

FILED

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 149

RIELLE HUNTER,

Plaintiff,

v.

ANDREW YOUNG and CHERI YOUNG,

Defendants.

MOTION FOR PROTECTIVE ORDER

NOW COMES John Edwards ("Edwards"), pursuant to G.S. §§1A-1, Rule 26(c), and moves this Court for an order limiting the scope of his deposition to matters relevant to this case. In the alternative, pursuant to G.S. §§1-1, Rule 45(c)(3), Edwards moves this Court to quash or otherwise modify the subpoena and the scope of the deposition to be taken. The grounds for this Motion are that, absent such a limiting Order, the Defendants will use this discovery device for purposes of embarrassment, annoyance, oppression, that the Defendants seek to proceed in a manner that will be unduly burdensome, and that the Defendants will seek to use information generated by the discovery for their own personal financial self-promotion, all in violation of G.S. §1A-1, Rule 26(c)

In support of this motion, Edwards shows the following:

Factual Background

1. This case between Plaintiff Rielle Hunter and Defendants Andrew and Cheri Young involves claims for conversion and invasion of privacy. At issue is the possession and use of several items, including certain video recordings of the Plaintiff and Edwards.

2. Plaintiff Hunter claims that the Defendants wrongfully seized the video and other items that were in her possession in a rental house during the term of her rental agreement. The Plaintiff contends that the Defendants sought to use the tape for their own personal and commercial benefit.

3. The Defendants claim that they had a right to inspect the Plaintiff's belongings and that, regardless of that right, the tape was abandoned. They thus claim that the Plaintiff has no legitimate claim of ownership in the tape. The Defendants have also recently argued that the Plaintiff had no ownership rights in the tape at any time, apparently contending that the videotape (though not the other items wrongfully seized) was the property of unnamed Edwards campaign organizations; this argument necessarily concedes that the Defendants have no right to the videotape or ownership interest in it.¹

4. Defendants Andrew and Cheri Young will not be deposed until the end of August 2010, due to scheduling availability.

5. Edwards was not present when the disputed tape was seized and/or found by the Defendants. Edwards therefore has no relevant first-hand information as to whether the tape was abandoned, was found among the Plaintiff's possessions, or was subject to a legitimate claim of ownership by the Plaintiff on the date on which the Defendants took possession of it.

¹ Indeed, in making this claim the Defendants will have to rely on the rights of as yet-unnamed Edwards campaign organizations to defeat the Plaintiff's possessory claim. However, and among other problems with this argument, the Defendants have no standing to raise the rights of these organizations.

The Efforts of the Youngs to Use Edwards for Personal Gain

6. Defendant Andrew Young has a history of using Edwards for his personal and financial gain. Indeed, the Defendant has admitted as much in his published book titled "The Politician," and in a variety of broadcast media interviews. For example, in "The Politician," Young refers to his plan to exploit his association with Edwards, stating that "he was my ticket to the top." Additionally, the Defendant has publicly stated a desire to obtain deposition testimony of Edwards and implied that he would then use that material publicly, presumably either to harass and embarrass Edwards or for further financial gain. Defendant Young is wholly dependent upon the publicity which he can generate from his association with Edwards to sell his book, to promote paid personal appearances, and to sell paid interviews (or for "consulting" agreements with various media organizations). Other than the monies which the Defendant Young can generate from the use of his association with Edwards, upon information and belief he has no other income or means of support.

7. Again, in "The Politician," Defendant Young recounts a conversation in which he attempted to extort Edwards by threatening him:

I could no longer contain myself. I looked at him and in dead seriousness said, "You know, I'm not sure we can really control what happens next." I then explained that I had the sex video, a small library of pertinent text messages, voice-mail recordings by the score, and contemporary notes I had made almost every day since I began working for him.

When Defendant Young was asked by ABC News correspondent Bob Woodward why he told Edwards he had possession of the videotape, Young plainly admitted his financial motive: "I wanted him to know he was not gonna walk away from this scott-free."

8. In a show-cause hearing held in this matter on March 9, 2010, Defendant Young testified, under oath, that he downloaded photographs of the Plaintiff, her daughter, and Edwards and saved them. More tellingly, he also testified to showing these photographs to ABC News and others in an effort to market himself and his writing. He has freely and openly used his possession (and now former possession) of these items as a basis for granting paid interviews and for other money-making schemes, all of which seek to capitalize on his association with Edwards.

9. Upon information and belief, Plaintiff Rielle Hunter was deposed in this matter. Neither Ms. Hunter nor her attorneys notified the media of her scheduled deposition, yet media were present at the time of the deposition to photograph and videotape Ms. Hunter's arrival. The only other persons with knowledge of Ms. Hunter's deposition date, time and location were the Defendants and their agents.

10. To further their commercial exploitation of their association with Edwards, the Defendants have sought to sensationalize this matter in their pleadings for maximum media exposure. Several examples from the pleadings are:

- a. In the Plaintiff's Complaint, the videotape in dispute is referred to as the "Video," whereas the Defendant's Answer refers to the same videotape as "the Edwards Sex Tape."
- b. The Plaintiff's Complaint describes the contents of the videotape as being "of a sensitive and personal nature," whereas the Defendant's Answer describes "explicit information of a sexual nature."

- c. The Plaintiff's Complaint refers to photographs of her "infant daughter," whereas the Defendant's Answer refers to the same photographs as depicting "John Edwards and the infant daughter of Edwards and Plaintiff."

11. In addition, the subpoena seeks the videotaped deposition of Edwards. In light of the fact that the Complaint and Amended Complaint charged that the Defendants sought to use private videotapes for their personal financial gain - - either through promotion or outright sale - - and that fact that the Defendants have conceded that they displayed the private videotapes to others in an effort to promote their book and their own economic interests, the Defendants should not be permitted to use any videotape generated by these proceedings for their personal economic benefit nor should they be permitted to release the videotape to third parties unless and until the videotape is validly used in court proceedings and this Court permits it to become a matter of public record.

The Deposition Should Be Limited to Factually Relevant Issues

12. While Edwards does not object to his deposition on relevant matters that are probative of the issues in this lawsuit, this Court should not permit the Defendants to use the judicial discovery process for personal gain, for publicity, for outside economic gain, or for purposes of annoyance, embarrassment or oppression. Rather, the discovery process is designed to elicit the facts underlying the claims and defenses of a civil action, not to gather information to later use (and profit from) in an extra-judicial fashion or to annoy, embarrass or oppress witnesses who are not parties to the dispute.

13. Rule 26(c) of the North Carolina Rules of Civil Procedure provides that it is within the Court's discretion to direct, among other things, that "discovery be had only on specified terms and conditions." For example, in *Wagoner v. Elkin City Schools' Board of Education*, the Plaintiff, a physical education teacher, sued her former school district after she was replaced by a man who allegedly had an affair with a student. The main allegations in the case, however, involved the school's treatment of the Plaintiff, which the Plaintiff contended forced her to quit. None of the main allegations involved the replacement teacher, but the Plaintiff attempted to ask the replacement teacher questions about the alleged affair with a student during pre-trial depositions. In holding that such questioning was not allowable under Rule 26(c), the Court made clear that the issue of whether the replacement teacher had previously had an affair with a student was both irrelevant and unnecessary to the Plaintiff's claims. *Wagoner v. Elkin City Schools' Board of Education*, 113 N.C.App. 579, 440 S.E. 2d 119 (1994). A copy of *Wagoner* is attached to this Motion as **Exhibit 1**.

The Deposition Should Be Limited to the Matters in Issue Between the Parties and to a Proper Means

14. Edwards seeks an Order similar to that issued in *Wagoner*, limiting his deposition. That is, he seeks an Order from the Court limiting the deposition to matters in issue between the parties - - primarily the ownership of the tape. Edwards asks that this Court limit the allowable questions to those addressing what Edwards knows about issues of ownership, what he knows about issues of who possessed the videotape during the relevant period of time, what he has been told about these matters by the parties, and what he knows about issues that are plainly and directly related to these matters.

15. Edwards also requests this Court to Order that, should a videotape be made of Edwards' deposition, neither the parties nor their lawyers be allowed to release the videotape nor any transcript of the deposition to any media, and that neither the parties nor their lawyers be allowed to publish in any way the contents of the deposition.

The Youngs Seek Documents from Entities Which Do Not Exist, or Are No Longer in Existence and Over Which Edwards Had No Control

16. Additionally, the subpoena purports to request that Edwards produce documents relating to contracts between and among the Plaintiff, Midline Groove Publications, and entities which it terms the "John Edwards campaign for President of the United States," and the "Edwards Campaign." No such entities exist. Consequently, no such documents exist.

17. The subpoena also seeks documents between Midline Groove Publications, Hunter and One America Committee. The One American Committee ("One America") did exist and had a separate corporate existence and named Officers, including an Executive Director, a Director, and a Treasurer. Publicly available documents filed with the internal Revenue Service not only name these individuals, but specify the Custodian of financial records for One America. One America was terminated as of the end of the 2007 tax year by public filings made in 2008. John Edwards was not the custodian of its financial documents and did not hold a position as an officer of One America. Thus, proper discovery should be directed to these individuals or this entity, not to Edwards. Indeed, the fact that the Subpoena seeks these documents from Edwards when publicly available documents plainly identify the officers and custodian of One America documents, indicates that the Subpoena was

designed for purposes of harassing Edwards, rather than actually securing the documents it purports to seek.

18. Moreover, since the Defendant Andrew Young has repeatedly characterized himself as an "experienced campaign operative" and "close advisor" in Edwards' political campaigns, it is difficult to understand why he either would not or could not direct his attorneys to the publicly filed documents of the organizations which may have documents relevant to this dispute. Andrew Young, as a self-described "operative," should have been well aware of the various organizations, the officers and boards of those organizations, and the custodians of these documents.

19. Consequently, these requests to Edwards are necessarily inappropriate and made solely for the purposes of harassment. Andrew Young is in possession of the information necessary to issue discovery to these entities and would also know that Edwards would not be in possession of the requested documents, let alone be the custodian of documents for these entities.

Conclusion

20. Edwards seeks and is entitled to a Court Order limiting the subject matter of the deposition to the following subjects:

- a. His knowledge of the ownership of the videotape and other items at issue in this case at the time that the Youngs came into possession of them;
- b. His knowledge of the physical possession or custody of the videotape and other items at issue in this case at the time that the Youngs came into possession of them;

- c. Information which he has been given by any parties to this case concerning the ownership, physical possession or custody of the videotape and other items at issue in this case, including any information relating to the Youngs' possession and custody of these materials;
- d. His knowledge of the ownership of the premises on which the videotape and materials at issue in this case were either found or taken;
- e. His knowledge of the rights of the Youngs, if any, to inspect or otherwise search the Plaintiff's premises where the videotape and other materials were found.
- f. His knowledge, if any, of the contractual provisions of any commercial relationship between Midline Groove and any organization which entered into a contract for services with Midline Groove;

21. Edwards further requests that this Court order that the transcript and any videotape of the deposition not be given or distributed to any third persons, that its distribution be limited to the parties and their attorneys until it is validly used in court proceedings and this Court has made it part of the public record, and that in no event can the videotape or transcript be used to the Youngs' economic advantage or to further any other commercial activities by them, including any self-promotional activities, media interviews or appearances, or public appearances.

22. In the alternative, Edwards asks this Court to quash the subpoena pursuant to Rule 45(c)(3) of the North Carolina Rules of Civil Procedure as the subpoena requiring Edwards' appearance at a deposition is unduly burdensome and is not reasonably calculated to lead to discoverable information given his lack of relevant

knowledge in this case and was issued for the purposes of embarrassment, annoyance or harassment.

WHEREFORE, John Edwards respectfully requests that the Court enter a Protective Order providing for the following:

1. The Defendants be limited in their questioning to the following categories of relevant inquiry:

- a. Edwards' knowledge of the ownership of the videotape and other items at issue in this case at the time that the Youngs came into possession of them;
- b. Edwards' knowledge of the physical possession or custody of the videotape and other items at issue in this case at the time that the Youngs came into possession of them;
- c. Information which Edwards has been given by any parties to this case concerning the ownership, physical possession or custody of the videotape and other items at issue in this case, including any information relating to the Youngs' possession and custody of these materials;
- d. Edwards' knowledge of the ownership of the premises on which the videotape and materials at issue in this case were either found or taken;
- e. Edwards' knowledge of the rights of the Youngs, if any, to inspect or otherwise search the Plaintiff's premises where the videotape and other materials were found.

f. Edwards' knowledge, if any, of the contractual provisions of any commercial relationship between Midline Groove and any organization which entered into a contract for services with Midline Groove;

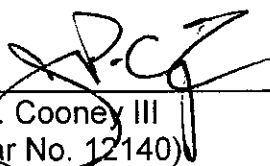
2. The transcript and any videotape of the deposition not be given or distributed to any third persons and that its distribution be limited to the parties and their attorneys until it is validly used in court proceedings and this Court has made it part of the public record.

3. In no event can the videotape or transcript be used to the Youngs' economic advantage or to further any other commercial activities by them, including any self-promotional activities, media interviews or appearances, or public appearances.

4. The Request for Documents be quashed as unreasonable, oppressive, harassing, annoying and otherwise irrelevant in that it seek information which either does not exist or is subject to the possession, custody or control of others which are known to the Defendant Andrew Young and which are publicly available.

5. This Court Order such further relief as it deems just and appropriate.

Respectfully submitted this 30th day of July, 2010.

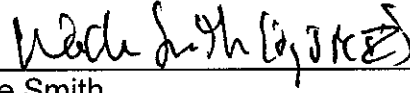


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing **Motion for Protective Order** was served on the Defendants by causing to be deposited a copy of the same in an official depository of the United States Postal Service, in a postage-paid envelope, addressed to Plaintiff's counsel of record as follows:

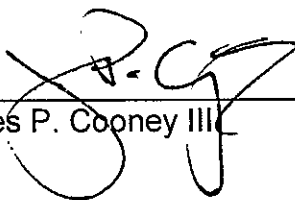
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This 30th day of July, 2010.



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