

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 LINDY
MENSE

I. RELIEF REQUESTED

Pursuant to Superior Court Civil Rule (CR) 45(c)(3)(A), Lindy Mense, Kitsap County Clerk 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. Mense must be quashed as it fails to comply with the requirements set forth in CR 45(a)(1) and is unduly burdensome on Ms. Mense and the Clerk's Office.

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 12, 2024, Ms. Wood served Ms. Mense with a subpoena duces tecum which
6 commanded she appear for a deposition on May 6, 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: "LINDY MENSE's testimony in regards to the events, and notes involving the parties,
10 persons, and Judicial officers of 07-3-01713-1, including, but not limited to the dates: 8/4/2023,
11 and 8/15/2023, and general information and duties performed." Ms. Mense is not a party to this
12 action.
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14 III. LEGAL AUTHORITY AND ARGUMENT

15 A trial court's order granting or denying a motion to quash a subpoena is reviewed on
16 appeal for an abuse of discretion. *Hammond v. Braden*, 16 Wn. App. 773, 776, 559 P.2d 1357
17 (1977). A court abuses its discretion when its decision is based on untenable grounds or
18 reasoning. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).
19

20 This motion is made pursuant to Washington Superior Court Civil Rules 26, 30, and 45.

21 The scope of a subpoena requiring a person to produce documentary evidence is limited
22 by CR 26(b), which provides in part:
23

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

26 (1) *In General.* Parties may obtain discovery regarding any matter, not
27 privileged, which is relevant to the subject matter involved in the pending action,
28 whether it relates to the claim or defense of the party seeking discovery or to the
claim or defense of any other party, including the existence, description, nature,
custody, condition and location of any books, documents, or other tangible things

1 and the identity and location of persons having knowledge of any discoverable
2 matter. It is not ground for objection that the information sought will be
3 inadmissible at the trial if the information sought appears reasonably calculated to
4 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

7 The same rule, CR 26(b)(1), authorizes the Court to limit depositions and other
8 discovery methods, providing:

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

19 Here, Petitioner seeks to depose an employee of the county clerk's office regarding "the
20 events, and notes involving the parties, persons, and Judicial officers of 07-3-01713-1, including,
21 but not limited to the dates: 8/4/2023, and 8/15/2023, and general information and duties
22 performed." This deposition and overly broad request for documents would be burdensome and
23 harassing. Ms. Mense is not a party to this case and can add nothing to the issues surrounding the
24 parenting plan that is at issue in this case. The Petitioner has failed to identify how discovery of
25 such information as described in the subpoena is or could be relevant to the pending parenting
26 action, or how such inquiry is reasonably calculated to lead to the discovery of admissible
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28 ¹ *Barfield v. City of Seattle*, 100 Wn.2d 878, 886, 676 P.2d 438 (1984).

1 evidence. As such, the Petitioner’s discovery requests are not within the scope of CR 26(b), and
2 responding thereto by a non-party 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. Mense 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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12
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. Mense is required to be sworn but does
5 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. Mense is requested to
23 provide is so broad, vague, and onerous that it would subject her and the clerk’s office to undue
24 burden in attempting to respond to a subpoena that appears to be nothing more than a fishing
25 expedition. Further, it is unclear how this request of Ms. Mense is relevant to the issue(s) that
26 will be 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. Mense 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. Mense in her capacity as employee of the
Kitsap County Clerk

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.

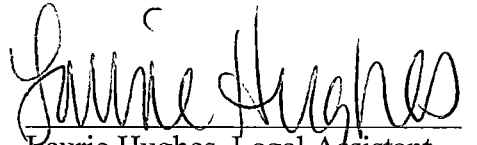

 Laurie Hughes, Legal Assistant
 Kitsap County Prosecutor's Office
 614 Division Street, MS-35A
 Port Orchard WA 98366
 Phone: 360-337-7089

EXHIBIT A