

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

U.S. Xpress, Inc.

Court of Appeals No. L-16-1296

Appellee

Trial Court No. CI0201502507

v.

Hub Group, Inc., et al.

DECISION AND JUDGMENT

Appellants

Decided: May 12, 2017

* * * * *

Thomas M. Metzger and Chad J. Kaldor, for appellee.

Matthew D. Gurbach, Christopher J. Lalak, and Michael J. Meyer, for appellants.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal of a November 30, 2016 judgment of the Lucas County Court of Common Pleas, denying appellants' pro hac vice motion. The disputed motion

was filed in civil litigation that had been ongoing for approximately one and one-half years at the time the motion was filed.

{¶ 2} From the onset of this litigation, appellants were represented by counsel from the Ohio office of a well-known national law firm. Nothing in the record reflects that existing counsel was unwilling or unable to continue effectively representing appellants. Nevertheless, new counsel sought admission on behalf of appellants. Notably, the appearance of new counsel seeking permission to be admitted to represent appellants on a pro hac basis coincided with that same counsel ending representation of appellants' litigant opponent USX in a similar matter in another jurisdiction. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 3} Appellants, Hub Group, Inc. ("Hub"), Chris Keller, Ryan Bristol, Nate Wilson, and Rob Simmons (collectively, "appellants"), set forth the following five (5) assignments of error:

1. The Trial Court erred as a matter of law by denying the Pro Hac Vice Motion.

2. The Trial Court erred as matter of law by failing to apply the former client test set forth in Rule 1.9(a).

3. The Trial Court erred as a matter of law because it made no finding that the Ohio Lawsuit and the California Lawsuit are "substantially related" as required under Rule 1.9(a).

4. The Trial Court erred as a matter of law by failing to find that there is a substantial risk that Seyfarth received confidential factual

information in the California Lawsuit that would materially advance Defendants' position in the Ohio Lawsuit.

5. The Trial Court erred as matter of law by applying a "timing of retention" standard instead of the "substantially related" test as required by Rule 1.9(a).

{¶ 4} The following undisputed facts are relevant to this appeal. On March 13, 2015, four management employees of appellee's Toledo logistics office executed a coordinated resignation, without prior notice, from U.S. Xpress, Inc. ("USX"). The group defected to logistics competitor Hub, which was in the process of launching a Toledo office. The extensive coordination of the effort was reflected in the sweeping hiring of 37 of the 40 USX Toledo office employees by competitor Hub within two days of the USX Toledo office management resignations.

{¶ 5} On May 5, 2015, USX filed the underlying complaint against appellants in the trial court. Over the course of the following one and one-half years of this litigation, extensive and complex discovery was conducted, including the taking of over 20 depositions. Throughout the litigation, appellants were ably represented by the Ohio office of the large, national law firm of Benesch, Friedlander, Coplan & Aronoff L.L.P. ("Benesch").

{¶ 6} During this same timeframe, the Illinois law firm of Seyfarth Shaw L.L.P. ("Seyfarth") represented USX in ongoing litigation in California in another employment related dispute. On August 2, 2016, Seyfarth withdrew as counsel of record to USX in

the California action, while simultaneously remaining available for consultation with USX on the matter as it progressed.

{¶ 7} Shortly thereafter, on November 1, 2016, Seyfarth filed a motion pro hac vice to be admitted to represent Hub in the Ohio litigation despite its long-term representation of Hub competitor and litigation opponent USX in the California case. The motion was filed ten days prior to the scheduled deposition of Hub CEO.

{¶ 8} On November 11, 2016, while the pro hac vice motion in the Ohio case to represent Hub was still pending and had not been granted, counsel from Seyfarth appeared at the Yeager deposition. Hub's existing counsel, Benesch, likewise appeared on behalf of Hub.

{¶ 9} At the deposition, Seyfarth adamantly insisted on defending the Hub CEO deposition despite USX being a recent Seyfarth client in another employment related case, despite the California and Ohio cases involving several of the same witnesses, and despite lacking pro hac vice admission. USX objected to Seyfarth's involvement, yet Seyfarth refused to leave. Faced with these untenable circumstances, the deposition was canceled.

{¶ 10} On November 30, 2016, the trial court denied Seyfarth's pending pro hac vice motion given their recent representation of Hub competitor and adverse party USX in a California employment law case ongoing during the same timeframe as the instant case, and involving several of the same witnesses.

{¶ 11} In denying the motion, the trial court held in pertinent part, "As such, there is no dispute that Plaintiff is a very recent former client Seyfarth * * * [I] cannot be said

that the two cases are wholly dissimilar * * * Seyfarth worked closely with plaintiff's general counsel's office in the California action * * * [P]otential overlap in witnesses/interested parties." This appeal ensued.

{¶ 12} Appellants' assignments of error all stand for the proposition that the trial court erred and abused its discretion in denying Seyfarth's pro hac vice motion. We do not concur. Given their common premise, the assignments of error will be addressed simultaneously.

{¶ 13} It is well-established that out-of-state counsel possesses no absolute right under state or federal law when seeking admission to practice in Ohio on a pending Ohio case. *Royal Indemnity Co. v. J.C. Penney Co.*, 27 Ohio St.3d 31, 501 N.E. 2d 617 (1986). As such, disputed pro hac vice motion judgments are reviewed pursuant to the abuse of discretion standard. The term abuse of discretion connotes more than a mere error of law or judgment. It requires demonstration that the disputed trial court action was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 14} In conjunction with the above, this court has consistently recognized that the three primary factors utilized in determining whether pro hac vice admission is warranted are whether a previous, long-standing personal relationship between the party and the out-of-state counsel existed, whether the out-of-state counsel is the customary counsel for the party seeking the admission, and the availability of competent, admitted counsel to represent the party seeking the out-of-state counsel admission. *Walls v. City of Toledo*, 166 Ohio App.3d 349, 2006-Ohio-2111, 850 N.E.2d, 789, ¶ 13 (6th Dist.).

{¶ 15} We have reviewed and considered the record of evidence in this matter. The record does not reflect the requisite long-standing, personal relationship between Seyfarth and appellants. The record further does not reflect that Seyfarth is the customary counsel for appellants.

{¶ 16} Conversely, the record does reflect ongoing representation from competent, admitted counsel from Benesch on behalf of appellants prior to the disputed pro hac vice motion. The record consistently reflects the presence of competent, admitted counsel from Benesch on behalf of appellants at the November 11, 2016 deposition of the Hub CEO prior to its cancellation necessitated by the appearance and insistence of representation by Seyfarth despite no pro hac vice admission in Ohio for this case.

{¶ 17} The facts of this case do not support the pro hac vice admission by Seyfarth.

{¶ 18} We find appellants' assignments of error not well-taken. The record of evidence shows that the disputed trial court denial of the pro hac vice motion was not arbitrary, unreasonable, or unconscionable. Ample evidence reflects concerns of impropriety associated with Seyfarth's pro hac admission for Hub given Seyfarth's representation of USX in an employment case in California involving some of the same witnesses. Wherefore, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Appellants are ordered to pay the cost of this appeal pursuant to App.R. 24.

Judgment affirmed.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, J.
CONCUR.

JUDGE