

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

~~JO ANN HOWARD AND ASSOCIATES, ET AL.~~
PLAINTIFFS

RECEIVED

V.

OCT 21 2014

CASE NO. 09-CV-1252-ERW

J. DOUGLAS CASSITY, ET. AL.
DEFENDANTS

BY MAIL

WRIT OF HABEAS CORPUS AD TESTIFICANDUM AND REQUEST FOR COPY OF DEPOSITIONS AND EXHIBITS

COMES NOW DEFENDANT DOUG CASSITY, PRO SE, and for his Writ of Habeas Corpus Ad Testificandum states to the Court that in the United States of America, as Plaintiffs' Attorney, Larry Pozner writes, a Defendant's right to confront and cross-examine witnesses is a right inherently embodied in the right to a fair trial. Pozner says "for a fair trial, civil litigants must have the right to cross-examine." Cross-Examination: Science and Techniques, Pozner and Dodd (1993) at page 2.

INTRODUCTION

Plaintiffs, in this case, have, in fact, recognized Defendant's need and right to confront and cross-examine witnesses at trial. Plaintiffs in their March 20, 2014 motion opposing Defendant's motion to sever or be dismissed without prejudice, unless this Defendant was provided the opportunity to participate in depositions, Plaintiffs told this Court at page 8:

Cassity will also have the ability to seek a writ of habeas corpus ad testificandum to permit his presence at trial. See *Poole v. Lambert*, 819 F2d 1025 1028 (11th Cir. 1987).

This Court noted in its September 5, 2014 Memorandum and Order, at page 6:

Plaintiffs do not oppose Brent Cassity's request, to the extent he asks to be remanded to the Court's custody, to testify at trial.

This Court further noted at pages 8-9 of its Order that "Doug Cassity appears to be similarly, if not identically situated" as Brent Cassity as to the issues in this case. If this Defendant is able to help reveal the truth to the Court and jury, it will equally benefit the defense of his family.

Defendant assumes, based on Plaintiffs previous representations to this Court, that Plaintiffs will join this defendant in requesting his Honor grant Defendant's writ of habeas corpus.

FACTORS TO CONSIDER IN WHETHER TO GRANT HABEAS CORPUS AD TESTIFICANDUM

In the *Poole* case cited by the Plaintiffs, the appellate court reversed and remanded the district court's failure to grant *Poole's* writ of habeas corpus ad testificandum because the district court failed to base its decision on the four factor test originally set out in *Ballard v. Spradley*, 557 F2d 476, 480 (5th Cir. 1977).

The *Poole* court stated that in determining whether to issue a writ, the district court must consider the following four factors:

- (1) Whether the prisoner's presence will substantially further the resolution of the case,
- (2) the security risks presented by the prisoner's presence,
- (3) the expense of the prisoner's transportation and safekeeping, and
- (4) whether the suit can be stayed until the prisoner is released without prejudice to the cause asserted.

It is obvious that this Defendant squarely qualifies under each of the four factors:

- (1) This Defendant's presence will substantially further resolution of the case.

Of the 40 plus defendants that Plaintiffs have sued, this Defendant is listed 1st and the Plaintiffs allege at page 145 of

TRULINCS 02005045 - CASSITY, JAMES DOUGLAS - Unit: MAR-J-A

their Complaint that "Defendant Doug Cassity ran all entities within the Cassity Consortium including but not limited to NPS, Lincoln, and Memorial."

This Court in its Memorandum and Order of March 23, 2011, succinctly summarized the issues in this case:

NPS's withdrawing funds is not the question, rather, whether Defendants violated the consent judgment in removing funds from Pre-Need Trust IV and whether Defendants were prohibited from converting whole life policies to term policies is the measure of whether the Plaintiffs are likely to succeed on the merits. Doc#726, p.4.

This Defendant is the only defendant to address the 2 key issues in this case, as summarized by this Court; was defendants' conduct legal in withdrawing funds and was it legal to use both whole and term life insurance to cover its liabilities. Just days before Elizabeth Fuller seized the companies and gave the companies to her brother, Chris; Bob Lock, the Missouri Attorney General Monitor, who supervised NPS's Compliance with the 1994 consent judgment, assured NPS attorney Scannell that once NPS paid monthly life insurance premiums to cover its liability there should be NO money left in trust. **DOC#726-5, pages 5-6. Lock's (Missouri's) interpretation of the consent judgment allowed cash withdrawals from trust so long as the aggregate market value (the face value of term and/or term life insurance in trust) exceeded 80% after the withdrawal.**

On February 29, 2008, the date of Lock's communication that NO money need be in trust after the monthly insurance premium was paid, there was over \$180,000 000 of face value term life insurance in trust, valued by the monitor and bank trustee, at the negotiated and monitored aggregate market value under Chapter 436 of \$180,000,000. The negotiated and monitored aggregate market value reported on monthly bank statements by the parties from 1994 until March 2008 was always the face value of the term and/or life insurance in trust.

Under that interpretation, every cash withdrawal NPS made was legal from 1994 until March 2008, when a Texas Regulator (Elizabeth Fuller) changed the rules in the middle of game, declared the life insurance worthless, ordered no new premiums be paid, assigned premium liability to the Guaranty Associations and gave the companies to her brother, Chris Fuller. The jury and this Court deserve to have the truth presented and Plaintiffs' make believe story challenged by cross-examination. As, even the Plaintiffs' attorney Larry Pozner admits, there is no other way for the defendants to receive a fair trial. This Defendant prays the Court allow cross-examination by someone who was present in 1994.

Clearly "the presence" of the 1st named Defendant Doug Cassity who plaintiffs say "ran" everything "will substantially further the resolution of the case."

(2) The security risks presented by the prisoner's presence

This Defendant is presently at Marion Prison Camp. 350 non-violent men reside in a dormitory surrounded by 30 acres of unfenced camp ground. There is a single "unarmed" guard (1 guard per 8 hour shift) for the 350 men. Much of the time the unarmed guard is female. The very reason I am assigned to this camp is that I am non-violent and trusted not to walk away to the "free" world.

This Defendant does not present a security risk to the Court room.

(3)The expense of the prisoner's transportation and safekeeping

Because of the low security risk of its prisoners, transportation from Marion to other Bureau of Prison (BOP) facilities is generally provided by friends, family members or public transportation. But the mechanics of transportation are beyond this Defendants knowledge and up to this Court and the BOP.

Safekeeping options are: (1) a furlough, (2) the federal cells in the Federal Court House (3) half way house on Kingshighway or (4) other options involving throwing this Defendant into the general population of "lock-down" facilities in the area. Either of the 1st 3 options would let this Defendant have a place to keep trial material overnight and prepare for trial the next day.

My thought is that any of the above options would be cheaper than my present confinement. It is estimated that the federal government spends \$80,000 per year per prisoner for feeding, housing, providing clothing and medical care for each

TRULINCS 02005045 - CASSITY, JAMES DOUGLAS - Unit: MAR-J-A

prisoner like myself who is over 65 years old. I am 68. In addition to the one guard for the dormitory and 30 acre camp grounds, there is an administration building, there are over 10 federal BOP employees who handle the paperwork for the camp, plus 2 health care professionals. These BOP employees would be relieved of duties associated with my care, if I am gone.

My release on a writ of habeas corpus ad testificandum should be a net savings for the federal government.

(4) Staying of the case.

This Court has already addressed the 4th point...this case is not going to be stayed.

As stated, this Defendant meets all criteria for the issuance of a writ of habeas corpus ad testificandum and the Plaintiffs have stated they are not opposed to the issuance of such a writ.

RIPENESS FOR ISSUANCE OF WRIT

This case is scheduled for trial on February 2, 2015, approximately 90 some days from now. If this Court grants this writ, Defendant needs time to review the depositions of witnesses in order to prepare for trial.

COPY OF DEPOSITIONS AND EXHIBITS

In March, when this Court granted the Defendant the right to listen to depositions, the Court deferred issuing an Order requested by Defendant that Plaintiffs make available copies of depositions. Plaintiffs' attorneys represented to the Court that it would talk to its clients and report back. This Defendant asked the Plaintiffs' attorneys by email, numerous times, what their decision was on providing copies, each time they promised to get back to me. In July they told me they would not supply the depositions and attempted to sever this defendant from this case by a motion to dismiss "without" prejudice.

Defendant was only able to listen in to about 1/3 of the depositions. Depositions started in January and were already half over by March when the Court was able to rule. Many times as many as 3 depositions were scheduled in one day with different phone numbers. Some times the BOP equipment simply failed to connect. I had to report back to the dorm at 4:00pm before most depositions were concluded and many times the BOP called me aside for various reasons. It was as good as could be accomplished under the circumstances.

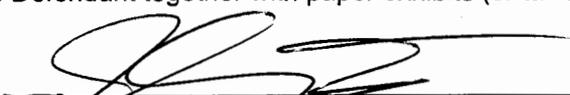
If the Court grants this Defendants motion for a writ of habeas corpus ad testificandum, there is only 90 some days left before trial. Defendant "tailors" his request to copies of only the depositions and paper exhibits. It is too late to think about the millions of pages of documents that exist. The depositions are copied in a way that 1 page front and back contains 4 pages of each deposition.

Compared to the money that is spent daily by the attorneys in this case, the expense of copies of depositions is deminimous. The Plaintiffs' just filed a 2200 page Motion to Amend and all parties routinely file motions of 100s of pages. As previously pointed out by the Plaintiffs, they were awarded restitution in the companion case and were awarded over \$1,700,000 in cash from bank accounts my ex-wife's bank account. In addition, the Plaintiffs have realized \$10,000,000 in early settlements.

Defendant will be denied any meaningful ability to cross-examine the witnesses without being provided copies of the depositions and paper exhibits.

WHEREFORE, DEFENDANT DOUG CASSITY, PRO SE, prays the Court grant his motion for a Writ of Habeas Corpus Ad Testificandum and order Plaintiffs to provide deposition copies to this Defendant together with paper exhibits (or tax as court costs or any other remedy) as this Court deems just and proper.

Dated: 10/20/2014



Doug Cassity, Defendant Pro Se

CERTIFICATE OF SERVICE

This Defendant asks the clerk to please serve this motion on parties not on pacer because he is incarcerated and has no ability to do so.

10/20/14



James Douglas Cassidy
Reg # 02005-045
USP Marion
US Penitentiary Sat. Camp
P.O. Box 1000
Marion, IL. 62959

SAINT LOUIS MO 63005
20 OCT 2014 PM 4 L
PURPLE HEART
FOREVER U.S.
2012

02005-045
Cerk Usedmo Court
111 S 10TH ST
Saint Louis, MO 63102
United States

RECEIVED
OCT 21 2014
BRIAN

20 OCT 2014 PM 4 L
SAINT LOUIS MO 63005
521125 0005

