

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

ARNOLD DAVIS,)	Court of Appeals No. 13-15199
)	Civil Case No. 11-00035
Plaintiff,)	Date: 2/21/2012
)	Time: 10:37 a.m.
vs.)	
)	
GUAM, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS BEFORE
THE HONORABLE JOAQUIN V.E. MANIBUSAN, JR.,
Magistrate Judge

Scheduling Conference

Proceedings recorded by *mechanical stenography*, transcript produced by computer-aided transcription.

Veronica Flores Reilly, OCR
District Court of Guam

APPEARANCES

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Court will make a report and recommendation on
the motion to dismiss without having oral
arguments unless the Court decides that oral
arguments is needed to assist in its determination..11

Veronica Flores Reilly, OCR
District Court of Guam

1 **February 21, 2012; 10:37 a.m.; Hagatna, Guam**

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4 THE CLERK: Civil Case 11-00035, *Davis versus*
5 *Guam*; scheduling conference.

6 Counsel, please state your appearances.

7 MR. ADAMS: This is Christian Adams appearing
8 telephonically.

9 THE COURT: Good morning, sir.

10 MR. ADAMS: Good morning.

11 MR. PARK: Good morning, Mun Su Park for
12 plaintiff.

13 THE COURT: Good morning, Mr. Park.

14 MR. WEINBERG: Rob Weinberg for the defendants
15 and Attorney General's Office.

16 THE COURT: Good morning, Mr. Weinberg.

17 Please be seated. And the matters before the
18 Court this morning for a scheduling conference. And the Court
19 has, of course, Mr. Adams on the line. Good morning, sir.

20 MR. ADAMS: Good morning, Your Honor.

21 THE COURT: And, generally, the Court has
22 reviewed the scheduling orders submitted, and, generally, the
23 Court adopts most of these recommendation in terms of dates
24 and times, with certain -- just certain modifications. And
25 let me go over with you, counsel, what those modifications

1 might be.

2 First of all, the bench trial will go forward as
3 requested, and that's on April 23, 2013, but the time will be
4 9:30 in the morning. So while we have a date in the
5 submission, there's no time. So the time is 9:30 on April 22,
6 2013.

7 With regards to the final pretrial conference,
8 and that's paragraph 7(k), we have proposed to the Court April
9 15. The Court has adopted that date. The time, however, will
10 be 9:30 instead of 9 o'clock that you have stated therein. So
11 the final pretrial conference is April 15, 2013 at 9:30 in the
12 morning.

13 Generally, our policy has been, although it's not
14 reflected in the rules, that in relation to any case, we have
15 three preliminary pretrial conferences, so the Court will set
16 those three this morning and announce those three dates, and
17 they are as follows:

18 The first preliminary pretrial conference will be
19 September 18, 2012 at 8:30 in the morning. And we're making
20 this early in the morning to give counsel on the east coast a
21 better time to participate with us here in Guam.

22 The second preliminary pretrial conference will
23 be on January 15th, 2013, also at 8:30 in the morning.

24 And the third preliminary pretrial conference
25 will be April -- I'm sorry, will be March 26th, 2013 at 8:30

1 in the morning.

2 So let me run those three dates again:
3 September 18, 2012, 8:30; January 15, 2013 at 8:30 --

4 MR. WEINBERG: 15, Your Honor?

5 THE COURT: I'm sorry. You're right.
6 January 15th. I think I may have misspoken. And March 26th,
7 2013 at 8:30 in the morning. So those are the three
8 preliminary pretrial conferences.

9 The only other matter I thought that needed some
10 date is in terms of when discovery motions are due, and the
11 Court will set a date for that. That will be December 31,
12 2012 at -- I'm sorry, December 31, 2012 would be the due date
13 for filing discovery motions with the Court.

14 Any questions so far in terms of these dates?

15 MR. ADAMS: No, Your Honor.

16 THE COURT: All right. Moving forward, the Court
17 has recently been advised that the pending motion has been
18 referred to it for a report and recommendation. And as I have
19 reviewed the file in preparation for today's scheduling
20 conference, I know that, basically, there's two motions
21 pending: A motion to dismiss that was filed on December 2nd,
22 which has been briefed and, I think, needs a date that this
23 Court will discuss with the parties as to when we can have
24 perhaps a hearing on its arguments; and the other motion is a
25 -- one motion filed by Anne Perez Hattori seeking leave to

1 file an amicus curiae brief with the Court. There's been an
2 opposition to the motion, so the Court has also set that
3 matter for hearing.

4 My concern is setting a hearing date on the
5 motion to dismiss with an opportunity to allow whatever the
6 outcome might be on the motion to -- for leave to file an
7 amicus curiae to be involved in the process, assuming the
8 Court were to grant motion.

9 The Court has not indicated or reviewed,
10 actually, the motion that's been filed therein. But I want to
11 set the motion to dismiss for arguments, and I'm trying to get
12 from the parties what's the best date for you to have
13 arguments on it, taking into consideration that I have this
14 motion that's pending that should be decided. And if the
15 Court were to deny the motion, that's fine, because we don't
16 have to worry about anyone. If we were to grant the motion,
17 then you will need to give the other party the opportunity to
18 file the amicus brief, and then allow the parties to respond,
19 whatever it is, to the filing therein and still have time for
20 us to hear the motion to dismiss.

21 So that's what I would like to maybe have a
22 discussion this morning. What will be a good time frame to
23 have oral arguments on the motion to dismiss, taking that into
24 consideration?

25 MR. WEINBERG: Your Honor, can I make --

1 THE COURT: Yes, Mr. Wineberg.

2 MR. WEINBERG: Under the local rules and -- at
3 the trial level, I don't think it's required that anybody --
4 that the amicus file a motion, that -- any amicus can file.
5 At the appellate level, the rules are clear enough that you
6 have to have permission from the counsel in the case, but I
7 don't think that it's something that needs to be argued or
8 argued about. I think that plaintiff can speak for himself,
9 but that -- they have filed their opposition to the arguments
10 that are raised, and the Court can simply consider -- can
11 consider them or not. It's amicus. It's not like --

12 THE COURT: The motion before the Court actually
13 is a motion for leave to file.

14 MR. WEINBERG: I understand that's what -- how
15 they've styled it and everything. I think they could have
16 just easily simply filed their amicus motion or amicus brief
17 without requesting permission at the trial level. At the
18 appellate level, they have to ask permission of the Court or
19 get permission from the parties.

20 So it's really kind of a -- what I'm suggesting
21 is that it's kind of a non sequitur kind of motion that the
22 Court can consider the brief or not consider the brief. It's
23 kind of hard not to unring a bell, but -- so I really -- I
24 don't think we need to have counsel for the amicus come in and
25 have an argument as to why they should be permitted to -- you

1 know, either the Court considers the amicus or it doesn't.
2 You know, the -- I think the arguments between the existing
3 parties stand for themselves well enough. I guess all I'm
4 suggesting is that I don't think we need to have a separate
5 setting for that.

6 THE COURT: Let me hear from Mr. Adams, then.

7 MR. ADAMS: Well, Your Honor, the plaintiff would
8 certainly, in large measure, agree with the defendant on this
9 point insofar as, in all candor, I do not relish the prospect
10 of an oral argument on the issue of the motion to file the
11 amicus. We're perfectly happy to stand on our pleadings on
12 that, but, of course, if the Court would like more input, we
13 could certainly talk about that too.

14 THE COURT: Okay. All right. That being the
15 case, then when would be appropriate to hear arguments on the
16 motion to dismiss? What suitable time frame might be best for
17 the parties? Or is this something that you don't want
18 arguments on?

19 MR. WEINBERG: Your Honor, I generally don't ask
20 for oral argument unless -- you know, if the Court thinks it
21 will help its deliberations, then I'm certainly willing to
22 attend. I think that the pleadings speak for themselves, or
23 the briefs more than adequately say everything that I would
24 have said in argument.

25 I would, though, if the Court does want to hear

1 it, ask for it as -- kind of as soon as possible. And my
2 reasoning is that because of the scheduling order, it would be
3 anticipated that whoever does not prevail before -- on the
4 Court recommendation is going to file an objection, and
5 whoever does not prevail there, in can be anticipated, might
6 be filing an appeal to the Ninth Circuit. And rather than the
7 parties -- and these appear questions of law, I think, as
8 presented on the complaint. So rather than the parties engage
9 in the scheduling order timelines, probably the sooner we get
10 a sense of where we're going with this on the complaint, the
11 better for all.

12 THE COURT: All right. Mr. Adams, would you like
13 arguments on the motion, or do you want the Court to decide it
14 based on the papers submitted?

15 MR. ADAMS: Well, I would certainly think that
16 the plaintiff would defer, to a great extent, to the Court's
17 wishes on that. If the Court prefer to have arguments, we're
18 perfectly happy to assist, though I think that both the
19 plaintiff and the defendant have pretty comprehensive briefs
20 on both of these.

21 I would note that -- and echo that what counsel
22 for the defendant just mentioned, very important point, that
23 when we sat down and hammered out this schedule for the case,
24 we were envisioning launching into discovery fairly quickly,
25 and I don't think anybody really anticipates or, I should say,

1 prefers to do a great deal of discovery while something is
2 pending, although I don't want to speak, certainly, for Guam.
3 But I do know that we both believe, I believe, that we have
4 thoroughly briefed it but, of course, are happy to appear to
5 add or answer any questions.

6 THE COURT: All right. Why don't we go ahead and
7 do it this way, then: The Court will look at the papers and
8 the motions and will decide it without arguments, unless the
9 Court is convinced after reading the arguments in the motion
10 and in the opposition, that oral arguments would assist in
11 that determination. Otherwise, it will be submitted and the
12 Court will make a report and recommendation based upon what
13 has been submitted to the Court at this point.

14 MR. ADAMS: Your Honor, this is Christian Adams.
15 If the Court were to decide that oral argument would be
16 helpful, could we renew the discussion about dates such that I
17 might be able to find time to come to Guam to do that?

18 THE COURT: The Court will certainly do that. If
19 at a point that I've looked at the briefs that have been
20 submitted, that a certain area needs to be more fully
21 discussed in oral arguments, I will certainly advise the
22 parties and ask you for a date that's suitable to the parties
23 for actually either appearing here personally or whatever, in
24 terms of having oral arguments before the Court. So that
25 Court can accommodate that.

1 MR. ADAMS: Thank you, sir.

2 THE COURT: All right. Now that we're here,
3 also, are there any other matters that the parties would like
4 to discuss?

5 MR. ADAMS: The plaintiff does not have any other
6 matters.

7 THE COURT: Mr. Weinberg, anything for the
8 defendants?

9 MR. WEINBERG: No. No, Your Honor. I just --
10 no.

11 THE COURT: All right. Well, let me thank you,
12 then, for -- Mr. Adams for participating telephonically in
13 this matter. And based upon what the Court feels the parties
14 desire to have done herein, the Court will make a report and
15 recommendation on the motion to dismiss without having oral
16 arguments unless the Court, after having read the briefs, it
17 decides that oral arguments is needed to assist it in its
18 determination.

19 Let me thank you again for being here this
20 morning. Thank you very much for being here.

21 MR. ADAMS: Thank you, Judge.

22 MR. PARK: Thank you.

23 THE COURT: Take care.

24 (Proceedings concluded at 10:53 a.m.)

25 * * *

CERTIFICATE OF REPORTER

CITY OF HAGATNA)
) ss.
TERRITORY OF GUAM)

I, Veronica F. Reilly, Official Court Reporter of the District Court of Guam, do hereby certify the foregoing pages 1 to 11, inclusive, to be a true and correct transcript made of the within-entitled proceedings, at the date and time therein set forth.

Dated this 4th of July, 2013.

/s/Veronica F. Reilly
Veronica F. Reilly