

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 DAVID MARTIN,

5 Plaintiff,

6 vs.

7 ATTORNEY GENERAL KWAME RAOUL, JUDGE
8 GREGORY EMMETT AHERN, JR., UNNAMED
9 COOK COUNTY CLERKS, COOK COUNTY,

10 Defendants.

)
)
)
) No. 22 CV 6296
)

) Chicago, Illinois
) August 10, 2023
) 9:22 a.m.
)
)

11 TRANSCRIPT OF PROCEEDINGS - TELEPHONIC STATUS HEARING

12 BEFORE THE HONORABLE ANDREA R. WOOD

13 APPEARANCES:

14 For the Plaintiff: MR. DAVID MARTIN, Pro Se
15 5352 South Princeton Avenue
16 Chicago, Illinois 60609
17 (773) 893-0813
18 martinvtthompson@gmail.com

19 For the Defendants: ILLINOIS ATTORNEY GENERAL
20 BY: MS. MARY ALICE JOHNSTON
21 115 South LaSalle Street, 27th Floor
22 Chicago, Illinois 60603
23 (312) 814-4417
24 mary.johnston@ilag.gov
25

26 Court Reporter: Brenda S. Varney, CSR, RMR, CRR
27 Official Court Reporter
28 219 South Dearborn Street, Suite 2144D
29 Chicago, Illinois 60604
30 (312) 554-8931
31 brenda_varney@ilnd.uscourts.gov

1 (Proceedings heard via telephone:)

2 THE CLERK: Calling the next case, 22 CV 6296, Martin
3 versus Ahern, et al., for status.

4 MR. MARTIN: David Martin here.

5 THE COURT: Thank you, Mr. Martin.

6 And do we have counsel for the two defendants who
7 have appeared?

8 MS. JOHNSTON: Good morning, Your Honor. Mary
9 Johnston on behalf of the Defendants Ahern and Raoul.

10 THE COURT: Thank you.

11 So over the last couple of weeks, I've received some
12 filings by the parties, and there's some disagreement about
13 how to proceed.

14 As I understand it, Mr. Martin would like to amend
15 his complaint. He has filed a motion to amend the complaint
16 which now names -- well, I think it's going to name the two
17 additional clerks who were previously unnamed, though I'm only
18 seeing Gretchen Peterson individually named who I believe was
19 not previously named. And then it also includes an affidavit.

20 So let me start by making sure that I know exactly
21 what Mr. Martin is doing with the amended complaint because I
22 thought, Mr. Martin, you were also naming the other people
23 from the clerk's office that you didn't have identities for
24 before.

25 MR. MARTIN: I can kind of go into the amended

1 complaint and give you a quick summary of it, if that's okay.

2 THE COURT: Keep it brief. If you could just focus
3 on what's different from the amended complaint as opposed to
4 the original complaint.

5 MR. MARTIN: Yes, Judge, definitely.

6 So there is an affidavit, and that affidavit is for
7 Ahern. It's an affidavit that was supposed to have gone in
8 the complaint originally. It originally was in the complaint,
9 but I amended the complaint, and I forgot to add it in the
10 first amendment. But I did have a reference point to it where
11 I referenced it, but I just didn't add it. So in this amended
12 complaint, I've added that affidavit as it pertains to Ahern.

13 There's also named Gretchen Peterson. She's the only
14 one I'm naming because she's the chief deputy clerk, and I
15 have also had some direct communication with her. So I named
16 her.

17 And I've added some exhibits for Gretchen Peterson
18 which was not originally added. And I also added additional
19 counts for Gretchen Peterson.

20 And I've added the Illinois Department of
21 Unemployment Security as a defendant. And the reason they
22 were added is because there were some things that happened at
23 the same time that I filed my complaint in federal court, and
24 I never got a chance to actually add them. So I'm adding them
25 now because there were a chain of events that happened

1 sometime just a little bit after I filed the federal
2 complaint, and I just never got a chance to add them.

3 And I've added some counts in 13, 14, and 15.

4 Now, with all that --

5 THE COURT: So if I can just pause you there, you say
6 that you named the Illinois Department of Employment Security.
7 What I see is that you've named an unknown employee.

8 Are you naming an individual, or are you trying to
9 name the entire department?

10 MR. MARTIN: Well, unfortunately, I can't get the
11 individual's name without getting a subpoena because what's
12 happened is that they've taken some action to essentially deny
13 my unemployment benefits which I believe were kind of like
14 retaliatory with all this stuff going on. But I don't know
15 who that was, and I can't name them until I get some type of
16 interrogatory or some type of subpoena.

17 THE COURT: So you do want to name the individual;
18 you just don't have the information yet?

19 MR. MARTIN: Exactly.

20 Now, with all that --

21 THE COURT: That's what you've done.

22 MR. MARTIN: Right, but with all that said, I may
23 have to withdraw this amended complaint because as I
24 understand it, the defendants want to -- I'm not sure what
25 they're trying to do, but, you know, I have -- there has been

1 progress made in terms of Ahern and Raoul. And I don't want
2 to lose the progress that this Court has made so I'm afraid I
3 may have to withdraw the complaint or try to sever Ahern and
4 Raoul from the other defendants or withdraw the affidavit.

5 So I would ask this Court: What exactly is the
6 defendants trying to respond to as it pertains to the amended
7 complaint? Because there's nothing in the complaint that
8 would allow them to re-file a motion to dismiss or, you know,
9 file an answer or anything like that. There's nothing in the
10 complaint as it pertains to Ahern or Raoul so I just want to
11 make that clear.

12 So I ask this Court --

13 THE COURT: Mr. Martin, I understand that you're
14 saying that the allegations are the same. Because you have
15 filed an amended complaint, it completely takes the place of
16 the old complaint. So let me step back.

17 If I grant your motion for leave to file an amended
18 complaint, the amended complaint is a new complaint. Under
19 the rules, they do get to file a new response. Their old
20 response is effectively moot because they responded to a
21 complaint that is no longer the operative complaint in this
22 case. That other complaint is no longer relevant if I grant
23 your motion for leave to amend.

24 Now, under the rules, when there's an amended
25 complaint that is filed, the defendants who have already

1 appeared would normally have 14 days rather than 21 days to
2 respond. So if I grant your motion for leave to amend, they
3 will get an opportunity to file a motion to dismiss.

4 They've asked for a lot longer than 14 days so I will
5 find out from them why they think they need more than 14 days,
6 and then I'll make a decision on when they will respond. But
7 they will get an opportunity to file a new motion. And
8 that's, in part, because if they were filing an answer, they
9 have to respond to everything in the complaint, including the
10 allegations that talk about what other people did. So that is
11 how the rules work.

12 It's up to you if you no longer want to proceed with
13 an amended complaint and go back to the old one, but if I do
14 allow your amended complaint, they will get a chance to make a
15 new motion-to-dismiss filing.

16 MR. MARTIN: Okay. So with that said, I'm just going
17 to go ahead and withdraw that amended complaint.

18 And if I could do a verbal motion to sever Ahern and
19 Raoul and split the cases, I'll take a verbal motion. If you
20 want me to write it, I'll write it, but for the most part, I'm
21 going to go ahead and withdraw that complaint for now.

22 THE COURT: I don't understand what you mean by a
23 motion to sever because the original complaint right now just
24 has the two defendants in it.

25 Who are you seeking to put into another case?

1 MR. MARTIN: I could file another case for Gretchen
2 Peterson and the Illinois Department of Unemployment, but I
3 don't want to lose the progress that this Court has made on
4 Ahern and Raoul.

5 THE COURT: So that's fine. So what you would need
6 to do is file a new complaint against the additional
7 defendants if you don't want to add them here. And you are
8 perfectly entitled to do that.

9 So the motion for leave to amend which is at Docket
10 Number 28 for me then is voluntarily withdrawn.

11 I'm going to take a step back because I know the
12 defendants had already asked for additional time for their
13 reply brief. I understand that you oppose that, Mr. Martin,
14 but I'd like to hear from defense counsel what their timeline
15 is, what they're asking for now that they've heard that you
16 are not going to file an amended complaint --

17 MR. MARTIN: If I could --

18 THE COURT: Mr. Martin, yes.

19 MR. MARTIN: I apologize for the interruption.

20 If I could, I'm asking the Court to deny the motion.
21 And the reason I'm asking the Court to deny it is because
22 they've missed the deadline. And it's not in this court, but
23 in other courts, I'm constantly being held to standards of a
24 lawyer, and these are professionals. This is what they do all
25 day every day, and, you know, they've missed their deadline to

1 actually respond.

2 But not only that, it's the way that they're missing
3 the deadline. Like, they didn't really give a reason on why
4 they missed the deadline. And I'm asking this Court to deny
5 that and either move on with a verdict on that.

6 So that's it. There's other reasons, but for the
7 most part, that's just kind of a quick summary, and that's
8 just that they missed the deadline to respond to the actual
9 complaint. They missed that twice. And now they're missing a
10 deadline to actually respond to my answer, and they didn't
11 even provide a reason for why they missed that deadline. So
12 I'm just asking this Court to just kind of move this case
13 forward.

14 THE COURT: So I will hear what their explanation is.

15 I believe that their reply date was August 3rd, and
16 that's the day that they filed their motion asking for more
17 time.

18 One thing that did happen, Mr. Martin, before their
19 reply date is you filed your motion for leave to amend. And
20 that was filed on -- I think it was a Friday. And then, you
21 know, the following week, just a week ago today, they filed
22 their request for an extension.

23 So I do think that because if I granted your motion
24 it would moot their work and require them to have to go and
25 figure out whether they needed to respond differently because

1 of the new defendants and the new allegations that that is one
2 reason. And your motion for leave to amend was filed just a
3 few days before their reply brief was due.

4 That is one of the risks of seeking to amend a
5 complaint while a motion to dismiss is pending is that it can
6 wipe out the briefing.

7 That said, they've also -- I also want to make sure
8 that any request that I decide to give them is a reasonable
9 one. So I'd like to hear from Ms. Johnston as to what her
10 position is in light of our discussion today.

11 Ms. Johnston?

12 MS. JOHNSTON: Thank you, Your Honor.

13 So you summarized exactly why it is that we filed
14 that request to potentially either moot out or extend the
15 reply date. As you said, it was a question of whether or not
16 there would be a new operative complaint hanging in the air.
17 I just didn't know what was going to be the appropriate course
18 of action until that question was resolved.

19 I believe in the motion that I filed, as you said, a
20 week ago today, I requested if the complaint was not going to
21 be amended an extension then until August 17th which would be
22 one week from today to then just file the reply brief and
23 complete briefing on the motion to dismiss that's already out
24 there.

25 I might ask -- and I apologize, but there have been

1 some pressing issues that came up last minute in the office.
2 If I could ask instead of having one week to reply potentially
3 just pushing that out to Tuesday, August 22nd, to file the
4 reply brief and wrap up briefing on the motion to dismiss.

5 THE COURT: Which would be two additional business
6 days but essentially about ten days from today.

7 MR. MARTIN: Right. Exactly, Your Honor.

8 THE COURT: Okay. So I'll give you a chance to
9 reply, Mr. Martin. So they want to file their reply brief by
10 the 22nd which is a week from this coming Tuesday.

11 MR. MARTIN: So I think the defendants have a history
12 of basically missing these deadlines, and it's causing
13 unnecessary delay. And I think that yes, I did file an
14 amended complaint, but that amended complaint would have had
15 absolutely no bearing on their reply.

16 I get it. Like, they would do work on the amended
17 complaint, and there's a potential chance that the amended
18 complaint would undo the work -- I'm sorry -- that they did on
19 the complaint. But, for the most part, there's not that many
20 days in between when I actually filed the amended complaint
21 and when their reply brief was due.

22 I can check the exact number of days, but I don't see
23 a reason why they couldn't have just filed their reply -- I
24 mean their -- yeah. I don't see a reason why they just
25 couldn't file their reply along with a motion to mark their

1 motion to dismiss as moot. I don't know. It's just that they
2 have a history of, you know, delaying the Court.

3 THE COURT: So, Mr. Martin, I did grant your prior
4 request for an extension of time because you had a tragedy in
5 your family, so I thought that was a reasonable request.

6 I will say I don't think that the request by defense
7 counsel is out of line at all. I think that the amended
8 complaint, as I said, under the rules would have mooted the
9 prior complaint and the motion that they filed. I think it
10 was reasonable for them to make the request that they did.

11 They might have moved a little bit more quickly, but,
12 again, your request for leave to amend was on a Friday. They
13 filed their motion the following Thursday. And they also knew
14 that there was a status hearing coming up within seven days of
15 that.

16 So with all of that said, I think their request is
17 reasonable. It's not going to hold up much, if at all, the
18 time for me to rule on the motion. So I'm going to go ahead
19 and grant their request that the reply be due, I think, the
20 22nd because given other cases that I already have scheduled
21 for next week, I wouldn't be issuing a ruling next week in any
22 case on a fully briefed motion to dismiss. So I think the
23 couple of extra days is not going to delay matters at all
24 materially. So I am going to allow them that additional time
25 till the 22nd. And then the motion will be fully briefed and

1 I can rule on it based on the papers.

2 I know you've asked for oral argument. This is not
3 the type of motion where I would generally find oral argument
4 useful regardless of whether there were attorneys on both
5 sides or not. This is the type of legal issue where I can
6 make a decision based on the briefs. You've explained your
7 position very clearly and what the facts are and what you're
8 looking for so I'm confident that I understand your position
9 and can make a proper ruling.

10 Also, I will say not having oral argument will also
11 probably lead to a faster ruling because scheduling oral
12 argument which would be an in-person hearing in the courtroom,
13 again, that's time that I can spend going over the briefs and
14 preparing a written ruling. So I'm not going to schedule oral
15 argument.

16 I will take the matter under advisement for ruling
17 based on the briefs once I get the reply brief on the 22nd.
18 I'll set another status date which will be set as a post
19 ruling status date, and if the case is going forward, we'll be
20 in a position to talk about discovery and what we need to do
21 to get it ready for trial.

22 If the case is not going forward, then you'll have
23 your other steps that you can consider, whether it's a motion
24 for reconsideration or appeal or filing the case elsewhere or
25 whatever it may be.

1 MR. MARTIN: So one quick question and not to take up
2 too much of the Court's time, so with the filing of the other
3 case, is it possible to give me a waiver since essentially I'm
4 severing?

5 And a separate question. Would it be against the
6 Court's rule to file -- would it have any negative impact if I
7 was to re-file the amended complaint in this case after the
8 Court's ruled on Ahern?

9 THE COURT: So would it have any -- so a couple of
10 things. One, if you file a new lawsuit, you have to either
11 pay the filing fee or file an application to proceed in forma
12 pauperis and file a financial affidavit.

13 It gets treated as a separate case so when you file
14 it, if you think it's related to this case, then there is a
15 box that you check where you say it's related to this case,
16 and then it might get sent to me as a related case.

17 If you don't think it's related to this case, then it
18 will be randomly assigned, and it will be up to the judge who
19 gets the case to decide whether you should have the fee
20 waived.

21 Either way, whoever considers it will have to have an
22 application to proceed in forma pauperis. That's not up to
23 me; that's the court's policy. The clerk of court pays close
24 attention to make sure that everybody is either paying the fee
25 or they get a waiver from the judge. So if it's a separate

1 case, it has to be considered separately.

2 For the amended complaint, after I rule on the motion
3 to dismiss, you can file a motion for leave to amend.

4 I'd have to see if the defendants who are already in
5 the case have any objection to that, but it is certainly
6 possible to file a motion for leave to amend really at any
7 time during the early stages of the case.

8 The rules say that leave to amend should be freely
9 given, but if it's going to prejudice the other parties, that
10 would be a reason for me to say no. So if it's early in the
11 case and there's not much discovery, it's entirely possible
12 that I would say that's fine. In fact, I would expect to say
13 that it's fine.

14 If the defendants' motion to dismiss is granted,
15 however, you might not have the option of amending the
16 complaint against them. Some of the arguments that they have
17 raised are ones based on subject matter jurisdiction. That
18 would mean, you know, this case would have to be dismissed and
19 there wouldn't be, you know, a reason to amend it. But it
20 really would depend on whether their motion is successful or
21 whether it fails.

22 If their motion fails and the case is going forward,
23 there's no reason you can't file another motion for leave to
24 file an amended complaint.

25 Does that answer your question, Mr. Martin?

1 MR. MARTIN: Yes. Thank you, Judge.

2 THE COURT: And then all of this will, of course, be
3 in the order for today.

4 I believe we're sending you orders by email to your
5 Gmail account; is that correct, Mr. Martin?

6 MR. MARTIN: That's correct. I've been getting all
7 the orders. I'm good to go on those.

8 THE COURT: Good. I'm glad to hear that.

9 So I will have the matter fully briefed by August
10 22nd. I will issue a ruling. I will set a regular 60-day
11 status.

12 Laritza, if you can look for what can be a telephone
13 status in 60 days.

14 If the case is going forward, we'll have a case plan.
15 If the case is dismissed, then the status may be dismissed as
16 well.

17 Laritza.

18 THE CLERK: Yes, Judge. We can do October 10th at
19 9:15.

20 THE COURT: Will the parties be able to call in then?

21 MR. MARTIN: I will.

22 MS. JOHNSTON: Yes, Your Honor.

23 THE COURT: Very good. Thank you for this hearing.
24 Thank you for your time. Have a good day.

25 MR. MARTIN: Take care.

1 MS. JOHNSTON: Thank you, Your Honor.

2 (Proceedings adjourned at 9:46 a.m.)

3 * * * * *

4 C E R T I F I C A T E

5

6 I, Brenda S. Varney, certify that the foregoing is a
7 complete, true, and accurate transcript from the record of
8 proceedings on August 10, 2023, before the HON. ANDREA R. WOOD
9 in the above-entitled matter.

10

11

12 /s/Brenda S. Varney, CSR, RMR, CRR

June 17, 2024

13 Official Court Reporter
14 United States District Court
15 Northern District of Illinois
16 Eastern Division

Date

17

18

19

20

21

22

23

24

25