

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARY WICKENKAMP,

Plaintiff,

vs.

CLAY SMITH, ANDREW STROTMAN,
B & J PARTNERS, ABC
CORPORATION, Its Successor Entity;
CLINE WILLIAMS WRIGHT JOHNSON
& OLDFATHER, L.L.P., A Nebraska
Limited Liability Partnership; JOHN DOE
NO.1, JOHN DOE NO. 2,

Defendants.

8:13CV262

MEMORANDUM AND ORDER

The case was originally filed in the United States District Court for the Southern District of Texas. Defendant Smith moved to dismiss the case for lack of personal jurisdiction in a Texas court and moved to transfer the case to this district. (Filing No. 13). After affording the plaintiff a hearing and an opportunity to amend her complaint to allege conduct occurring in the State of Texas, the Texas Court transferred the case to this forum. (Filing No. 23). It was assigned to the undersigned magistrate judge for pretrial progression on September 23, 2013.

Typically, this court would now issue a scheduling order requiring the parties to complete a Rule 26(f) Report outlining their claims and defenses and their proposed deadlines for final progression of the case to trial. However, in addition to his venue and personal jurisdiction challenges, Defendant Smith had filed a Rule 12(b)(6) motion to dismiss for failure to state a claim, and a Rule 12(e) motion to make more definite and certain, in the Texas Court. Those motions were not ruled on before the case was

transferred to Nebraska, and this court cannot currently rule on those motions because the briefs in support of or opposing them (if any)¹ are not filed of record.

The court also questions whether this case should remain assigned to an Omaha trial location. That assignment was done at the time of transfer based on clerk's office procedures and without regard to the convenience of the parties, witnesses, and counsel. See NECivR 40.1(b)(1).

Under such circumstances, the appropriate next steps for this case are: 1) affording the parties an opportunity to file a motion requesting a different trial location, and 2) determining whether the any party wants to file Rule 12 motions in this forum before a final progression order is entered.

Accordingly,

IT IS ORDERED:

- 1) If any party wishes to raise or re-raise a Rule 12 motion in this forum before the court enters a final progression order, such motions shall be filed in accordance with this court's local rules on or before October 18, 2013. Absent the timely filing of any such motions, the court will promptly enter a scheduling order requiring the parties to prepare and file their Rule 26(f) Report.
- 2) Any motion to change the trial location shall be filed on or before October 18, 2013.

October 4, 2013.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge

¹ Some federal districts and some federal district judges do not require briefs to be filed when motions are filed, and some federal districts that do require briefs on all motions do not allow or require the briefs to be filed on the court's public docket. Therefore, the court does not know if briefs, as required in this forum, were ever submitted to the judge in Texas.