

1
2 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

3 WORLD SERVICE OFFICE, INC.) C.A. 90-7631
4 Plaintiff)
5 -v-)
6 DAVID MOORHEAD,) Philadelphia, PA
7 Defendant) October 1, 1992
8) 9:15 a.m.

9 TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LOUIS H. POLLAK,
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

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1 (Call to Order of the Court.)

2 THE COURT: Good morning.

3 MR. SYNNESTVEDT: Good morning, Your Honor.

4 THE COURT: Hi, how are you?

5 MR. EMMONS: I'm attorney Greg Emmons.

6 THE COURT: Hi, how are you?

7 MR. ALLEN: Mr. William Allen (phonetic).

8 THE COURT: Mr. Allen.

9 MR. WILLIAM: John Williams.

10 THE COURT: Hi, how are you? Sit down. You know Ms.
11 Whittington, and in the jury box is Ms. Silverstein.

12 Ms. Whittington felt it would be a good idea to call
13 this conference to see if we can have a common understanding
14 of the situation. This is litigation that began back in 1990.
15 And in the course of an initial hearing, and discussions
16 ensued, and a consent order was arrived at. Then last spring
17 there was a flurry of activity at just about the time of the
18 end of April and beginning of May, World Service Conference of
19 Narcotics Anonymous. There was a motion filed by the
20 defendant, Mr. Moorhead, captioned a motion to enforce or
21 vacate the consent order. That resulted in a series of con-
22 ference telephone calls. When I say a series, I know that
23 there were at least two which were intended to ameliorate
24 whatever difficulties were arising with respect to that con-
25 ference. And a then pending vote which it was defendant's

1 position was to be presented in a fashion inconsistent with
2 the consent order.

3 My understanding was that the -- it was agreed that
4 the conference would not bring the matter to a vote. And
5 thereafter, from a litigation prospective, there has been
6 silence, except that quite recently we were advised, I think a
7 letter from Mr. Emmons to Ms. Whittington by which Ms.
8 Whittington apprised Ms. Silverstein and me that Mr. Moorhead
9 had died in July; that there was some law of substituting
10 another defendant or defendants.

11 We're all, of course, saddened to learn of Moorhead's
12 death. The -- I think there is not -- there was not as of the
13 time of Mr. Moorhead's death, there was not effectively any
14 pending motion. I think that's fair to say. The -- and
15 though I think no formal action was taken on Mr. Moorhead's
16 motion to enforce or vacate, that would be docket number 20.

17 MR. EMMONS: Your Honor, --

18 THE COURT: I believe the effect of our phone confer-
19 ences in the spring, late April, the beginning of May, was to
20 moot that motion. Am I right?

21 MR. EMMONS: Your -- yes, Your Honor, respectfully,
22 Greg Emmons. Just in reference to the last point that you
23 made, and I appreciate the comment in reference to Mr. Moor-
24 head, there was a accompanying motion along with the motion to
25 vacate which was a motion for a preliminary injunction to

1 commit the motion on the intellectual property trust document.
2 That is the motion which was rendered moot as a result of the
3 agreement by the WSO to commit the motion for the intellectual
4 property trust document for one year. The motion to vacate
5 and/or enforce the consent order of January 4, 1991 does
6 remain pending before Your Honor. That particular motion was
7 not moved forward as a result of the willingness of the WSO to
8 commit the property trust document motion. Which property
9 trust document motion requires the WSO to solicit input and
10 review from the fellowship as to the ownership of the fellow-
11 ship literary rights -- literature rights and intellectual
12 property rights. That is currently under process, Your Honor.
13 There has been attempts made by members of the fellowship
14 throughout the United States to solicit input into the trust
15 document. There have been meetings held, most recently in
16 Atlantic City on the 27th of this month. There was a meeting
17 held attended by several members of the plaintiff, the WSO
18 office, and RSR regional service representatives who have been
19 appointed to review this document. They're currently review-
20 ing, receiving input for the document and considering that in
21 fact the fellowship does own the intellectual property rights,
22 and that the WSO is not a true owner but merely a trustee.
23 Those are the issues that still remain as a part of the motion
24 to vacate and/or enforce.

25 The agreement that was entered into in January of 1991

1 upon much of the urges from yourself for there to be internal
2 resolution within the fellowship resulted in a meeting in
3 February of 1991 in Harrisburg, attended by Mr. Allen, Mr.
4 Moorhead, and a group of individuals from the fellowship, and
5 the plaintiff, the WSO, agreed to appoint a working group of
6 members of the fellowship to work on this trust document.

7 THE COURT: Mr. Emmons, we don't have a great deal of
8 time. I'm trying to determine the status of matters. Maybe I
9 misapprehended what you had in mind as the scope of the
10 motion. Certainly the first item on the proposed order filed
11 in conjunction with the motion to enforce or vacate addresses
12 the 1992 World Conference and calls for a stay of action on
13 motion number eight. And that was -- the vote on that was to
14 be stayed for a period of a year. I think it's reasonably
15 clear that that --

16 MR. SYNNESTVEDT: Your Honor.

17 THE COURT: -- that matter is mooted.

18 MR. SYNNESTVEDT: Your Honor.

19 THE COURT: Yes.

20 MR. SYNNESTVEDT: That motion to commit was not done
21 under the auspices of the court or in pursuance of any agree-
22 ment with the Court. It was done completely independently by
23 the World Service Conference. In fact, Your Honor will recall
24 that during a conference call with the Court, I was asked to
25 immediately find out if there had been any action taken. And

1 I called Dallas and was able to find out that the motion had
2 been committed independently of anything going on in this
3 lawsuit, Your Honor.

4 THE COURT: Well, however that may be the --

5 MR. SYNNESTVEDT: But Your Honor is quite right, it is
6 moot.

7 THE COURT: I do remember, as I'm sure you do, that
8 there was considerable difficulty reported by you in your
9 communicating with your client.

10 MR. SYNNESTVEDT: Yes.

11 THE COURT: And I'm not concerned for the moment with
12 whether your client acted independently of advice from this
13 Court. I was at the time, you'll remember, quite dismayed
14 that you seemed unable to communicate with your client or get
15 any acknowledgement by the client that there was a pending
16 case and the judge who had some continuing supervisory respon-
17 sibility with respect to the activities of your client who is
18 the plaintiff in this court.

19 MR. EMMONS: Quite to the contrary too, Your Honor, is
20 the minutes reflect at that time, it's quoted, our counsel has
21 advised that there is no reason not to consider motion number
22 eight in the normal course of business as it's reached on the
23 agenda. It was quite disturbing at that time. And we
24 continue to find the same lack of cooperation from the WSO.

25 THE COURT: Well, suppose we agree that questions

1 about what was to happen at the conference in April or May of
2 1992, those questions are moot. They became moot as a result
3 of the action whether taken with some awareness that this
4 Court was curious or independently as plaintiff's counsel has
5 suggested. However that may be, the matter was not voted on
6 at the conference. And so the motion to stay it's considera-
7 tion for a year became moot.

8 Now, however all that may be -- and I think Mr. Emmons
9 points out that there was a motion for preliminary injunction
10 and that motion was withdrawn in the course of one of our
11 telephone conferences. We now have a situation in which the
12 defendant has died. There -- we really no longer have a
13 currently active controversy. And I think my appropriate
14 action is to deny the motion to enforce or vacate as moot.

15 And that I'm advised, Mr. Emmons, that you had -- that
16 it was your view that some effort should be made to revive the
17 controversy? I don't quite know what was -- what the fault
18 was.

19 MR. EMMONS: Yes, Your Honor.

20 THE COURT: I don't believe it's reflected in any
21 submission to the Court.

22 MR. EMMONS: No, Your Honor. Pursuant to Rule 25, it
23 was our intention to move to substitute defendant as a
24 survival right in this action. The lawsuit against Mr. Moor-
25 head was commenced against him as a defendant together with

1 those people who were acting in concert with him in reference
2 to the protection of the fellowship's rights to the intellec-
3 tual property. Mr. Allen is one of those individuals who
4 contributed towards the authorship of the fellowship litera-
5 ture. There are numerous other individuals who are also
6 authors of the intellectual properties of the fellowship that
7 desire to continue to preserve the rights of the fellowship to
8 the utilization of fellowship literature without the sole use
9 and benefit being derived by this corporation in California.
10 We --

11 THE COURT: Mr. Emmons, if I may, you may sit down.
12 There's no need for this formality. We're not going to be
13 able to continue for more than another minute or two because I
14 have a trial that's resuming.

15 As I suppose you are aware, it's a kind of unusual
16 situation to have somebody propose to come in and replace a
17 defendant in a lawsuit. The matter of substitution is usually
18 one that involves preservation of a pending claim of a
19 different -- to have somebody come in and say I want to
20 continue to resist a claim. And it certainly raises something
21 of a question as to whether the interest of other persons if
22 there are persons other than Mr. Moorhead who share allegiance
23 to his concerns, whether those shouldn't be manifested in some
24 other way by pursuing their own litigation in their own name,
25 rather than coming in in lieu of the deceased defendant.

1 MR. SYNNESTVEDT: Your Honor, on that point of
2 substitution, I have a series of cases that hold that a proper
3 substitute party is the executor or the other personal
4 representative of the deceased party.

5 THE COURT: Well, maybe so. Fine. There is nothing
6 before the Court now. I don't believe there's been any motion
7 made.

8 MR. EMMONS: That's correct, Your Honor, under Rule
9 25, the 90 day period from the date of certification of
10 suggestion of death. And what we've been trying to do is
11 watch what was happening within the fellowship to see that, in
12 fact, the fellowship is considering input in resolution of
13 this pending controversy.

14 THE COURT: Good.

15 MR. EMMONS: And without the necessity of filing legal
16 action, Your Honor, we are requesting that we simply be given
17 the right under Rule 6(A) to extend the time period in which
18 to move to substitute the defendant until after this pending
19 intellectual trust property document is completed this year
20 and resubmitted into the conference agenda report for 1993.
21 It's our belief that perhaps it will not be and this entire
22 matter will be rendered moot. And for that reason we would
23 respectfully request that we simply be given that right under
24 Rule 6(A) to extend our motion to substitute and the matter
25 lie dormant.

1 (Pause.)

2 MR. EMMONS: I'm sorry, Your Honor, it's 6(B) as in
3 boy.

4 THE COURT: Six B.

5 (Pause.)

6 THE COURT: Well, --

7 MR. EMMONS: Then I could draw your attention to the
8 comments section under 25(A), the 1963 amendment comment
9 section where it specifically states, motion may not be made
10 later than 90 days after the service of the statement unless
11 the period is extended pursuant to Rule 6(B). And that would
12 be our request, Your Honor, so that hopefully it would not be
13 necessary for a new legal action to be commenced at consider-
14 able expense to all parties, and that this matter would remain
15 dormant pending resolution of this very controversial issue
16 within the fellowship.

17 THE COURT: I assume that the plaintiff has no
18 objection.

19 MR. SYNNESTVEDT: We do object, Your Honor, to any
20 extension of time. My client is concerned that with the
21 finality of the judgment and we do not hear from Mr. Emmons
22 anything that indicates that there is a proper substitution of
23 party in the offering. He's proposing only that Mr. Allen or
24 another member of the fellowship be substituted. And I
25 haven't heard anything that indicates Mr. Allen as executor or

1 other personal representative of the deceased defendant, and
2 therefore, is not a proper substitute party.

3 THE COURT: Doesn't that go to the merits of the
4 proposed motion for substitution?

5 MR. SYNNESTVEDT: Yes, it does, Your Honor.

6 THE COURT: Why is it -- why should we be arguing
7 about the merits when the current motion is for enlargement of
8 time in which to present such a motion?

9 MR. EMMONS: Even at that, Your Honor, Danny White was
10 executrix --

11 THE COURT: Well, suppose --

12 MR. EMMONS: -- the executrix is --

13 THE COURT: -- I get an answer from the counsel to
14 whom I addressed the question.

15 MR. EMMONS: I'm sorry.

16 MR. SYNNESTVEDT: Well, we do not want to have this
17 lawsuit strung out, Your Honor. We believe that there's no
18 content left in it, and we'd like a finality affirmed.

19 THE COURT: How much of an extension are you asking
20 for?

21 MR. EMMONS: The 1993 conference agenda report has to
22 be out by February 1st of 1993. It will be in that document
23 whether the WSO will commit itself as to its position on the
24 intellectual property trust document. So I would request
25 until February 15th, 1993.

1 THE COURT: All right, I will give you until February
2 15th to move for substitution of another party or parties
3 defendant.

4 In granting that motion, I want to make it entirely
5 clear that I'm not by any remote implication suggesting any
6 view of mine that substitution would be proper. By the same
7 token, I'm not suggesting that substitution would not be
8 proper. But I think it is claimed that a motion to substitute
9 a defendant is, especially when that defendant is the only
10 defendant, the only adverse party, such a motion is an unusual
11 one, and I think take a pretty strong case to establish an
12 entitlement to intervene, to perpetuate a lawsuit. There may
13 be all sorts of other ways in which persons who have a kind of
14 a hortatory or editorial interest in a litigation to which
15 they're not a party can, if they see their legal interest
16 affected, undertake to protect them in other ways other than
17 shoring up a litigation which on its face has become
18 extinguished with the death of the defendant.

19 But I will grant your motion to extend the time in
20 which to file an application for substitution. In the mean-
21 while, the case will -- well, it has been marked off, I think,
22 as in suspense. And if this hearing today brought it off the
23 suspense list, it will return to suspense.

24 MR. SYNNESTVEDT: Your Honor, --

25 MR. EMMONS: Thank you very much, Your Honor.

1 MR. SYNNESTVEDT: -- could we have a briefing schedule
2 on the motion for substitution?

3 THE COURT: Well, we don't know whether there will be
4 any such motion filed. If a motion is filed --

5 MR. SYNNESTVEDT: I don't want the World Service
6 Conference disrupted by the filing of papers by Mr. Emmons.

7 THE COURT: If a motion is filed by February 15, then
8 you will have under the rules your appropriate time to respond
9 to the --

10 MR. SYNNESTVEDT: Fine, Your Honor.

11 THE COURT: -- motion. And if Mr. Emmons wishes a --
12 to reply to whatever you submit, that reply will be due no
13 later than a week after the -- your response.

14 MR. SYNNESTVEDT: That's fine, Your Honor.

15 THE COURT: All right.

16 MR. EMMONS: Thank you, Your Honor.

17 THE COURT: All right. Thank you all.

18 MR. SYNNESTVEDT: Thank you.

19 (Tape off, tape on.)

20 THE COURT: ... to all of you that you continue your
21 efforts to work these matters out in a nonlitigation mode.
22 We're dealing with problems that seem peculiarly unfitting for
23 litigation.

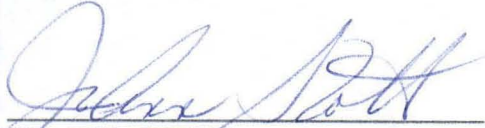
24 MR. EMMONS: Thank you, Your Honor.

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C E R T I F I C A T I O N

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


JO ANN STOTT

10/19/92
DATE