

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE, EASTERN DIVISION

KELLEY S. STONE,

Plaintiff,

v.

THE CITY OF GRAND JUNCTION,
TENNESSEE, a Municipal Corporation;
PAT RYAN, Individually; and SUSAN TICE,
Individually,

Defendants.

No.:1:10-cv-01088-JDB-egb

ORDER GRANTING MOTION OF GRAND JUNCTION AND PAT RYAN
TO SEQUESTER NON-WITNESSES AND GRANTING
MOTION FOR PROTECTIVE ORDER REGARDING THE SEQUENCE
OF DEPOSITIONS

A. Background.

Kelley Stone sued, among others, Pat Ryan and Grand Junction, Tennessee, alleging they violated her federal constitutional rights and that the Defendants committed various state-law torts.¹ Ryan and Grand Junction answered Stone's Complaint and then moved for summary judgment.² Stone dismissed her official-

¹ Complaint (D.E. No. 1-1).

² Answer of Grand Junction and Pat Ryan (D.E. No. 3); Grand Junction's Motion for Summary Judgment and Pat Ryan's Motion for Partial Summary Judgment (D.E. No. 13).

capacity claims against Ryan and her Fourteenth Amendment claims against all Defendants.³

Stone responded to the Defendants' motions and requested additional time to take discovery before responding to the City's arguments that it did not have a policy, custom, or procedure that caused a violation of Stone's federal constitutional rights; and its argument that the City is not liable because Ryan did not act with deliberate indifference.⁴ The Court granted in part Stone's motion to conduct additional discovery.⁵ The parties agreed to depose Stone on November 1; Pat Ryan on November 3; and Mayor Lane on November 4.⁶ Because Stone would not agree that her father would not attend her deposition, the Defendants filed a motion for protective order to sequester non-party witnesses from other witnesses' depositions and to prevent the non-party witnesses from reading, watching, or hearing details of depositions until after their depositions are completed.⁷ Stone responded opposing the motion.⁸

As the scheduled depositions approached, the Defendants asked to continue the depositions until after the Court ruled on the protective order. Stone's attorney agreed

³ Stipulation of Dismissal Without Prejudice (D.E. No. 14); Partial Order of Dismissal Without Prejudice as to Certain Claims (D.E. No. 15).

⁴ Plaintiff's Response to Defendants' Motion for Summary Judgment (D.E. No. 20); Plaintiff's Memorandum in Support of Motion to Deny or to Continue Defendants' Motion for Summary Judgment (D.E. No. 17-1).

⁵ Order Granting in Part Plaintiff's Motion to Conduct Additional Discovery Relative to Certain Portions of Defendants' Motion for Summary Judgment (D.E. No. 23).

⁶ Defendants' Motion to Quash Notices of Depositions and Protective Order Regarding the Sequence of Depositions at Affidavit of Dale Conder, Jr. at Exhibit 1, pp. 2 and 3 of 8 (D.E. No. 30-2).

⁷ Defendants' Motion for Protective Order (D.E. No. 26).

⁸ Response to Motion for Protective Order (D.E. No. 28).

to continue her deposition, but wanted to proceed with Chief Ryan's deposition.⁹ Ryan and Grand Junction, however, wanted to depose Stone first, and filed a motion to quash the notices of deposition and to order that Stone be deposed first as agreed to by the parties.¹⁰

The Court set the motions for oral argument on November 2, 2010, at 3:30 p.m.¹¹

B. Analysis.

1. Sequestration of witnesses during depositions.

Before 1993, the courts disagreed as to whether the witness-sequestration rule applicable in trials applied to depositions.¹² The 1993 amendment to Fed. R. Civ. P. 30(c)(1) clarifies that "other witnesses are not automatically excluded from a deposition simply by request of a party."¹³ But the courts can exclude other witnesses under Fed. R. Civ. P. 26(c)(5).¹⁴

Rule 26(c)(5) requires a showing of good cause to exclude witnesses from depositions.¹⁵ Although the rules have been amended over the years, the standard for excluding non-party witnesses from depositions has remained the same, i.e., "for good cause."¹⁶

⁹ Defendants' Motion to Quash Notices of Depositions and for Protective Order Regarding the Sequence of Depositions at Affidavit of Dale Conder, Jr. at Exhibit 1, pp. 6 and 7 of 8 (D.E. No. 30-2).

¹⁰ *Id.* (D.E. Nos. 30 and 30-1).

¹¹ Setting Letter (D.E. No. 33) (setting both of Defendants' motions for hearing).

¹² Fed.R.Civ.P. 30(c), 1993 advisory committee comments.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Fed.R.Civ.P. 26(c)(1)(E).

¹⁶ Compare *Dunlap v. Reading Company*, 30 FRD. 129, 130 (E.D.Pa. 1962) (quoting Rule 30(b); and Fed.R.Civ.P. 26(c)(1) (both requiring good cause).

Defendants' argue that good cause exists because Stone has alleged that Ryan and co-defendant Susan Tice engaged in a conspiracy to violate her constitutional rights, Chief Ryan lied to the prosecuting attorney, Stone's relationship with her father makes the motivation to alter testimony more tangible, and this is not a case in which there are a number of objective fact witnesses. This is a case from a small town that has pitted one family against another and includes allegations that law enforcement has taken sides.¹⁷

Based on the pleadings and the argument of counsel, the Court finds as follows:

- (1) In cases such as this one, where the Plaintiff alleges conspiracy among the Defendants, there is good cause for preventing non-party witnesses from attending other depositions, reading other depositions, or otherwise learning the details of other depositions until after the non-party witness has been deposed;¹⁸
- (2) The close relationships between the parties and potential witnesses also supports sequestration in this matter;¹⁹ and
- (3) This is a case in which there are not multiple objective witnesses, but witnesses from a small town in which two families are pitted against each other with allegations that law enforcement has taken sides.

THEREFORE, the Court finds that Defendants have satisfied the burden of showing good cause for sequestering non-party witnesses during the depositions.

2. Sequence of witnesses.

The Defendants are also seeking a protective order regarding the sequence of the depositions. In September, the parties agreed that Stone would be deposed

¹⁷ Memorandum of Law in Support of Defendants' Motion for Protective Order at pp. 4-5 (D.E. No. 26-1).

¹⁸ See *In re Levine*, 101 B.R. 260 (Bankr.D.Colo. 1989).

¹⁹ See *Fed. Savings & Loan Assoc. v. Shipley*, 1986 WL 11549 (Del.Supr.Ct. 1986); *Dunlap v. Redding, Inc.*, 30 Frd at 131.

first.²⁰ No reason has been shown as to why this order of depositions with the Plaintiff going first should not be followed. Therefore, Kelley Stone will be deposed before the Defendants.

CONCLUSION

Because the Defendants have satisfied the good cause requirement for sequestration of witnesses, non-party witnesses will not be allowed to attend the depositions of any other witnesses, read the depositions of any other witnesses, watch, or be informed of details about the depositions of other witnesses, until the non-party witness has been deposed.

Furthermore, the Court orders that Kelley Stone be deposed before the Defendants in this matter.

Entered this 4th day of November, 2010.

s/Edward G. Bryant
EDWARD G. BRYANT,
UNITED STATES MAGISTRATE JUDGE

²⁰ Motion to Quash Notices of Depositions and for a Protective Order Regarding the Sequence of Depositions at Affidavit of Dale Conder, Jr. at Exhibit 1, p. 4 of 8 (e-mail from Charles Holliday to Dale Conder, Jr. dated September 20, 2010).