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IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

JANE DOE,  
Plaintiff,  
v.  
WILMINGTON HOUSING AUTHORITY,  
and FREDERICK S. PURNELL, SR.,  
Defendants.

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: CIVIL ACTION NO.  
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: 10-473 (JJF-LPS)

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Wilmington, Delaware  
Friday, November 12, 2010  
TELEPHONE CONFERENCE

BEFORE: HONORABLE **LEONARD P. STARK**, U.S. MAGISTRATE JUDGE

APPEARANCES:

FOX ROTHSCHILD, LLP  
BY: FRANCIS G.X. PILEGGI, ESQ., and  
AUSTEN ENDERSBY, ESQ.

Counsel for Plaintiff

YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
BY: BARRY M. WILLOUGHBY, ESQ.,  
TERESA A. CHEEK, ESQ., and  
LAUREN E. MOAK, ESQ.

Counsel for Defendant

Brian P. Gaffigan  
Registered Merit Reporter

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P R O C E E D I N G S

(REPORTER'S NOTE: The following telephone conference was held in chambers, beginning at 2:31 p.m.)

THE COURT: Good afternoon everybody. This is Judge Stark. Who is there, please?

MR. PILEGGI: Good afternoon, your Honor. Francis Pileggi and Austen Endersby of Fox Rothschild for the plaintiffs.

MR. WILLOUGHBY: Your Honor, it's Barry Willoughby along with Teresa Cheek and Lauren Moak for the defendants, Young Conway.

THE COURT: Okay. Great. Good afternoon all of you. It is, for the record, our case of Doe v Wilmington Housing Authority. It's our Civil Action No. 10-473-LPS.

We're here for a status conference. I do have a court reporter.

I have reviewed the two letters from the parties and have a pretty good idea of how I want to proceed, but let me first ask and make sure, have there been any developments? For instance, have you settled the case?

MR. WILLOUGHBY: No, we haven't, your Honor.

THE COURT: Is that Mr. Pileggi?

MR. WILLOUGHBY: It's Mr. Willoughby.

THE COURT: And you agree with that, Mr.

1 Pileggi?

2 MR. PILEGGI: Your Honor, we agree with that,  
3 that the case is not yet settled.

4 THE COURT: So here is how I see where we are.  
5 In my view, the plaintiffs are entitled to have the  
6 constitutionality of the -- I'll call it "new" but I  
7 understand it to be the current policies that are now in  
8 effect. They are entitled to press a constitutional  
9 challenge to those policies and to have a court review  
10 them. They are not entitled, however, to have any judicial  
11 assessment of the now defunct policies which were in place  
12 at the start of the case but as I understand it no longer  
13 are.

14 So what I want, and what I'm going to do, is  
15 I'm going to schedule a hearing. I've already got a date.  
16 It's March 29th at 2:00 p.m. And I want to leave it to the  
17 parties to figure out and propose to the Court a schedule  
18 for how we get to March 29th and what we're doing on  
19 March 29th.

20 I'll just throw out to you that it seems to me  
21 that probably what needs to be done is a deadline for amended  
22 pleadings and then a deadline for either case dispositive  
23 motions or I don't know if you want to tee it up as a  
24 preliminary injunction motion, but basically for the parties  
25 to figure out what you need to do in order to tee up the

1 constitutional issue, get it fully briefed for me by three  
2 weeks before the hearing, so by March 7th. And then we'll  
3 have the hearing and we'll get you a resolution of this  
4 dispute.

5 But go ahead and react to what I've proposed and  
6 ask any questions you may have. Mr. Pileggi.

7 MR. PILEGGI: Your Honor, that's fine. We  
8 appreciate the hearing; and I'm sure that my friends and I  
9 can work on a pretrial schedule that we will submit. And I  
10 guess, does that include any discovery that might be  
11 necessary to tee up, your Honor?

12 THE COURT: Well, I figured you all would, in  
13 the first instance, see if you could agree on whether it  
14 requires discovery.

15 MR. PILEGGI: Okay.

16 THE COURT: And if you can't agree on that, then  
17 obviously I would have to determine that.

18 MR. PILEGGI: Well, maybe Barry and I can talk  
19 off-line, and I feel confident we can propose a pretrial  
20 schedule.

21 MR. WILLOUGHBY: I just had a slightly different  
22 idea in mind. I'll just throw it out there for the Court's  
23 consideration and for Mr. Pileggi's consideration. We have  
24 a bench trial. Neither side has requested a jury so we  
25 don't have to worry about all the things that go with a jury

1 trial. It seems to me that doing a briefing before the  
2 testimony is almost putting the Court through double work;  
3 and what I sort of had in mind if the parties were  
4 agreeable, the Court was agreeable, was to do a hearing,  
5 to the extent there is factual testimony to put on the  
6 record, and there may be some but I don't think it will be  
7 lengthy, and then do you post-trial briefing and have the  
8 Court decide a final injunction or final order based on that  
9 rather than having going through perhaps two steps with case  
10 dispositive motions and then post-trial briefing. Because  
11 we don't have a jury involved, it seems to me that is kind  
12 of double work for the Court.

13 The only proposal I would make and throw out  
14 there is we still have the hearing on the 29th but then we  
15 do post-trial briefing and the Court can resolve all the  
16 issues at that point.

17 THE COURT: Any response to that, Mr. Pileggi?

18 MR. PILEGGI: Yes, your Honor. I feel confident  
19 that we are going to be submitting dispositive motions and  
20 that -- and I think that maybe in another type of case,  
21 Barry's comment would make more sense. But since we're  
22 planning, I think it's almost a certainty -- in fact, I will  
23 say it is a certainty that we will be filing dispositive  
24 motions. So for that reason, it seems to me if we're filing  
25 dispositive motions, the March date might be an oral

1 argument date. I don't know if the Court typically has oral  
2 argument on these things, but since we're going to be filing  
3 dispositive motions, it seems to me that unless the Court  
4 wants to hear oral argument before March 29th, I think  
5 scheduling a time for testimony might be unnecessary.

6 THE COURT: All right. Well, here is we I can  
7 tell you on that. And by the way, the March 29th, the time  
8 that I have reserved for you is at 2:00 o'clock. I don't  
9 know if I said that.

10 MR. WILLOUGHBY: You did, your Honor. Thank  
11 you.

12 THE COURT: And I'll hold on to the whole  
13 afternoon for you.

14 I'm going to let you all talk further about  
15 this, but given the timing in which I hoped to get the case  
16 resolved, I want whatever evidence anybody thinks needs to  
17 be presented to me as well as any briefing, I want that done  
18 by the end of March. So if you all agree that we need an  
19 evidentiary hearing or a trial or something that is going to  
20 require a post-hearing or post-trial submissions, then we're  
21 going to get you a date for that proceeding in the early  
22 part of March so that you can get the briefing done by the  
23 end of March.

24 When I gave you the March 29th date for hearing,  
25 I envisioned really that it would be oral argument on cross

1 motions for summary judgment or possibly a preliminary  
2 injunction hearing that would be fully briefed prior to the  
3 hearing. But the idea is the briefing and whatever hearings  
4 we're going to have are going to be done over the course of  
5 March so that I have everything I need to make a decision.

6 And with that, I'll just leave it to all of  
7 you and give you a week to get back to me with a proposed  
8 scheduling order. Hopefully, it's all agreed upon. If it  
9 isn't, then just note in the proposal what the competing  
10 proposals are. And if I need to, we'll set a date to get  
11 you on the phone real quick just to get those disputes  
12 resolved.

13 Anything else or any questions?

14 MR. PILEGGI: Just quickly, your Honor.

15 I don't know if you are willing to accept any  
16 additional written arguments on the issue of whether or not  
17 the Court is going to consider any formal disposition on the  
18 prior policy. I heard what your Honor said at the beginning  
19 of the call and I'm not here to reargue that. I just don't  
20 know if the Court would consider any further written  
21 argument on that issue.

22 THE COURT: I don't expect I will change my  
23 mind on it, but you can certainly put into the schedule,  
24 if you want to, the opportunity to brief that issue in  
25 conjunction with whatever else you're filing, but we've

1 looked at the letters, we've looked at the authorities. My  
2 sense is what I think it has been throughout much of the  
3 case because we've sort of discussed this before, is that  
4 you were entitled to a determination of one or the other but  
5 not both, and now it seems pretty clear to me which one you  
6 are entitled to a determination of.

7 MR. PILEGGI: Okay. Thank you, your Honor.

8 THE COURT: Okay.

9 MR. WILLOUGHBY: Your Honor, we will work  
10 together and submit a hopefully jointly agreed to scheduling  
11 order within, by this time next week?

12 THE COURT: Exactly.

13 MR. WILLOUGHBY: Okay.

14 MR. PILEGGI: Thank you very much, your Honor.

15 THE COURT: Okay. Thank you all. We'll look  
16 forward to your submissions.

17 MR. WILLOUGHBY: Thank you, your Honor.

18 THE COURT: Good-bye.

19 MR. WILLOUGHBY: Good-bye.

20 (Telephone conference ends at 2:40 p.m.)  
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