

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

SEP 11 2008

LINDA MCDONNELL, an individual; et al.,

Plaintiffs,

and

DONALD L. ZACHARY,

Intervenor - Appellant,

v.

SOUTHWEST AIRLINES COMPANY,

Defendant - Appellee,

and

THE BOEING COMPANY; et al.,

Intervenors - Appellees,

and

HOWARD PETERSON, an individual; et al.,

Defendants.

No. 06-56089

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

D.C. Nos. CV-00-9982-RSWL  
CV-01-1933-RSWL  
CV-01-1934-RSWL  
CV-01-3156-RSWL  
CV-01-4426-RSWL  
CV-01-4820-RSWL  
CV-01-4822-RSWL  
CV-01-4824-RSWL

MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court  
for the Central District of California  
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted March 3, 2008  
Pasadena, California

Before: D.W. NELSON, GIBSON,<sup>\*\*</sup> and GRABER, Circuit Judges.

Intervenor Donald L. Zachary seeks to unseal records from a suit against Southwest Airlines following an airline crash at Bob Hope Airport in Burbank, California. The district court denied Zachary's motion to unseal the documents. We review de novo whether the district court applied the correct legal standard in ordering the records to remain under seal. Phillips v. Gen. Motors Corp., 307 F.3d 1206, 1210 (9th Cir. 2002). We review for an abuse of discretion the district court's application of that legal standard. Id. We now affirm.

1. As an initial matter, Zachary argues that the district court erred by requiring only a showing of "good cause" for the documents to remain under seal, while Ninth Circuit precedent requires a showing of "compelling reasons" because the documents were attached to dispositive motions. E.g., Kamakana v. City & County of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006). Although we agree that the "compelling reasons" standard applies to the documents at issue on appeal, we

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<sup>\*\*</sup> The Honorable John R. Gibson, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

disagree that the district court erred. Notwithstanding some inept wording in the district court's orders, the court understood its duty from the beginning and required compelling reasons to keep the dispositive documents from public scrutiny. See Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003) ("If the district court conscientiously balances the competing interests and articulates compelling reasons supported by specific factual findings, its decision will be reviewed only for an abuse of discretion.").

2. Zachary also argues that the district court abused its discretion in finding that compelling reasons supported keeping certain documents under seal. Specifically, Zachary points to district court docket numbers 57, 58, 59, 66, 67, 68, 69, 70, 71, 73, 74, 76, and two documents filed after number 88. After a careful review of the entire sealed record in dispute, we disagree. As found by the district court, all of the documents contain trade secrets and confidential procedures and communications geared toward investigating the cause of the airline crash. Consequently, the court did not abuse its discretion in ruling that, due to their confidential and sensitive nature, public disclosure of the documents could result in improper use. See Kamakana, 447 F.3d at 1179 ("In general, compelling reasons sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such court files might have become a vehicle for improper

purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." (internal quotation marks omitted)).

AFFIRMED.