

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VIRGIE ARTHUR

§

v.

§

Civil Action No. 6:08MC6

§

NELDA (ROSE) TURNER and
KENNETH TURNER

§

§

§

MOTION TO TRANSFER VENUE

Pursuant to 28 U.S.C. § 1404(a), Respondents Rose and Kenneth Turner file this motion to transfer this ancillary discovery proceeding to the United States District Court for the Southern District of Texas so it can be consolidated with the main case.

I.

GROUND

1. ***All issues* before the Eastern District in this ancillary discovery proceeding were argued in the Southern District case on April 18, 2008, and are under consideration by Judge Lee Rosenthal (Presiding Judge in the main case).**
2. **Plaintiff's choice of forum *is the Southern District*. Plaintiff admits that her only basis for this Eastern District matter is the Turner's convenience. The Turners, however, do not object to the Southern District—which is also a permissible venue for the issuance of Plaintiff's subpoenas.**
3. **Plaintiff is presently attempting to add Rose Turner as a party in the Southern District case. Discovery from a party must be obtained in the main case in the Southern District, not in an ancillary proceeding.**
4. **In sum, the interests of justice, the efficient administration of the courts, and the convenience of the parties and witnesses, all favor the transfer of this matter to the Southern District.**

II.

BACKGROUND FACTS

1. As briefed to the Court in the Turner's response to Plaintiff's Motion to Compel, this case relates to Plaintiff's libel and slander litigation arising out of the public

discussion about Plaintiff's relationship with her famous daughter Anna Nicole Smith. Respondent Rose Turner posts a celebrity-oriented website and weblog that contain discussion of celebrity court cases, including some of the legal proceedings following the death of Anna Nicole Smith.¹

2. Plaintiff's libel and slander claims are pending in Southern District, as Civil Action No. 4:07-CV-03742, *Virgie Arthur v. Howard K. Stern, CBS Studios, Inc. and KPRC Houston*, the Honorable Lee Rosenthal presiding. See Exhibit B (State court petition and Notice of Removal). Plaintiff filed this Eastern District ancillary proceeding solely to issue two document subpoenas to the Turners, despite the fact that Plaintiff is currently trying to add Rose Turner as a party defendant in the Southern District case.² The Turners objected to the oppressive and overly broad subpoenas and timely moved for protection and to quash the subpoenas in the Southern District.

3. On April 18, 2008, Judge Rosenthal held an hour-and-a half hearing, with attorneys for both parties present, after which she took the matters related to the subpoenas under consideration, and has not yet ruled. See, Docket Entry 73, Civil Docket Sheet in Case No. 4:07-CV-03742, attached as Exhibit C (The hearing concerned a number of other matters besides the Turners' objections to the subpoenas). Acting as if the April 18 hearing before Judge Rosenthal never occurred, Plaintiff filed a Motion to

¹ A copy of Respondents' Response to Plaintiff's Motion to Compel—which contains a more detailed background of the proceedings—is attached as Exhibit A (without attachments) for the Court's reference.

² Plaintiff has also filed a second defamation lawsuit in Texas state court against eight defendants, including *Rose Turner*, wherein Plaintiff asserts essentially the same causes of action, alleges many of the same facts, and includes six of the same parties as in the action pending in the Southern District. See Exhibit D. Plaintiff claims that her only reason for filing the state court claim was to preserve her claims from being barred by limitations and will seek to add the state court defendants to the Southern District action. See Plaintiff's Reply to the Turners' Response to Plaintiff's Motion to Compel, ¶ 13.

Compel in this matter on April 22, 2008, erroneously implying that the Turners have never responded to the subpoenas and seeking to relitigate the issues currently under consideration by Judge Rosenthal. Plaintiff's attempt to relitigate the issues in this Court is a waste of judicial resources, a waste of party resources, and presents a risk of conflicting rulings. The Turners therefore request that this matter be transferred to the Southern District for the convenience of the parties and for the efficient administration of the courts so that it can be consolidated with the main case.

III.
ARGUMENT AND AUTHORITIES

4. Section 1404 (a) provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. §1404(a). Therefore, a court has two broad categories of factors to consider when deciding a motion to transfer: (1) the interests of justice, and (2) the convenience of the parties and witnesses. *In re: Volkswagen A.G.*, 371 F.3d 201, 203 (5th Cir. 2004). In this case, the interests of justice and convenience of the parties and witnesses are best served by transferring this case to the Southern District.

A. The interests of justice and efficient administration of the courts require that this case be transferred to the Southern District of Texas where the issues are already pending before Judge Lee Rosenthal.

5. As stated above, *all issues* in this ancillary discovery proceeding were already presented to Judge Rosenthal in the main case on April 18, 2008. Counsel for all parties fully participated in the hearing. Judge Rosenthal is in the best position to determine the issues presented in the Turners' Motion for Protection, as she has presided over the main action since November 2007, and has an extensive knowledge of the case

and the parties' claims, including how the documents requested by Plaintiff relate (or do not relate) to Plaintiff's complaint. Moreover, the Southern District is a permissible venue for the issuance of the subpoenas as the Turners reside in Texas. *See Mohamed v. Mazda Motor Corp.*, 90 F.Supp.2d 757, 778 (E.D. Tex. 2000). Plaintiff's attempt to relitigate or avoid those issues in this Court is a waste of judicial resources, a waste of party resources, presents a risk of conflicting rulings.

B. The convenience of the parties and witnesses are best served by transferring this case to the Southern District where the issues are already pending before Judge Lee Rosenthal and that Court is best situated to rule on the scope and extent of relevant discovery.

6. In considering the convenience of the parties and witnesses in light of a motion to transfer, the Court considers several factors, including: (1) Plaintiff's choice of forum, (2) the convenience of the parties, and (3) location of counsel.³ *In re Volkswagon AG*, 371 F.3d 201, 203 (5th Cir. 2004). All factors listed above support transferring this matter to the Southern District to be consolidated with the main case.

7. One of the most significant factors in determining a transfer motion is the Plaintiff's choice of forum. *In re Horseshoe Entertainment*, 337 F.3d 429, 434 (5th Cir. 2003). In this instance, the Plaintiff's choice of forum is *the Southern District*. Plaintiff brought the main suit in Houston, Harris County, Texas and it was removed to the Southern District. Plaintiff did not move for remand, and the case has moved forward in that venue since November 2007. Plaintiff's only ostensible reason for filing this ancillary matter in the Eastern District was for the convenience of the Turners. *See*

³ Additional consideration is given to the following factors; however, they are inapplicable to this ancillary discovery proceeding: (1) cost of obtaining witnesses, (2) ability to compel attendance of witnesses for trial, (3) convenience of key witnesses, (4) accessibility and location of sources of proof, (5) possibility of jury view; and (6) existence of a forum selection clause. *In re Volkswagon AG*, 371 F.3d at 203.

Plaintiff's Reply to the Turners' Response to Plaintiff's Motion to Compel, ¶ 7 (stating that the only reason for filing in the Eastern District was because it is the place of the Turners' residence). The Turners, however, never objected—and do not object—to having the issues brought in the Southern District so that all issues can be considered by a single court.

8. Similarly, the convenience of the parties, witnesses and counsel all favor transfer of this matter to the Southern District. The parties already argued all issues before the Court in this ancillary proceeding to Judge Rosenthal in the Southern District on April 18, 2008. The convenience of the parties would not be served by having a second hearing on issues already under consideration by Judge Rosenthal in the main case.

9. Moreover, all counsel are located in the Southern District.⁴ The Turners should not have to bear the cost of relitigating issues in multiple courts in Texas, especially considering that Rose Turner is a party defendant in Plaintiff's recently filed state court action and Plaintiff has requested that she be added as a party defendant in the Southern District case. Plainly, the issues raised in this ancillary proceeding are already under consideration in Plaintiff's own choice of forum, the Southern District. This matter should be transferred to the Southern District for consolidation with the main case.

⁴ In *In re Horseshoe Entertainment*, 337 F.3d at 434, the Fifth Circuit has held that the convenience of counsel is not a consideration for a motion to transfer. In this matter, however, the fact that all counsel are located in the Southern District weighs heavily on the convenience of the parties, which is a proper factor. The Turners employed the undersigned counsel to defend them in the Southern District action and the Harris County state court action. The cost and expense of relitigating the discovery issues in the Eastern District will be incurred by the Turners. This increased expense is an unnecessary burden on the Turners, as the issues are already under consideration in Plaintiff's own choice of forum.

IV. RELIEF REQUESTED

10. The Turners ask that this Motion to Transfer Venue to the Southern District be granted so that the court already chosen by Plaintiff can properly deal with her subpoenas, and for any further relief to which the Turners are justly entitled.

DATED and SERVED this 19th day of May, 2008.

Respectfully submitted,

**OGDEN, GIBSON,
BROOKS & LONGORIA, L.L.P.**

By: 

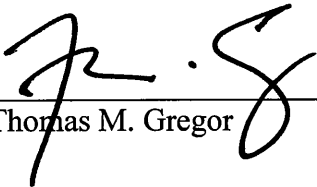
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**ATTORNEYS FOR ROSE AND KENNETH
TURNER**

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2008 a true and correct copy of the foregoing Motion to Quash and/or for Protection was served by electronic notification to parties of record through the efileing website of the Eastern District, and by certified mail, return receipt requested as follows:

Mr. Neil C. McCabe
Mr. M. Michael Meyer
The O'Quinn Law Firm
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