
NO. 17-1593

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

SEXUAL MINORITIES UGANDA

Plaintiff-Appellee,

v.

SCOTT LIVELY, individually and as President of Abiding Truth Ministries,

Defendant-Appellant.

**APPELLANT SCOTT LIVELY'S MOTION
FOR RECONSIDERATION OF DENIAL OF MOTION
TO SET ORAL ARGUMENT AND TO EXCLUDE APPELLEE
FROM ORAL ARGUMENT FOR DEFAULT IN FILING BRIEF**

Mathew D. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
Mary E. McAlister
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
Facsimile: (407) 875-0770
Email: court@LC.org

Defendant-Appellant Scott Lively (“Lively”), pursuant to Fed R. App. P. 27(b) and First Circuit Rule 27.0(d), moves the Court for reconsideration of the Order of Court (EID 6137382) entered December 11, 2017, denying Appellant Scott Lively’s Motion to Set Oral Argument and to Exclude Appellee from Oral Argument for Default in Filing Brief (EID 6134651) (the “Motion to Set”). Lively shows the Court as follows in support of this motion:

1. Lively filed his Motion to Set in order to obtain a date for oral argument, and to exclude Appellee, Sexual Minorities Uganda (“SMUG”) from oral argument for its default in filing its brief. (Motion to Set, copy attached hereto as Exhibit A.) Lively cited the applicable Federal Rules of Appellate Procedure, First Circuit Rules, and First Circuit Internal Operating Procedures mandating the setting of oral argument and the exclusion of SMUG therefrom based on SMUG’s failure to file any brief in accordance with, or seek an extension of, Appellee’s Briefing Notice (EID 6124394), expressly ordering SMUG to file its brief by November 2, 2017. (Motion to Set, ¶¶ 8-11.)

2. The Court’s Order denying Lively’s Motion to Set was entered by the Clerk pursuant to 1st Cir. R. 27.0(d) (Order at 1.) According to the Order, “the deadline for appellee’s brief was issued in error as its motion to stay remains pending before the court.” (*Id.*).

3. As an initial matter, 1st Cir. R. 27.0(d) authorizes the Clerk to dispose only of “certain routine, procedural motions.” Lively is not certain whether his Motion

to Set, seeking the exclusion of SMUG from oral argument, is properly considered a “routine” motion. Regardless, pursuant to 1st Cir. R. 27.0(d), Lively respectfully requests reconsideration by the Clerk, failing which Lively requests reconsideration by a judge or panel of this Court.

4. As Lively showed the Court in his Motion to Set, “There is no authority, however, in either the Federal Rules of Appellate Procedure or this Court’s Rules, to disregard the Court’s explicit order establishing a briefing deadline, or otherwise for an ‘automatic’ stay of briefing deadlines based solely on a pending motion to stay proceedings.” (Motion to Set, ¶ 10.)

5. By this action, the Clerk has granted SMUG a *de facto* stay, based solely on SMUG’s filing a motion to stay—a motion which is opposed by Lively. The Clerk, however, has no express authority under 1st Cir. R. 27.0 or 1st Cir. IOP V to grant a motion to stay, and no discretion under 1st Cir. R. 31.0 or 1st Cir. IOP IV not to notice an appellee’s briefing deadline. To be sure, **the Order denying the Motion to Set did not cite to any written or unwritten rule or procedure automatically staying briefing or granting the Clerk discretion to stay briefing based solely on the filing of an opposed motion for stay.**

6. If no brief is due from SMUG based solely on SMUG’s stay motion, and irrespective of the Appellee’s Briefing Notice issued to SMUG, then no brief was due from Lively, irrespective of the Appellant’s Briefing Notice and **two** subsequent

Orders of Court **requiring** the filing of his brief. Lively was never informed, however, of any such unwritten rule, and filed his brief in accordance with the Court's Orders.

7. Lively is prejudiced by the Clerk's apparently unauthorized granting of a stay to SMUG while holding Lively to the Court's rules and procedures.

WHEREFORE, for good cause shown, Lively respectfully requests reconsideration of the Order denying his Motion to Set. In the absence of any rule or authority for staying briefing deadlines solely based upon the pendency of an opposed motion to stay, Lively respectfully requests that his Motion to Set be granted, that oral argument be set on the next available calendar, and that SMUG be precluded from presenting argument because it has defaulted in filing its brief.

Respectfully submitted,

/s/ Roger K. Gannam

Mathew D. Staver

Horatio G. Mihet

Roger K. Gannam

Daniel J. Schmid

Mary E. McAlister

LIBERTY COUNSEL

P.O. Box 540774

Orlando, FL 32854

Phone: (407) 875-1776

Facsimile: (407) 875-0770

Email: rgannam@LC.org

*Attorneys for Defendant-Appellant,
Scott Lively*

CERTIFICATE OF SERVICE

I hereby certify that on this December 21, 2017, I caused the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notification system.

/s/ Roger K. Gannam
Roger K. Gannam
Attorney for Defendant-Appellant