

NICHOLAS PAUL ANDERSON,  
Plaintiff,

FILED

Vs.

2016 AUG 26 P 2:35

SARAH COVINGTON ANDERSON,  
Defendant

RUTHERFORD CO., C.S.C.

BT  
Dmb

MOTION TO QUASH

Matthew Fenner, pursuant to Rule 45(c) of the North Carolina Rules of Civil Procedure, moves the Court for an order quashing the subpoena issued on August 19, 2016 by Plaintiff to Matthew Fenner, on the grounds that it is unreasonable and oppressive, subjects the deponent to undue burden or expense, and amounts to a fishing expedition. In support of its motion, Danielle Cordes states that:

1. The above-captioned action is a divorce action between husband and wife. The deponent Matthew Fenner is not a party to the action, has no information about the grounds for the action, is not involved in any manner in the relationship between the parties, and has no information which could be relevant or lead to relevant information in the divorce action.
2. On August 20, 2016, the deponent received a subpoena commanding him to appear for a deposition on August 31, 2016 in Chapel Hill, NC.
3. The subpoena issued by Plaintiff would impose unreasonable and oppressive burdens on Mr. Fenner. Mr. Fenner is a prosecuting witness in a criminal action involving one of the parties to this action. Since becoming a prosecuting witness in a criminal action, members of the Plaintiff's church, and the former church of the Defendant have continually subjected the deponent to harassment, and legal requests which have amounted to an undue and oppressive burden on the deponent.
4. Among the actions taken by members of the Plaintiff's church have included filing an action for libel against a former member of the church in order to obtain depositions of witnesses to the criminal action including Mr. Fenner. During these depositions, no questions were ever asked as to the statements made by the former member of the church who was the defendant in the action, but instead all questions in these depositions were asked regarding the allegations made by Mr. Fenner in the criminal case. Mr. Fenner was not a party to the action in which the depositions were sought. The case was dismissed on a Motion for Summary Judgment before Mr. Fenner could be deposed in that case.
5. In addition to the attempts to take Mr. Fenner's deposition, Mr. Fenner and his relatives were served with subpoenas seeking to obtain all telephone records including the full contents of text messages, all metadata, where calls were made, and further incredibly intrusive information. These subpoenas were successfully quashed by the Court.
6. It should be pointed out that the Plaintiff's attorney who is seeking this deposition is also the attorney of record for one of the defendants in the criminal action in which Mr. Fenner is the prosecuting witness. It is Mr. Fenner's belief that this is simply another attempt by the Defendant's in the pending criminal action to harass, intimidate, and dissuade him from furthering his prosecution of these defendants.
7. Plaintiff's subpoena amounts to nothing more than a fishing expedition wherein the parties are seeking not information which will lead to the prosecution of their divorce case against Sarah Covington Anderson, but is instead designed to seek any information which could be used to assist in the defense of members of the Plaintiff's church and the Plaintiff's attorney's client against the allegations made by Matthew Fenner. Such an outrageous and transparent misuse of the discovery process and subpoena power should not be sanctioned by this Court and must result in the subpoena being quashed.

8. Furthermore, the subpoena presents an undue burden and expense on the deponent. Because of the continued harassment by the members of the Plaintiff's church against Mr. Fenner, Mr. Fenner has had to obtain legal counsel both to make this motion, as well as if the motion is denied, to retain counsel to attend the deposition with him in order to protect his rights and give him counsel during the deposition process.

WHEREFORE, Matthew Fenner, prays that this Court enter an Order quashing the subpoena seeking his deposition issued by Plaintiff to him.

This the 26 day of August, 2016.

DITZ EDWARDS & BEAM, PLLC

A handwritten signature in black ink, appearing to read "Paul J. Ditz", is written over a horizontal line. The signature is stylized and cursive.

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ATTORNEY FOR MATTHEW FENNER