

Judge: Visiting Judge
Hearing Date: May 20, 2024
Hearing Time: 9:00 a.m.

FILED
APR 29 2024
KITSAP COUNTY CLERK
DAVID T. LEWIS III

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY

HEATHER WOOD,

Petitioner,

-vs-

LENARD FEULNER,

Respondent.

NO. 07-3-01713-1

MOTION TO QUASH
PETITIONER'S SUBPOENA
DUCES TECUM TO KATHY
LOUGHEED

I. RELIEF REQUESTED

Pursuant to Superior Court Civil Rule (CR) 45(c)(3)(A), Kathy Lougheed, Kitsap County Superior Court employee, by and through her attorney, Lael K. Carlson, hereby moves to quash a subpoena issued by Petitioner Heather Wood. A copy of the subpoena is attached hereto as Exhibit A. The subpoena issued to Ms. Lougheed must be quashed as it fails to comply with the requirements set forth in CR 45(a)(1) and is unduly burdensome on Ms. Lougheed and the Superior Court.

II. STATEMENT OF FACTS



1 This case was first filed in 2008 and concerns a parenting plan regarding the parties'
2 minor child, AMF. Since that date, there have been numerous hearings, motions, and filings. A
3 trial date is currently set for June 4, 2024.
4

5 On April 15, 2024, Ms. Wood served Ms. Lougheed with a subpoena duces tecum which
6 commanded she appear for a deposition on May 16, 2024, at 11:30 a.m. at the Bremerton Kitsap
7 Regional Library and for trial on June 4, 2024, at 9:00 a.m., and made a general request for
8 documents. The description of testimony and documents she was expected to provide was as
9 follows: "KATHY LOUGHEED'S testimony in RE: Adeline Feulner (child), Heather Wood vs.
10 Lenard Feulner hearings attended 8/15/2023, and conversations, utterances, communications
11 with parties from outside the courthouse, and outside the courtroom on 8/15/2023, and all things
12 IN RE: and all things cause # 07-3-01713-1, and 23-2-01534-18." Ms. Lougheed is not a party to
13 this action.
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15 III. LEGAL AUTHORITY AND ARGUMENT

16 A trial court's order granting or denying a motion to quash a subpoena is reviewed on
17 appeal for an abuse of discretion. *Hammond v. Braden*, 16 Wn. App. 773, 776, 559 P.2d 1357
18 (1977). A court abuses its discretion when its decision is based on untenable grounds or
19 reasoning. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).
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21 This motion is made pursuant to Washington Superior Court Civil Rules 26, 30, and 45.
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23 The scope of a subpoena requiring a person to produce documentary evidence is limited
24 by CR 26(b), which provides in part:

25 **Discovery Scope and Limits.** Unless otherwise limited by order of the court
26 in accordance with these rules, the scope of discovery is as follows:

27 (1) *In General.* Parties may obtain discovery regarding any matter, not
28 privileged, which is relevant to the subject matter involved in the pending action,
whether it relates to the claim or defense of the party seeking discovery or to the

1 claim or defense of any other party, including the existence, description, nature,
2 custody, condition and location of any books, documents, or other tangible things
3 and the identity and location of persons having knowledge of any discoverable
4 matter. It is not ground for objection that the information sought will be
inadmissible at the trial if the information sought appears reasonably calculated to
lead to the discovery of admissible evidence.

5 Thus, the essential test is whether the discovery device employed is reasonably calculated
6 to lead to the discovery of admissible evidence, which is broader than the standard of ER 401.¹
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8 The same rule, CR 26(b)(1), authorizes the Court to limit depositions and other
9 discovery methods, providing:

10 The frequency or extent of use of the discovery methods set forth in section (a)
11 shall be limited by the court if it determines that: (A) the discovery sought is
12 unreasonably cumulative or duplicative, or is obtainable from some other source
13 that is more convenient, less burdensome, or less expensive; (B) the party seeking
14 discovery has had ample opportunity by discovery in the action to obtain the
15 information sought; or (C) the discovery is unduly burdensome or expensive, taking
16 into account the needs of the case, the amount in controversy, limitations on the
parties' resources, and the importance of the issues at stake in the litigation. The
court may act upon its own initiative after reasonable notice or pursuant to a motion
under section (c).

17 Here, Petitioner seeks to depose an employee of the Court regarding “conversations,
18 utterances, communications with parties from outside the courthouse, and outside the courtroom
19 on 8/15/2023... and all things cause # 07-3-01713-1, and 23-2-01534-18.” This deposition and
20 overly broad request for documents would be burdensome and harassing. Ms. Lougheed is not a
21 party to this case and can add nothing to the issues surrounding the parenting plan that is at issue
22 in this case. The Petitioner has failed to identify how discovery of such information as described
23 in the subpoena is or could be relevant to the pending parenting action, or how such inquiry is
24 reasonably calculated to lead to the discovery of admissible evidence. As such, the Petitioner’s
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28 ¹ *Barfield v. City of Seattle*, 100 Wn.2d 878, 886, 676 P.2d 438 (1984).

1 discovery requests are not within the scope of CR 26(b), and responding thereto by a non-party
2 would be unduly burdensome.

3 Although the parties to a lawsuit “must accept its burdens as a natural part of civil
4 litigation, nonparties have a different set of expectations.” *Eugster v. City of Spokane*, 121 Wn.
5 App. 799, 813, 91 P.3d 117 (2004), *review denied*, 153 Wn.2d 1012 (2005). The burden upon a
6 nonparty “is a factor entitled to special weight” when a court decides whether to enforce a
7 subpoena duces tecum. *Id.* The court in *Eugster* refused to enforce six overly burdensome
8 subpoenas against a nonparty. *Id.* at 813-14. As stated above, Ms. Lougheed is not a party to this
9 action and is a factor the Court should consider when deciding whether to enforce the subpoena
10 at issue here.
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13 Civil Rules 30 and 45 authorize a party to issue a subpoena requiring a person’s
14 attendance at a deposition and govern the taking of depositions. This motion is also made
15 pursuant to CR 45, which provides in pertinent part:
16

17 (a) Form; Issuance.

18 (1) Every subpoena shall:

- 19 (A) state the name of the court from which it is issued;
- 20 (B) state the title of the action, the name of the court in which it is
21 pending, and its case number
- 22 (C) command each person to whom it is directed to attend and give
23 testimony or to produce and permit inspection and copying of
24 designated books, documents or tangible things in the possession,
25 custody or control of that person, or to permit inspection of premises,
26 at a time and place therein specified; and
- 27 (D) **set forth the text of subsections (c) and (d) of this rule.**

28 (2) **A subpoena for attendance at a deposition shall state the method for
recording the testimony.**

1 As the subpoena attached to Exhibit A shows, the text of subsections (c) and (d) of CR 45
2 are not set forth in the subpoena, and the subpoena fails to state the method for recording the
3 testimony at the deposition. The deposition conditions are vague. The subpoena indicates that the
4 deposition is to take place at a library. It states that Ms. Lougheed is required to be sworn but
5 does not say by whom. It states that the deposition will be performed using "Facebook video
6 conferencing at the library, via Heather Wood to the Officer." The "Officer" is not designated,
7 nor is the manner of recording. The subpoena is silent on how the recording will be
8 memorialized, preserved, recorded, or transcribed, contrary to CR 28, 29, and 30.

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11 "A subpoena which does not comply with CR 45 is a 'nullity.'" *State v. Adamski*, 111
12 Wn.2d 574, 577-78, 761 P.2d 621 (1988) (citing *Harrison v. Prather*, 404 F.2d 267, 273 (5th
13 Cir. 1968)).

14 In addition, CR 45(c)(3)(A) provides:

15 On timely motion, the court by which a subpoena was issued shall quash or
16 modify the subpoena if it:

17 ... (iii) requires disclosure of privileged or other protected matter and no exception
18 or waiver applies; or

19 (iv) subjects a person to undue burden, provided that the court may condition
20 denial of the motion upon a requirement that the subpoenaing party advance the
21 reasonable cost of producing the books, papers, documents, or tangible things.

22 The description of the testimony and documentation that Ms. Lougheed is requested to
23 provide is so broad, vague, and onerous that it would subject her and her office to undue burden
24 in attempting to respond to a subpoena that appears to be nothing more than a fishing expedition.
25 Further, it is unclear how this request of Ms. Lougheed is relevant to the issue(s) that will be
26 presented at trial. Lastly, the subpoena fails to comply with CR 45.

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V. CONCLUSION

For the reasons stated herein, the Subpoena Duces Tecum directed to Ms. Lougheed should be quashed.

Respectfully submitted this 29th day of April 2024.

CHAD M. ENRIGHT
Kitsap County Prosecuting Attorney



LAEL K. CARLSON, WSBA No. 44773
Deputy Prosecuting Attorney
Attorney for Ms. Lougheed in her capacity as employee of
the Kitsap County Superior Court

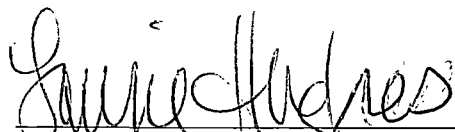
CERTIFICATE OF SERVICE

I, Laurie Hughes, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Heather Wood	<input checked="" type="checkbox"/> Via 1 st Class U.S. Mail
9129 James Rd. SW	<input type="checkbox"/> Via Fax:
Rochester, WA 98579	<input type="checkbox"/> Via Email
Hthrwood012@gmail.com	<input type="checkbox"/> Via Hand Delivery

SIGNED in Port Orchard, Washington this 29th day of April 2024.



Laurie Hughes, Legal Assistant
Kitsap County Prosecutor's Office
614 Division Street, MS-35A
Port Orchard WA 98366
Phone: 360-337-7089

EXHIBIT A