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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

FRANK STEFFENSEN,

Plaintiff,

v.

CITY OF FAIRBANKS, et al.,

Defendants.

Case No. C09-0004RJB

ORDER ON THE
COURT'S ORDER
REQUESTING
ADDITIONAL BRIEFING
AND ON CITY OF
FAIRBANKS
DEFENDANTS' MOTION
TO RESCHEDULE TRIAL
DATE

This matter comes before the court on the court's order requesting additional briefing (Dkt. 46) and on defendants City of Fairbanks, Ron Dupee, John Merrion, Burlyn Rigdon and Stewart Lewis' Motion to Reschedule Trial Date (Dkt. 39). The court has considered the relevant documents and the remainder of the file herein.

PROCEDURAL HISTORY

On April 20, 2009, the City of Fairbanks defendants (City of Fairbanks, Ron Dupee, John Merrion, Burlyn Rigdon and Stewart Lewis) filed a motion to reschedule the trial date in this matter. Dkt. 39.

On April 20, 2009, the court issued an order denying plaintiff's motion for reconsideration, in which he had requested that the court reinstate certain claims against certain defendants. Dkt. 38. On May 6, 2009, plaintiff filed a Notice of Interlocutory Appeal of Order Dismissing Federal Defendants from Cause of Action, in which he appealed the court's April 20, 2009 order. Dkt. 44.

1 On May 12, 2009, the court entered an order, permitting the parties to file additional briefing, not
2 later than May 26, 2009, addressing the question of whether this court may or should proceed in this case
3 until the appeal has been resolved. Dkt. 46. The City of Fairbanks' motion to reschedule the trial date
4 (Dkt. 39) was renoted for consideration on May 26, 2009. Dkt. 46.

5 On May 18, 2009, the City of Fairbanks defendants (City of Fairbanks, Ron Dupee, John Merrion,
6 Burlyn Rigdon and Stewart Lewis) filed additional briefing, contending that, because plaintiff has appealed
7 a non-appealable interlocutory order, this court continues to have jurisdiction and should proceed with the
8 case. Dkt. 47. No other additional briefing has been filed.

9 DISCUSSION

10 *1. Jurisdiction Pending Appeal*

11 Plaintiff has filed an appeal in this case. Once a notice of appeal is filed from a final judgment, the
12 district court is divested of jurisdiction. *Laurino v. Syringa General Hosp.*, 279 F.3d 750, 755 (9th Cir.
13 2002); *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58- 59 (1982). However, when a Notice of
14 Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction
15 to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has
16 issued on the appeal does not apply. *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007).

17 In this case, plaintiff appealed the court's April 20, 2009 order dismissing some, but not all, of the
18 defendants (Dkt. 38). Plaintiff did not make a request for a final judgment under Fed.R.Civ.P. 54(b). The
19 court's order April 20, 2009 order is not an appealable final order under 28 U.S.C. § 1291; it is not an
20 interlocutory order generally appealable under 28 U.S.C. § 1292(a), and the court did not provide the
21 statement necessary to make the order an interlocutory order appealable under 28 U.S.C. § 1292(b).
22 Because the appeal is defective, this court is not divested of jurisdiction while the appeal proceeds.
23 Accordingly, the court should proceed with the case.

24 *2. City of Fairbanks Defendants' Motion to Reschedule Trial Date*

25 The City of Fairbanks defendants request that the court strike the February 1, 2010 trial date due to
26 the heavy trial schedule of defendants' counsel in February of 2001. Dkt. 40. The City of Fairbanks
27 defendants request that the court issue an order requiring the parties to conduct a scheduling and planning
28 conference report in accordance with Fed.R.Civ.P. 26(f).

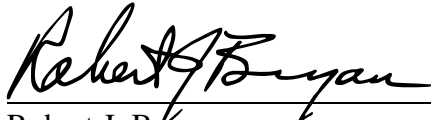
1 Defendants City of Fairbanks, Ron Dupee, John Merrion, Burlyn Rigdon and Stewart Lewis'
2 Motion to Reschedule Trial Date (Dkt. 39) should be granted. The court will issue a minute order
3 requiring a joint status report from the parties.

4 Therefore, it is hereby

5 **ORDERED** that the court will proceed with this case while plaintiff's appeal is pending.
6 Defendants City of Fairbanks, Ron Dupee, John Merrion, Burlyn Rigdon and Stewart Lewis' Motion to
7 Reschedule Trial Date (Dkt. 39) is **GRANTED**. The dates set in the scheduling order issued on March 31,
8 2009 (Dkt. 32) are **STRICKEN**. The court will issue a minute order requiring a joint status report that
9 complies with the requirements of Fed.R.Civ.P. 26(f).

10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
11 party appearing *pro se* at said party's last known address. The Clerk is further directed to issue a minute
12 order requiring a joint status report that complies with the requirements of Fed.R.Civ.P. 26(f).

13 DATED this 1st day of June, 2009.

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15 Robert J. Bryan
16 United States District Judge
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