

No.

FIFTEEN-B DISTRICT

NORTH CAROLINA COURT OF APPEALS

RIELLE HUNTER,)
)
Plaintiff,)
)
v.)
)
ANDREW YOUNG and)
CHERI YOUNG,)
)
Defendants.)

PETITION FOR A WRIT OF SUPERSEDEAS

and

MOTION FOR TEMPORARY STAY

TO THE HONORABLE JUDGES OF THE NORTH CAROLINA COURT OF APPEALS:

NOW COME ANDREW YOUNG and CHERI YOUNG, defendants, by and through the undersigned, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, and move this Court to issue a temporary stay of the attached First Supplemental Contempt Order, issued at 10:35 p.m. on Sunday, 7 February 2010 [Exhibit 1, Supplemental Contempt Order], which compels defendants to take measures by 2:00 p.m. on Wednesday, 10 February 2010, and which measures will

irreparably alter the status quo before a determination can be made of the merits of this action. By issuing a temporary stay pursuant to Rule 23(e), this Court will preserve the status quo and prevent enforcement of the contempt order pending this Court's review of the petition for a writ of supersedeas. In further support of this petition and motion, defendants show the following:

STATEMENT OF THE FACTS AND PROCEEDINGS

On 28 January 2010, plaintiff filed a complaint against defendants alleging conversion, invasion of privacy, and unfair and deceptive trade practices. The underlying basis for the complaint involved defendants' alleged possession and threatened or actual use of certain video recording and photographs that plaintiff claimed belonged to her. Plaintiff also moved for issuance of a temporary restraining order (TRO).

On 28 January 2010, the superior court entered a TRO prohibiting defendants from publishing, disseminating, selling, copying, or otherwise distributing certain video recordings and photographs. The Court also ordered defendants to turn over any such material in their possession, custody, or control to plaintiff's counsel and directed the Sheriff of Orange County to execute the order for return and relinquishment of the video recordings and photographs.

On 28 January 2010, the Sheriff of Orange County served the summonses,

complaint, and TRO personally on Andrew Young and on Cheri Young by leaving her documents with Mr. Young at their residence. Mr. Young spoke with counsel, both privately and in the presence of the serving officer. Thereafter, Mr. Young, through counsel, indicated defendants would not be able immediately to comply with the order given the short notice. Counsel indicated defendants would address the matter in Court before the presiding judge as soon as possible.

On 29 January 2010, acting on its own motion, the superior court issued a notice to show cause directed at defendants, purportedly finding probable cause that they were in civil contempt for failing to comply with the TRO. The sheriff was unable to achieve service of the Show Cause Order upon defendants.

On 1 February 2010, the superior court, again on its own motion, issued a second notice to show cause. This order directed defendants to bring certain documents and other items to the hearing. Defendants responded in writing on 4 February 2010. Defendants acknowledged having possession, custody, or control of items subject to the TRO including the three video recordings and the photographs. However, defendants disputed whether the TRO was legal and whether plaintiff owned the items.

The superior court convened proceedings on 5 February 2010. The proceedings were conducted in the judge's chambers and off the record.

Defendants represented:

- a. The original “video of a personal and private nature” is located in a bank lockbox in Atlanta, Georgia, accessible only by Andrew Young together with Glen Sturm, an attorney in Atlanta, and there may also be a copy of this video in the lockbox. Mr. Sturm is receiving medical treatment in New York that limits his ability to travel;
- b. Two videos, referred to as “campaign videos” are in the same lockbox;
- c. Defendants provided a copy of the personal video to David Geneson, Esq., their attorney in Washington D.C., which Mr. Geneson provided to the Federal Bureau of Investigation. Mr. Geneson did not make or keep any copies of the personal video.
- d. Defendants have copies of photographs taken by plaintiff, which include her daughter, that are on Mr. Young's laptop computer located in Raleigh and in his control;
- e. Defendants will search for and produce any other videos authored by plaintiff that are in their custody and control. [This latter agreement resulted from defendants being threatened with being incarcerated for their purported contempt].

At the conclusion of these proceedings, the superior court determined defendants had the ability to comply with the TRO and failed to meet their burden to show cause why they should not be held in contempt. The superior court then entered an order adjudging defendants in civil contempt of court, *see* N.C. Gen State § 5A-21, but providing a mechanism by which they could produce and convey the requested materials to the Clerk of Court of Orange County, to be held by the Clerk under seal and securely maintained (with access to the same allowed only by further order of the

Court), by 2:00 p.m. on Wednesday, February 10 and thereby purge themselves of the contempt. [Exhibit 2, Contempt Order]

If defendants failed to comply with the terms of the order, the order directed the Sheriff of Orange County to take them into custody for seventy-five (75) days or until such time as the superior court found they had purged themselves of the contempt. The superior court then scheduled a hearing for 2:00 p.m. on Wednesday, February 10.

Then, on Sunday, 7 February 2010, at 10:35 p.m., the superior court “became concerned” that its contempt order entered two days earlier, did “not adequately safeguard the identification and production of the original videos, other items and evidence regarding such, that [Mr.] Young has stored in a bank lock box in Atlanta, Georgia . . . and the Court has an interest in knowing of access to the lock box in the adjudication of this matter.” [Exhibit 1 at 1] At that point, the superior court entered the First Supplemental Contempt Order, incorporating the original contempt order, and imposing further conditions and obligations on defendants that will irreparably alter the status quo. Among other things, the supplemental order directed (1) that a security officer meet Mr. Young, at Mr. Young’s expense, at the bank in Atlanta, Georgia, be provided a copy of the access log to the lock box, open the box in Mr. Young’s presence, and secure all items “in bags as is customary for evidence

collection;” and (2) that the security officer meet defendants at their residence in Orange County, North Carolina, identify “each item in the [r]esidence,” and “seize the [i]tem and secure it.” [Exhibit 1 at 4]

Additionally, defendants are required to arrange for a court-designated technician “to examine and retrieve the photographs and other [i]tems stored on the computer [they] identified and any other computer or storage medium” and “to assist the technician in finding all [i]tems, assist in a search for [i]tems and allow the technician to fully delete all [i]tems and ‘scrub’ them from the computer.” [Exhibit 1 at 4-5] Defendants are further required to “identify and turn over all [i]tems [and] any copies of items whether on tape, disk, computer, electronic storage device, in ‘cloud’ storage, paper or other medium” and “then allow inspection of the place of storage to ensure that all traces are removed and cannot be retrieved in any manner.” [Exhibit 1 at 5]

The supplemental order directs that compliance occur by the original deadline of 2:00 p.m. on Wednesday, February 10. However, the superior court indicated it would “consider” whether the officer’s inability to complete the assigned by the deadline and “may reschedule the time of the ‘purge’ hearing.” [Exhibit 1 at 6] Defendants filed a written notice of appeal to this Court on 8 February 2010. [Exhibit 3]

REASONS FOR ISSUING A WRIT OF SUPERSEDEAS

Axiomatically, an ex parte temporary restraining order serves the sole purpose of maintaining the status quo until a hearing can be held. *Huff v. Huff*, 69 N.C. App. 447, 450, 317 S.E.2d 65, 67 (1984). It is an extraordinary and temporary remedy. Its “primary purpose” is “to meet an emergency when it appears that any delay would materially affect the rights of a plaintiff.” *Hutchins v. Stanton*, 23 N.C. App. 467, 469, 209 S.E.2d 348, 349 (1974). A TRO must include such procedural safeguards as necessary to ensure that the “drastic” procedure passes constitutional muster that “affords defendants notice and an opportunity to be heard.” *State ex rel. Gilchrist v. Hurley*, 48 N.C. App. 433, 448, 269 S.E.2d 646, 655 (1980), *disc. rev. denied*, 301 N.C. 720, 274 S.E.2d 233 (1981). Contrary to this principle, the superior court has embarked on a course of adjudging defendants in contempt of court for failing to comply with a temporary restraining order and, through this contempt order and its supplementation, expands the TRO to do far more than merely preserve the status quo. Indeed, the orders now appear in the nature of a disfavored mandatory injunction, which would alter the status quo. *See Seaboard Air Line R.R. Co. V. Atlantic Coast Line R.R. Co.*, 237 N.C. 88, 96, 74 S.E.2d 430, 436 (1953).

The action of the superior court, in the guise of a contempt determination for failure to honor a TRO, is unreasonable and beyond its authority at the preliminary

stages of civil litigation. On information and belief, defendants have not knowingly violated the TRO. They appeared before the superior court on February 5. They indicated what materials they had within their possession and control that might fall under the purview of both the complaint and the TRO. After being coerced with the threat of being immediately incarcerated, they agreed to provide those materials to the court.

On information and belief, defendants were coerced into this position by the improper threat of imprisonment for contempt of court. They have been subjected to an unreasonable judicial determination that travels far beyond the determination of possible civil contempt. In effect, it is an order of production of materials, which is appropriate in the context of civil discovery, not as part of a TRO. The attached orders and may cause them irreparable injury by removing undelineated “items” from their residence and all undelineated electronic storage systems therein.

The supplemental order is unreasonably over broad and sweeping. It directs a security officer to meet Mr. Young, *at Mr. Young’s expense*, at the bank in Atlanta, Georgia; obtain a copy of the access log to the lock box; open the box; and secure all items “in bags as is customary for evidence collection.” This action is tantamount to an unreasonable search and seizure under the United States and North Carolina Constitutions, issued without any probable cause whatsoever. It is certainly beyond

the scope of a TRO. Moreover, it directs the security officer to meet defendants at their residence in Orange County, North Carolina, identify “each item in the [r]esidence,” and “seize the [i]tem and secure it.” This directive is overly broad and unreasonable vague.

Aside from the unreasonable and overly broad nature of the production improperly required by the TRO, it further requires defendants to arrange for and allow a court-designated technician, again presumably at their expense, “to examine and retrieve the photographs and other [i]tems stored on the computer [they] identified and any other computer or storage medium” and “to assist the technician in finding all [i]tems, assist in a search for [i]tems and allow the technician to fully delete all [i]tems and ‘scrub’ them from the computer.” They are also required to “identify and turn over all [i]tems [and] any copies of items whether on tape, disk, computer, electronic storage device, in ‘cloud’ storage, paper or other medium” and “then allow inspection of the place of storage to ensure that all traces are removed and cannot be retrieved in any manner.” This action demonstrably exceeds the court’s authority through a TRO to preserve the status quo. Indeed, by “fully delet[ing] all [i]tems and ‘scrub[bing]’ them from the [undelineated] computer” and “allow[ing] inspection of the place of storage to ensure that *all traces are removed and cannot be retrieved in any manner*” (emphasis added), this order alters the status quo and does

so in a way that is irreparable. Essentially, the superior court has ordered, through a purported determination of civil contempt of a TRO, virtually unlimited discovery through court-sanctioned production of materials and defendants' access to them destroyed, all prior to any determination of the matter in controversy.

In order to present fully the facts necessary to a determination of this request for a writ of supersedeas, defendants need to obtain affidavits not only of the defendants (and Mr. Young is in Atlanta, Georgia, where he was poised to comply with the order of February 5 that has now been superceded by the order of February 7, which expressly forbids him for accessing the lock box in the absence of a security officer), but of several attorneys who were present during the unrecorded hearing on February 5, several of whom are in federal and state court on previously set litigation. Under these circumstances, it is not feasible to request a stay from the superior court. Indeed, a temporary stay from this Court is necessary to allow the parties to develop this information and present it to this Court. Defendants believe they can obtain and present the necessary affidavits to this Court within forty-eight (48) hours. They should not be compelled to labor under the threat of contempt sanctions, particularly incarceration for seventy-five (75) days, while trying to present the necessary information to this Court and have this matter is resolved.

REASONS FOR ISSUING A TEMPORARY STAY

Rule 23(e) allows this Court to stay enforcement or execution of a judgment or order pending its decision on a petition for a writ of supersedeas. For good cause shown, this temporary stay may be issued ex parte. Defendants can make this showing.

On information and belief, defendant have been subjected to an unreasonable determination and enforcement of TRO through the threat and imposition of contempt sanctions, including incarceration for seventy-five (75) days. On information and belief, there has been no evidence to suggest defendants would disseminate or destroy items that are the subject of the complaint. On information and belief, defendants have disclosed the existence and location of the items that are the subject of the complaint. On information and belief, they have been coerced into much of this disclosure by an unreasonable and inappropriate threat of incarceration, which continues to linger. On information and belief, defendants are being subjected to an unreasonable and unconstitutional search and seizure of their residence and possessions supported by no probable cause save the superior court's unspecified statement that it "became concerned" that its original contempt order did not safeguard its intent, which should only have dealt with compliance with the TRO, and its own "interest in knowing of access to the lock box" in the adjudication of this

matter. On information and belief, they are also being subjected to unnecessary expense regarding security officers and electronic technicians based on no discernable evidence in the record to support these requirements imposed by the supplemental order.

This Court should act to prevent the superior court from proceeding farther in this matter, especially by imposing sanctions such as incarceration for civil contempt of court, until it can determine, on the merits and after full presentation by the parties, whether a writ of supersedeas should be granted. This result can only be accomplished by issuing a temporary stay.

VERIFICATION

I, M. Gordon Widenhouse, Jr., do hereby verify that I have read the foregoing Petition for a Writ of Supersedeas and Motion for a Temporary Stay and that its contents are accurate based on my knowledge or information and belief.

/s/ M. Gordon Widenhouse, Jr.
M. Gordon Widenhouse, Jr.

WHEREFORE, defendants respectfully request that this Court:

1. Issue a temporary stay of the Contempt Order and First Supplemental Contempt Order under Rule 23(e);
2. Allow defendants a reasonable time of no less than forty-eight hours to supplement the petition for a writ of supersedeas;
3. Set a reasonable time in which plaintiff can respond to the petition for a writ of supersedeas;
4. For such other relief as the Court deems them justly entitled.

This the 8th day of February, 2010.

RUDOLF WIDENHOUSE & FIALKO

Filed electronically
M. Gordon Widenhouse, Jr.; NCSB 10107
312 West Franklin Street
Chapel Hill, NC 27516
(919) 967-4900
(919) 967-4953
mgwidenhouse@RWF-law.com

COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for a Writ of Supersedeas and Motion for a Temporary Stay was served on the following by first class mail postage prepaid and electronic means.

This the 8th day of February, 2010.

Filed electronically
M. Gordon Widenhouse, Jr.

Wade Barber
Wade Barber PLLC
Post Office Box 1755
Hillsborough, NC 27312
wadebarber2@gmail.com

Alan W. Duncan
Allison Van Laningham
Smith Moore Leatherwood LLP
Post Office Box 21927
Greensboro, NC 27420
alanduncan@smithmoorelaw.com
allison.vanlaningham@smithmoorelaw.com

Exhibit 1

FILED

7th February 2010, at 10:35 (p.m.) a.m.
Abraham Penn Jones by Tammy K Keshley
Abraham Penn Jones, Superior Court Judge

NORTH CAROLINA

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

ORANGE COUNTY

RIELLE HUNTER,)
)
Plaintiff,)
)
v.)
)
ANDREW YOUNG and CHERI)
YOUNG,)
)
Defendants.)

**FIRST SUPPLEMENTAL
CONTEMPT ORDER**

THIS MATTER is before the Court on the Court's own motion to modify the Contempt Order entered by the undersigned on Friday, 5 February 2010 and filed with the Court at 5:45 p.m. that same date.

Upon reviewing the Contempt Order, the undersigned became concerned that the Contempt Order drafted and presented to the Court by the parties and entered herein does not adequately safeguard the identification and production of the original videos, other items and evidence regarding such, that the Defendant Andrew Young has stored in a bank lock box in Atlanta, Georgia as described in Mr. Young's affidavits and in the Contempt Order, and the Court has an interest in knowing of access to the lock box in the adjudication of this matter. The Court is further concerned that all items to be delivered pursuant to the Contempt Order, be collected in place by the Sheriff, in order to fulfill the

purposed of the Court's Orders and maintain evidence and chain of evidence.

Whereupon the Court, communicating through Tammy Keshler, Judicial Assistant for the Superior Court Judges' Office in Judicial District 15B, contacted Wade Barber, counsel for the Plaintiff and Mark Edwards, Esq., counsel for the Defendant, advised them of the Court's concerns, directed that the Atlanta lock box not be opened except in accordance with this Supplemental Order and requested that Plaintiff's counsel draft a proposed order for review and comment of Defendants' counsel and consideration of the Court. Having reviewed the drafts and comments of all counsel, the Court makes the following findings:

1. The Court adopts and incorporates all findings made in previous orders entered in the matter.
2. Mr. Young, through his attorneys and his affidavits, was certain that three original video tapes were in the Atlanta lock box, but was unsure what other items (such as copies of the videos and a "List" taken by him from what he contends was Plaintiff's "trash") which are or may be subject to the contempt order. Also, it is apparent that the Lock Box was obtained by Mr. Young for the purpose of safe keeping items once owned by the Plaintiff (the Court is expressing no opinion as to current ownership);
3. Mr. Young, in his affidavit did not say whether or not anyone had accessed the Atlanta lock box since the entry of the Temporary Restraining Order;
4. Mr. and Mrs. Young may have some of the items at their home in Orange County and on a computer located there or elsewhere;
5. Evidence of the chain of possession and access to the Tapes and other items is

3. The Defendants shall not handle, move or alter the Items except in the presence of the Officer and in accordance with the procedures in the Contempt Order as supplemented and modified herein;
4. With regard to obtaining all items identified in the Contempt Order and since identified by the Defendants as coming within the purview of the Contempt Order or the Preliminary Injunction "Items," (Items shall include a "list" that was mentioned in Court) the Court should supplement the Contempt Order and order that:
 - a. Atlanta lock box:
 - i. The Officer shall accompany Mr. Young in accessing the lock box;
 - ii. The Defendant Andrew Young, through counsel, shall inform the Court (or Ms. Keshler or other designee), the Orange County Sheriff's office or Mr. Truax and Plaintiff's counsel as to his plans to access the Atlanta lock box, the name and location of the bank and arrange a time to meet there;
 - iii. The Orange County Sheriff shall arrange to have the Officer to meet Mr. Young at the Atlanta bank. The Sheriff, the Officer and Mr. Young shall work in good faith to accommodate each other;
 - iv. Mr. Young and Mr. Strum shall not obtain the box until the Officer is present;
 - b. Upon meeting at the bank:
 - i. Mr. Young shall take the Officer with him into the vault to obtain

the lock box;

- ii. Mr. Young shall request that the bank make a copy of the lock box access log and provide a copy to the Officer;
- iii. The Officer shall open the box and inventory it in Mr. Young's presence, with both keeping a copy of the inventory;
- iv. The Officer shall secure all items contained in the lock box in bags as is customary for evidence collection;
- v. The Officer shall receipt Mr. Young for each item.

c. Defendants' Orange County Residence, "Residence:"

- i. The Defendants shall arrange a time for the Officer to meet them at their Residence; meanwhile, they shall not handle or touch any Item in any way;
- ii. Mr. and Ms. Young shall escort the Officer to the location of each item in the Residence and identify same to him;
- iii. The Officer shall inventory, seize the Item and secure it; he shall also give the Defendants a receipt;

d. Items on Computers:

- i. The Defendants shall arrange a time with Russell Gilmore and the Officer, for Mr. Gilmore to examine and retrieve the photographs and other Items stored on the computer identified in their affidavits and any other computer or other storage medium, assist the technician in finding all Items, assist in a search for Items and allow the technician to fully delete all Items and "scrub" them from

the computer.

- e. Geneson Affidavit. The Officer shall collect Mr. Geneson's Affidavit and secure it. In the event that Mr. Geneson does have any Tape or other Item, the Officer shall collect that in a manner similar to that provided above;
5. The Defendants shall identify and turn over all Items, any copies of items whether on tape, disk, computer, electronic storage device, in "cloud" storage, paper or other medium. They shall then allow inspection of the place of storage to ensure that all traces are removed and cannot be retrieved in any manner. If there is any difficulty in doing this, the Defendant or Officer shall immediately notify the Court to resolve the issue.
6. The Officer shall keep all Items collected on his person and secure, and bring them to Major Charles Blackwood at the Sheriff's office as provided in the original Contempt Order.

WHEREFORE, IT IS ORDERED THAT:

1. The original Contempt Order entered herein is supplemented by this Order;
2. Counsel shall advise their clients of this Order immediately;
3. All of the of the CONCLUSIONS set forth above are incorporated here as an order and the Defendants compliance with those conditions is required for each of them to "purge" themselves of contempt, supplemental to the conditions set forth in the original Consent Order;
4. The Items are to be retrieved and evidence collected and preserved as set forth in the CONCLUSIONS above;
5. Wherever any provision in this order conflicts with a provision of the original

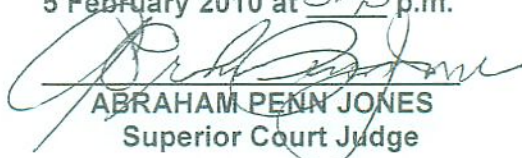
- Contempt Order, the provision of this Supplemental Order shall be followed;
6. The Defendants' counsel shall contact the Officer, Wayne Truax, RMA Security, 4000 WestChase Blvd. Suite 350, Raleigh, NC 27607, Phone: 919-834-8584, Toll Free: 800-775-8584 immediately and make arrangement for him to work with the Defendants;
 7. The Officer shall make a full report of all his activities to the Court at 2 p.m. on Wednesday, 10 February 2010 in Hillsborough;
 8. The Parties shall equally share the costs of the Officer including travel and incidentals, and the costs may be reallocated as "costs" upon the final judgment in this matter;
 9. In the event that the Defendants are fully cooperative, but the Officer cannot carry out his duties and return all items by Wednesday, 10 February 2010 at 2 p.m., the Court shall consider that matter, confer with the parties and may reschedule the time of the "purge" hearing.
 10. The Defendants shall fully comply in good faith, and counsel for the Defendant shall keep opposing counsel and the Court advised of the progress of complying with the implementation.

This the 7th day of February 2010.

Abraham Penn Jones by Tommy K. Keshler
Hon. Abraham Penn Jones
North Carolina Superior Court Judge

Exhibit 2

FILED
5 February 2010 at 5:45 p.m.


ABRAHAM PENN JONES
Superior Court Judge

NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10 CVS 000149

RIELLE HUNTER,)
)
Plaintiff,)
)
v.)
)
ANDREW YOUNG and)
CHERI YOUNG,)
)
Defendants.)

CONTEMPT ORDER

THIS MATTER is before the Court on the Court's Second Notice of Hearing and Order to Appear and Show Cause and Order to Produce Certain Items and Documents, entered 1 February 2010, directing Defendants to appear and show cause why they should not be held in contempt for failing to comply with the Temporary Restraining Order ("TRO") issued by the Court on 28 January 2010, and to produce certain items and documents. On 4 February 2010, Defendant Andrew Young and Defendant Cheri Young filed a Response of Andrew Young and Cheri Young to the Temporary Restraining Order (the "Response"). On 5 February 2010, at the show cause hearing, Andrew Young and Cheri Young appeared with their attorneys, Mark E. Edwards and Robert C. Trenkle.

AND IT APPEARING TO THE COURT after having reviewed the matters of record, hearing the arguments of counsel, and considering the affidavits (including the two affidavits of Defendants Andrew Young and two affidavits of Cheri Young regarding

the number and location of the items), and the statements of counsel; and the agreement of the Defendants that they consent to the entry of this order under the terms set forth below, and other matters of record, that the Court should hold Defendants in contempt of Court pursuant to N.C. Gen. Stat. § 5A-21, the Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW, and enters its CONTEMPT ORDER as follows:

1. On 28 January 2010, Plaintiff filed a Complaint against Defendants alleging conversion, invasion of privacy, and unfair and deceptive trade practices, with respect to Defendants' possession and threatened or actual use of certain video recording and photographs that Plaintiff alleges belong to her. Plaintiff also moved for issuance of a temporary restraining order.

2. On 28 January 2010, the Court entered the TRO prohibiting the Youngs and those acting in concert with them from taking any action to publish, disseminate, sell, copy, or otherwise distribute certain video recordings and photographs. The Court also ordered the Youngs and those acting in concert with them to turn over any such material in their possession, custody, or control to Hunter's counsel, and directed the Sheriff of Orange County to execute the Order for return and relinquishment of the video recordings and photographs.

3. Also on 28 January 2010, the Sheriff of Orange County served the Summonses, Complaint, and TRO on Andrew Young in person, and Cheri Young by leaving her documents with Mr. Young at their residence. As set forth in the Return of Execution that has now been sworn to by Major Charles Blackwood of the Orange County Sheriff's Office, Andrew Young spoke with counsel, both privately and in Major Blackwood's presence. Thereafter, Mr. Young asked Major Blackwood to speak on the telephone with an attorney representing Defendants. Major Blackwood summarized the

provisions of the TRO to Andrew Young and the person on the telephone, by “summarizing the Order portion of the document that directed Mr. Young to deliver those certain items listed in the Order to the Sheriff.” Major Blackwood then reports that Andrew Young and the purported attorney “asked me to allow [them] to speak in private and then a decision would be made whether to deliver those items to me or not” (emphasis added).

4. Thereafter, a different person purporting to be an attorney representing Defendants told Major Blackwood, by telephone, that “[Defendants] would not be able to immediately comply with the Order on such short notice and they would address the matter in Court before Judge Jones as soon as possible.” The attorney also stated “that they had serious concerns about the methods by which [Plaintiff’s counsel] had attempted to seize the items in question.” Defendants did not provide any of the materials identified in the Temporary Restraining Order to Major Blackwood.

5. On 29 January 2010, on its own motion, the Court issued a Notice of Hearing and Show Cause Order, in which the Court found probable cause that the Youngs were in civil contempt of the Court for failing to comply with the Temporary Restraining Order. The Court directed the Sheriff of Orange County to serve the Show Cause Order forthwith. The Sheriff was unable to achieve service of the Show Cause Order upon the Youngs.

6. On 1 February 2010, the Court, again on its own motion, issued the Second Notice of Hearing and Show Cause Order, including similar findings and directives as were made in the first Show Cause Order. Additionally, the Second Notice of Hearing and Show Cause Order directed Defendants to bring certain documents and other items identified therein to the show cause hearing. It is clear from the record that Defendants received notice of the Second Notice of Hearing and Show Cause Order.

Also, Defendants have now filed a response on 4 February 2010, and appeared before the Court on 5 February 2010.

7. In the Second Notice of Hearing and Show Cause Order, the Court, on its own motion, found probable cause to believe that Defendants were in contempt.

8. Until 4 February 2010 when Defendants filed the Response, they did not produce any items or file anything in response to the TRO.

9. In the interim, Andrew Young has appeared in multiple nationally-broadcast interviews, sometimes also with his wife Cheri Young, promoting Andrew Young's book *The Politician*. In some of these interviews, Defendants have been asked about and have discussed the instant lawsuit and the TRO.

10. Defendants did not bring with them to Court the items referenced in the TRO and/or the Second Notice of Hearing and Show Cause Order, nor have Defendants delivered these items to the Orange County Sheriff or to Plaintiff's counsel.

11. By their statements to the media and other evidence presented to the Court, the Court finds that Defendants are aware of the terms of the TRO, specifically with respect to the items that Defendants were ordered to deliver to Plaintiff's counsel.

12. In their affidavits, Andrew Young and Cheri Young admit that they have possession, custody, or control of property subject to the TRO including the three video recordings and the photographs, although they dispute Plaintiff's claims of ownership.

13. Defendants have the means and ability to comply with the TRO.

14. Prior to agreeing to the entry of this order, the Defendants have failed to submit to the authority of the Court, and have violated the terms of the TRO, by refusing to turn over the items referenced in the TRO, and by not delivering items in their possession or under their control during the subsequent seven days.

15. Each of the Defendants now represent to the Court the following:

- a. The original “video of a personal and private nature” is located in a bank lockbox in Atlanta, Georgia, accessible only by the Defendant Andrew Young together with Glen Sturm, an attorney in Atlanta, and there may also be a copy of that Video in the lockbox. Mr. Sturm is receiving medical treatment in New York which limits his ability to travel;
- b. Two videos the Defendants refer to as “campaign videos” are in the same lockbox;
- c. The Defendants provided a copy of the personal video to David Geneson, Defendants’ attorney in Washington D.C., which was provided by Mr. Geneson to the Federal Bureau of Investigation. Mr. Geneson did not make or keep any copies of the personal video.
- d. The Defendants have copies of photos taken by Ms. Hunter that include her daughter in the photograph which are located on Mr. Young’s laptop computer now located in Raleigh and in his control;
- e. The Defendants will search for and produce to the Court any other videos authored by Hunter that are in their custody and control.

CONCLUSIONS OF LAW

1. Defendants had no legal justification for violating the TRO.
2. Defendants had the present ability to comply with the TRO.
3. The TRO is still in full force and effect and the purpose of that Order may still be served by compliance with this Order, the essential terms of which will be extended by an order of preliminary injunction.
4. Defendants failed to meet their burden of show cause why they should not be held in contempt of the Court.

5. Defendants' conduct as set forth above, with respect to Defendants' failure to comply with the TRO, was willful.

6. Defendants should be held in civil contempt of the Court and its lawful Order of 28 January 2010.

7. Whether or not the Plaintiff abandoned the items referenced in the TRO is of no consequence for the purposes of the TRO and such an assertion does not excuse Defendants from complying with the Order.

8. Defendants are in civil contempt of this Court and the TRO, pursuant to N.C. Gen. Stat. § 5A-21.

9. Defendants shall be allowed to purge themselves of this contempt by doing the following:

- a. Turning over all of the following to the Clerk of Court of Orange County, to be held by the Clerk under seal and securely maintained, with access to the same allowed only pursuant to further Court order;
 - i. The original "video of a personal and private nature" which is located in a bank lockbox in Atlanta, Georgia, and any copy of that Video in the lockbox;
 - ii. Two videos the Defendants refer to as "campaign videos" from the same lockbox, and any copy thereof;
 - iii. Deliver an electronic copies of the eight photos taken by Ms. Hunter that include her daughter in the photograph which are located on Mr. Young's laptop computer now located in Raleigh and in his control, together with an affidavit from an independent computer forensic examiner that the photographs have been permanently deleted from the computer on which they were stored;

- iv. Deliver an affidavit from their attorney David Geneson that he gave the tape to the FBI, and did not make any copies, did not allow anyone else to copy, and does have any copy.
- b. Certify under oath to the Court that they do not have in their possession, custody or control any other photographs, video recordings, and documents which once belonged to Ms. Hunter and obtained by you without her consent; and that they have no knowledge of anyone else having a copy thereof.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. Defendants are hereby in civil contempt of this Court and its lawful TRO dated 28 January 2010, pursuant to N.C. Gen. Stat. § 5A-21;
2. Defendants shall be allowed to purge themselves of this contempt by fully complying with the provisions of paragraph 9 under CONCLUSIONS OF LAW above and appear in the Superior Court of Orange County in Hillsborough at 2:00 p.m., on Wednesday, 10 February 2010 and prove to the Court that they have so complied in full; and
3. Defendants are to be taken into the custody of the Sheriff of Orange County for seventy-five (75) days or until such time as the Court adjudges them to have purged themselves of contempt, the first to occur; EXCEPT THAT the execution of this order is deferred until the conclusion of the Court hearing scheduled for 2:00 p.m. on Wednesday, 10 February 2010.

This the 5th day of February, 2010.



Hon. Abraham Penn Jones
North Carolina Superior Court Judge

Exhibit 3

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
10-CVS-000149

RIELLE HUNTER,
Plaintiff,
v.
ANDREW YOUNG and
CHERI YOUNG,
Defendants.

) 2010 FEB -8 A 11: 43
) ORANGE COUNTY, C.S.C.
) BY NS

NOTICE OF APPEAL

NOW COME defendants, Andrew Young and Cheri Young, by and through the undersigned, and give notice of appeal to the North Carolina Court of Appeals from the First Supplemental Contempt Order, entered on 7 February 2010, and the incorporated Contempt Order, entered on 5 February 2010, by the Honorable Abraham Penn Jones in the Superior Court for Orange County.

This the 8th day of February, 2010.

EDWARDS & TRENKLE, PLLC


Mark E. Edwards (gvr)

Mark E. Edwards
Attorney for Defendants
331 West Main Street
Suite 509
Post Office Box 77
Durham, NC 27702
(919) 688-9555

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served on the following by first class mail postage prepaid and electronic means.

This the 8th day of February, 2010.


Mark E. Edwards

Wade Barber
Wade Barber PLLC
Post Office Box 1755
Hillsborough, NC 27312
wadebarber2@gmail.com

Alan W. Duncan
Allison Van Laningham
Smith Moore Leatherwood LLP
Post Office Box 21927
Greensboro, NC 27420
alanduncan@smithmoorelaw.com
allison.vanlaningham@smithmoorelaw.com