

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

FILED FOR RECORD
R.B. SHORE
2009 JUL 21 PM 4:20
CLERK OF CIRCUIT COURT
MANATEE CO. FLORIDA

MARY LOU SMITH, an individual
and SHARON DENSON, an individual,

Plaintiffs,

vs.

CASE NO. 2008 CA 11315

TRAILER ESTATES PARK AND
RECREATION DISTRICT, an
independent special taxing district,
JANET JONES, an individual
JOHN VANDERMOLEN, an individual
JOSEPH SALERNO, an individual, AND
MARY LOU McNULTY, an individual,

Defendants.

**ORDER SCHEDULING CASE FOR NON-JURY TRIAL
& REFERRAL TO MEDIATION**

IT IS HEREBY ordered as follows:

1. **Trial Date.** This Cause is hereby set for non-jury trial during the two-week trial period beginning **SEPTEMBER 8, 2009**. All counsel and pro se parties will be ready for trial at **9:00 a.m.** on the first day of said trial period, unless the Court indicates otherwise. **Pretrial conference will be scheduled only upon request.**

2. **Exchange of Lists of Lay Witnesses, Expert Witnesses and Trial Exhibits.**

(a) Unless otherwise ordered by the court, no later than forty-five (45) days prior to trial, counsel shall exchange lists of exhibits expected to be actually used at trial, and the names, addresses, and expected subject matter of testimony as to all lay and expert witnesses expected to testify. **Expert witnesses shall be specifically designated.**

(b) Each party shall have the right to submit a supplemental list upon receipt and review of the opposing party's list no later than thirty (30) days prior to trial.

(c) The lists must be specific. General categories will not be accepted or enforced. No party shall be permitted to call a witness or introduce any exhibit not so disclosed without permission from the court or written stipulation.

3. **Time for Disposition of Motions/Disputes.** All motions/disputes shall have been heard prior to the first day of the trial period or will be deemed to have been waived.

4. **Discovery.** All discovery must be completed no later than ten (10) days prior to the trial period. Discovery conducted thereafter upon written stipulation or leave of court is at the risk of the parties. No continuance will be granted due to facts discovered after the pretrial conference that could have been discovered earlier with due diligence.

5. **Meeting Required 5 Days Prior to Trial.** No later than **five (5) days** prior to trial, the attorneys for the parties shall meet for the following purpose:

(a) **Trial Exhibits:**

(1) The attorneys shall examine all previously listed exhibits they intend to introduce into evidence.

(2) Prior to the meeting, at his or her option, an attorney may request that opposing counsel bring copies of their exhibits to the meeting at the requesting attorney's expense.

(3) **Joint Pretrial Stipulation.** The attorneys shall confer and prepare a joint pretrial stipulation listing all exhibits intended to be introduced into evidence. The list shall set forth the following:

A. Exhibits which are stipulated as admissible shall be initialed by all counsel.

B. Basic objections under the Florida Evidence Code shall be noted as to all other exhibits. Objections not noted shall be deemed waived and will not be heard by the court except for good cause shown.

(4) The list shall be filed with the court prior to the first witness being sworn.

(5) On the day of trial, all trial exhibits should be given to the clerk prior to the first witness being sworn for pre-marking. All attorneys should review and make note of the marked exhibits prior to the time the first witness is sworn.

(b) **Witnesses Appearing Through Deposition Testimony.**

(1) At the meeting, the attorneys shall confer and identify all deposition questions and answers (video or transcribed) to be read or shown to the judge in lieu of live testimony.

(2) The attorneys shall make every reasonable effort to resolve all objections. All unresolved objections to deposition questions must be listed in writing and filed with the court prior to the first witness being sworn. Objections not so filed will be deemed waived and will not be heard by the court except for good cause shown.

6. **Continuances.** This court strictly adheres to Rule of Judicial Administration 2.085(c) and Rule of Civil Procedure 1.460. Continuances may be granted, but only upon a showing of an unanticipated event and good cause. Any written stipulation to continue must be signed by all counsel.

7. **Witness Availability For Trial.** If at any point in time a party determines that any witness may not be available, it is directed that an appropriate deposition, video or otherwise, be taken. Unavailability will not be good cause for continuing the case or disrupting the court's trial docket, as the multiple trials set cannot be arranged based upon conflicts of various individuals.

8. **Referral to Mediation:** Pursuant to Fla.R.Civ.P. 1.710(b), the Court, sua sponte, determines that this action is of such a nature that formal mediation could be of benefit to the litigants or the Court.

Since 1987, Florida law has become replete with statutes on various issues as to mediation, reflecting joint legislative and judicial intent for parties to attempt to resolve disputes without acrimonious and expensive litigation.

As an example of an analysis of the concept of mediation and the judicial process, "Litigation Under Florida Probate Code," The Florida Bar Fifth Edition, section 3.49, indicates

"The success of mediation...should not be ignored. Many adversary...matters could be resolved through mediation. Mediation has the potential to permit the parties to agree on compromises and solutions that would not be available in a judgment. Face-to-face meetings of the adversaries in mediation may overcome the bitterness and antagonism that otherwise pushes an adversary proceeding to trial. The procedure is generally overlooked, but definitely could be a benefit." (E.A.)

Mediator: Pursuant to Fla.R.Civ.P. 1.720(f), within ten (10) days of the date of this order, the parties shall either:

- (1) Sign a written stipulation naming a mediator, or
- (2) The attorney for the party who initiated the litigation in this case shall provide a list of proposed mediators to the Court by letter, which does not

identify which party suggested which mediator. Each party will be entitled to provide the names of two mediators. The parties shall have determined prior to the submission of those names that the mediators will be available and able to schedule a formal mediation of whatever length is necessary within sixty (60) days of the date of this order. The initiating party's attorney will also submit an original order for the Court to insert the name of the mediator chosen by the Court, along with copies and stamped/addressed envelopes for all parties.

(3) The attorney for the party who initiated litigation shall notify all counsel in writing of the date and time agreed for mediation.

(4) In the absence of a written agreement, the mediator fee shall be \$150.00 per hour, to be initially paid equally by each party. The mediator must submit a report to the assigned judge as required in Fla.R.Civ.P. 1.730.

Unsuccessful Mediation/Ultimate Prevailing Party: The parties should be advised as part of the mediation process that if an agreement is not reached, and further litigation occurs, it is quite likely that the non-prevailing party may be responsible for the full costs of the mediation as well as attorney fees and costs pertaining to the litigation.

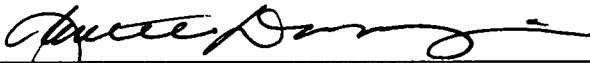
Waiver of Referral to Mediation: If formal mediation has already occurred in this case, the Referral to Mediation will be deemed waived by the Court.

9. **Settlements:** In the event this case settles, Plaintiff's counsel shall immediately notify the undersigned judge by written fax memorandum (941) 749-3685, and/or by phone call (941) 749-3633.

10. **Local Rules, Standards of Professionalism, and Good Faith Certifications.** In all pretrial and trial conduct, attorneys are expected to comply with the Local Rules and Standards of Professionalism of the Twelfth Judicial Circuit located at www.12circuit.state.fl.us.

11. **Sanctions.** Failure to comply with the requirements of this order will subject the party and/or attorney to appropriate sanctions.

DONE AND ORDERED in Manatee County, Florida, on this 20 day of July, 2009.



Janette Dunnigan, Circuit Judge

Copies to:

Kevin S. Hennessy, Esq.
1001 3rd Ave West, Suite 670
Bradenton, FL 34205

Hunter Carroll, Esq.
1777 Main St, Suite 500
Sarasota, FL 34236

James D. Dye, Esq.
1111 Third Ave West, Suite 300
Bradenton, FL 34205

Robert E. Turffs, Esq.
1444 First St, Suite B
Sarasota, FL 34236

Thomas D. Shults, Esq.
50 Central Ave, Suite 700
Sarasota, FL 34236

Daniel E. Scott, Esq.
2033 Main St, Suite 408
Sarasota, FL 34237