then yes. If it occurred outside your presence,
20 then you would need some evidence coming from the Movant in
21 order to --

22 THE COURT: I am not talking about the evidence. I
23 am just saying from a notice standpoint, you don't have to be
24 personally served. She didn't have counsel when she was
25 served, though, right?

1 MR. KITA: No.

2 THE COURT: So you weren't served with it either?

3 MR. KITA: I was notified of this on Monday morning
4 after the New Year.

5 THE COURT: Okay. All right. Mr. Weinzierl.

6 MR. WEINZIERL: Sir, I filed -- I filed because it
7 was connected with the motion to compel that Mr. Foster had
8 served on us on the 26th, just four days prior to me sending
9 out this motion. And in that, we -- his motion to compel
10 production, in that, we had made an argument or we had made
11 our case or our reason for not producing yet, because the
12 temporary injunction, as well as the protective order, had not
13 been in place yet.

14 THE COURT: Right, right.

15 MR. WEINZIERL: So we addressed that in our response
16 to his motion to compel. I believe he wanted to delay the
17 motion to compel this morning, Your Honor, because I believe
18 he thinks that this is grounds for dismissing this case per
19 our November 30th hearing.

20 THE COURT: What is grounds for dismissing this
21 case, the contempt part?

22 MR. WEINZIERL: The contempt part. But you had
23 stated on November 30th that Ms. Karelin would be responsible
24 for Ms. Dobrott's posting. So whether we have to reset that
25 for a hearing, Ms. Dobrott -- or Ms. Karelin still has a

1 responsibility for forty-plus posts that violate the --

2 THE COURT: Let's go back. Before we get to the
3 substance of it, we have to address procedural issues. And
4 that's the disadvantage I've told y'all over and over again
5 that you have in this court is that you don't understand the
6 procedural issues that must be met before we can get to
7 motions a lot, outside of any evidence you have about the
8 merits. We don't get there unless we hit the procedural
9 requirements.

10 The procedural requirements to hold somebody in
11 contempt do require personal service of the notice of hearing
12 or show cause notice. And since you are not a licensed
13 attorney, it has to come from the Court, okay? An officer of
14 the Court. Any of the lawyers in here can sign that as
15 notice; but you can't, okay? And so we are fatally flawed for
16 proceeding on a motion for contempt because she did not get
17 adequate notice, number one.

18 Number two is she didn't get ten days notice. You
19 have to understand the reason why we have heightened
20 requirements for that is because you are asking me to throw
21 her in jail, and so we call that a quasi-criminal matter that
22 requires due process, as Mr. Kita had said. So we are not
23 going to address that point, okay?

24 The case will not be dismissed either because of a
25 motion for sanctions on her -- or by a motion by contempt.

1 That would be more of a sanction under Rule 13 of the Texas
2 Rules of Civil Procedure. And so you have not pled sanctions,
3 dismissal, or the Court has several things it can do. It can
4 strike pleadings, it can strike a lot of things in the case,
5 penalize somebody for violating the Court's order or doing
6 things frivolously, or whatever it finds to be contemptible.
7 Or the last resort would be to dismiss the case, but that has
8 to come under a motion for sanctions and it has to lay out
9 specifically what that sanctionable conduct is, okay?

10 And so for all of those reasons, we are not going to
11 hear that motion today.

12 MR. WEINZIERL: Okay. Your Honor, how do I approach
13 the Court or the clerk for going through the proper process?

14 THE COURT: Well, neither the Court nor the clerks
15 can give you any legal advice, okay? Now, I thought you were
16 about to ask me how you could get my signature on notice or
17 something. You can do that through the clerk's office. They
18 will bring me the file. But as far as how to do it, I have
19 given you too much information, probably, already.

20 MR. WEINZIERL: Your Honor, I have yet to meet the
21 Plaintiff after four-plus years. And she has had the luxury
22 of kind of sitting back in California. Can we request that
23 she attends these hearings?

24 THE COURT: Well, she doesn't have to attend unless
25 she is subpoenaed to be here, ordered by the Court to be

1 here. But I can't -- or she has a motion she has to put on
2 evidence for so you can cross examine her. I don't think we
3 have had any of those hearings that would require her
4 presence.

5 MR. WEINZIERL: Okay.

6 THE COURT: But you can subpoena her, too. But you
7 probably have to have the Court's signature on a subpoena
8 also, or lawyers can subpoena people directly. You could also
9 take her deposition and notice her deposition, which would
10 have to take place in Collin County.

11 MR. FOSTER: Your Honor, also, I remind the Court,
12 Ms. Karelin lives in California.

13 THE COURT: Yes. And -- well, yeah, but if she is
14 subpoenaed to be here -- she is the Plaintiff in the case, she
15 picked this forum to be in; and we do things here in this
16 forum. He wouldn't have to go to California to take her
17 deposition, for example.

18 MR. WEINZIERL: I have never met her and was not
19 involved in the --

20 THE COURT: I have told you how that works.

21 Any other pending motions before the Court?

22 MR. KITA: May I ask one question for
23 clarification?

24 THE COURT: Sure.

25 MR. KITA: Your Honor, if another party in this case

1 files a motion for a show cause hearing, does this court have
2 a procedure whereby it would hear -- or consider her response
3 for a motion to show cause before setting a date for a
4 hearing? For example, if he says I would like a show cause
5 hearing and I say you are not entitled to one for the
6 following reasons, can we do that without forcing us all
7 coming together again and object on procedural grounds?

8 THE COURT: That's how we do it; otherwise, I have
9 to plug in every case and say this motion has merit or this
10 motion has merit. I am making a pre-determination with regard
11 to the procedural requirements before we have a hearing on it.

12 MR. KITA: Respectfully, Your Honor, for a motion to
13 contempt, the Movant is required to lay out certain grounds
14 with specificity; but he can't get the hearing if he hasn't
15 laid it out. I guess that's my --

16 THE COURT: Well, I don't have the luxury with the
17 1,600 cases that I have to review everything that's filed to
18 make sure it met the procedural requirements. So that's why
19 we have an adversarial process and so -- and then I would have
20 to bring them up or you would have to bring them up and I
21 would have to read them. But I think I am making
22 predeterminations on cases before hearing, even if I haven't
23 had a hearing.

24 Now, if he continues not to meet the legal
25 requirements that need to be made, the proper response would

1 be a motion for sanctions and you can charge for your
2 attorney's fees for having to show up because he didn't follow
3 the procedural requirements. If he did it again, I would be
4 very mindful of that and go, Mr. Weinzierl, you didn't meet
5 them again and you keep dragging these lawyers up, they are
6 having to bill time; and I am going to pop him for it.

7 MR. KITA: Thank you.

8 THE COURT: I think that's the proper way to do it.

9 MR. WEINZIERL: And, Your Honor, before we leave, it
10 was an emergency for me because I am still out of employment.
11 Those forty posts are showing up on page one under Google all
12 over the internet for the world to see after you were very
13 clear --

14 THE COURT: I was clear -- I was crystal clear to
15 the Plaintiff's lawyer about this; that I wasn't going to
16 tolerate it anymore.

17 MR. WEINZIERL: So I can still proceed --

18 THE COURT: Listen to me. If I am talking, stop
19 talking.

20 And I was very clear to your client how I expected
21 things to go. But the person who is going to pay the price is
22 the Plaintiff in this case if this continues, if what you are
23 saying is true; and I have no idea whether it is or not. And,
24 by the way, after we get over the procedural requirements,
25 there is a lot of evidentiary requirements, meaning that you

1 just can't put posts up. Someone has to testify to their
2 authenticity or their origins and all of that kind of stuff.
3 So it is a burden. Not to these lawyers because they do it
4 every day, but it will be for someone who is pro se. I am not
5 excluding you, I am not telling you you can't have it heard;
6 but you just have not had the procedural requirements met to
7 have it heard today, okay?

8 What did you need?

9 MR. FOSTER: Your Honor, with regard to our motion
10 to compel and the Defendants producing documents, the fact
11 that we are rescheduling this hearing on the motion to show
12 cause should not have any effect on their producing documents.

13 THE COURT: No.

14 MR. FOSTER: The protective order is now in place.
15 They shouldn't have any reason not to produce documents,
16 should they?

17 THE COURT: Those are two separate issues. Whether
18 someone is violating my court order is one issue, and then the
19 case and how it progresses and the proper rules, or following
20 of the rules under the discovery rules still -- they are what
21 they are. They are not affected -- one is not affected by the
22 other.

23 Okay. Anything else? And so -- but I will tell
24 you, this case is stayed anyway. Don't you come back here
25 because it is stayed because of a bankruptcy, okay?

1 If someone wants to file a motion to sever the case
2 and have Advantage Conferences out of this case --

3 MR. SANDIFER: You have actually already entered an
4 order of severance.

5 THE COURT: So why are you here?

6 MR. SANDIFER: Well, I filed the motion --

7 THE COURT: Not that I don't like to see you, but
8 why are you here?

9 MR. SANDIFER: When I filed the motion, the clerk
10 wasn't clear; the paperwork hadn't been done, apparently. So
11 they filed it in this case. But I found out on the same day
12 you entered the summary judgment, you actually severed
13 Advantage Conferences into a separate cause number. So I
14 filed a notice of bankruptcy in both cases so I would make
15 sure it got to the right place.

16 MR. FOSTER: But the motion for new trial was filed
17 in the original proceeding, not in the severed case.

18 THE COURT: That's okay. The way the proper
19 severance order should read, it should tell the clerk what
20 portions of the original file should be transferred into the
21 new file, okay?

22 MR. SANDIFER: I don't think it actually does that.

23 MR. FOSTER: I think it said --

24 THE COURT: You have to send a letter over here and
25 say this is what I need over here.

1 MR. WEINZIERL: If the severance took place after
2 the bankruptcy filing --

3 THE COURT: Yes, it does.

4 MR. WEINZIERL: -- would it be stayed?

5 THE COURT: Okay. What?

6 MR. WEINZIERL: If the severed -- if the agreement
7 or agreed order for severing occurred after the bankruptcy
8 filing, when he filed, then it would be stayed?

9 THE COURT: No. Once I have severed the bankrupt
10 person out, the underlying case, this case, continues.

11 MR. WEINZIERL: Even if the bankruptcy was filed
12 prior to the severing?

13 THE COURT: Yeah, because it is just to the party;
14 it is not the case. So the person who filed bankruptcy, the
15 party who filed bankruptcy has the opportunity to have their
16 case stayed, but not everybody else. Everybody else can't
17 just piggyback up on that. So that's why we sever it out and
18 so they are over there and they are stayed, but we can
19 continue on with our case unless somebody else files
20 bankruptcy.

21 MR. WEINZIERL: I don't want to, Your Honor.

22 THE COURT: Well, I don't want anybody to have to
23 either; but that's how it would work. Does that answer
24 everybody's question?

25 MR. FOSTER: Our case is not stayed.

1 THE COURT: Apparently, it is not stayed. I didn't
2 know I was ahead of the game, and I was wondering why he was
3 here. But --

4 MR. FOSTER: What happened was, the summary judgment
5 was granted. At the same time the judge signed the -- you
6 signed the summary judgment, you signed an order of
7 severance. And then the case, on the 30th day, they filed a
8 motion for new trial but filed it in the original case, not in
9 the severed case.

10 THE COURT: Well, he is stayed no matter what.

11 MR. SANDIFER: Right.

12 THE COURT: Because whatever has happened in this
13 case was stayed because of the bankruptcy. And in an
14 abundance of caution, he filed a Notice of Bankruptcy in
15 both. So I am not proceeding, just for the record, I am not
16 proceeding at all in this case, Cause Number 4376-07, against
17 Advantage Conferences. We are okay.

18 MR. FOSTER: Okay. So in this case against Mr.
19 Weinzierl and Mr. Darnell, we are not stayed?

20 THE COURT: We are not stayed. We are not stayed.
21 Okay. Anybody have anything else?

22 MR. DARNELL: In request for production from the
23 Plaintiff regarding Advantage Conferences' materials, do I
24 need to present that?

25 THE COURT: Well, I am giving y'all legal advice,

1 and I don't know why because I am not charging you by the hour
2 and I should be. If you have documents in your care, custody
3 or control that were responsive to his request, you have to
4 comply with it, okay? That's the rule.

5 All right. Anything else?

6 Yes, sir.

7 MR. WEINZIERL: In terms of validating or
8 authenticating --

9 THE COURT: Your parking pass? What?

10 MR. WEINZIERL: I need to have a witness available?

11 THE COURT: Validating what?

12 MR. WEINZIERL: Validating --

13 THE COURT: The posts?

14 MR. WEINZIERL: Any of the posts.

15 THE COURT: Yeah, you need to do some legal research
16 and quit talking the rules according to Roach, all right?

17 MR. WEINZIERL: I have many 3:00 a.m. mornings.

18 Thank you.

19 (Proceedings concluded).
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1 THE STATE OF TEXAS)

2 COUNTY OF COLLIN)

3
4 I, Janet L. Dugger, Official Court Reporter in and
5 for the 296th District Court of Collin County, State of Texas,
6 do hereby certify that the above and foregoing contains a true
7 and correct transcript of all portions of evidence and other
8 proceedings requested in writing by counsel for the parties to
9 be included in this volume of the Reporter's Record, in the
10 above-styled and numbered cause, all of which occurred in open
11 court or in chambers and were reported by me.

12 I further certify that this Reporter's Record of the
13 proceedings truly and correctly reflects the exhibits, if any,
14 offered by the respective parties.

15 WITNESS MY OFFICIAL HAND this the 22nd
16
17 day of March, 2011.

18
19 /s/
20

Janet L. Dugger, Texas CSR #2575

21 Expiration Date: 12-31-12

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