

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARY WILLETT,

Plaintiff,

v.

VILLAGE OF HOLMEN, *et al.*,

Defendants.

ORDER

12-cv-305-bbc

In this civil lawsuit, plaintiff, after being fired by the Village of Holmen from her positions as the village administrator/clerk, is suing the Village and its six trustees for having violated her federal due process rights when they fired her and for having violated her liberty interest in her reputation without due process by stigmatizing her in the press. On January 8 and 9, 2013, plaintiff served Rule 45 subpoenas seeking testimony and production of documents from three third parties: newspaper reporter Randy Erickson, his paper, *The Onalaska Holmen Courier-Life*, and the parent company, Lee Enterprises, Inc. Erickson wrote several articles addressing plaintiff's employment dispute with the defendants which included quotes from some of the defendants. Plaintiff seeks documents and testimony regarding communications about plaintiff between any defendant or other village representative and Erickson or other *Courier-Life* employees.

On January 16, 2013, the three media deponents jointly moved to quash these subpoenas, claiming First Amendment and Wisconsin state law privileges against providing the requested testimony and documents. *See* dkts. 33-35. On January 18, 2013, the court held a telephonic hearing on this motion. The three deponents and all parties to the lawsuit were represented by counsel. After discussing the matter with counsel, the court denied the motion to quash for reasons stated on the record.

By way of brief overview, in the Seventh Circuit, the controlling law is provided in *McKevitt v. Pallasch*, 339 F.3d 530 (7th Cir. 2003). In *McKevitt*, the court held that there is no actual "reporter's privilege" under the First Amendment or any other source; this is all the more true when a reporter's sources of information are not confidential; and, state law privileges are not legally applicable in cases that present federal questions. A court's inquiry when deciding a motion to quash

a Rule 45 subpoena to a journalist or media outlet is the same as when deciding a motion to quash a Rule 45 subpoena to any other third party: is the subpoena reasonable in the circumstances? *Id.* at 532-33.

Here, plaintiff's subpoenas are focused on discovering what the defendants and other village officials may have said about plaintiff's job performance or conduct as Holmen's administrator, any statements about plaintiff's misrepresentations of her qualifications, and about why she was fired. Any such statements are directly relevant to plaintiff's claims, they likely would be admissible at trial as statements of a party opponent, the statements are by public officials regarding a village employee and village business, and disclosing any such statements would not impose a substantial burden on any of the three subpoenaed witnesses beyond their understandable antipathy toward being required to provide any responsive information at all. The court is sympathetic to these concerns, but the Court of Appeals for the Seventh Circuit has rejected them.

At the hearing we also discussed the dispute regarding the date of the depositions. After hearing from both sides, and mindful of the deadlines the parties face in this lawsuit, the court gave the deponents' lawyers a choice: either find a colleague to defend the depositions in La Crosse next week as scheduled or set a date the following week and travel to Eau Claire to be deposed there. The parties are to work this out as quickly and efficiently as possible.

ORDER

It is ORDERED that the third party witnesses' motion to quash the Rule 45 subpoenas served on them is DENIED.

Entered this 18th day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge