

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

VIRGIE ARTHUR
PLAINTIFF

v.

NELDA (ROSE) MILLIGAN
TURNER, and KENNETH
TURNER
DEFENDANTS

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Civil Action No. 6:08mc6

**VIRGIE ARTHUR'S SUR-REPLY TO RESPONDENTS REPLY TO
PLAINTIFF'S RESPONSE TO MOTION TO TRANSFER VENUE**

Virgie Arthur files this her Reply to Respondents' Sur-Reply to Plaintiff's Response to Motion to Transfer Venue, which, in support thereof, and in support of her Motion to Compel Compliance with Subpoena, she would show as follows.

In Respondents' Reply to Plaintiff's Response to Motion to Transfer Venue ("Reply"), the Turners' attempt to re-characterize their Motion to Quash, which was filed in the wrong court, as a set of objections under FED. R. CIV. P. RULE 45(c)(2)(B),¹ but they do not explain how that new characterization makes any difference.

One of the Turners' "objections" in their Motion to Quash is on first-amendment grounds. On her "Rose Speaks" website, Rose Turner objects to the subpoena in religious terms relating to her domestic practices.² Her court filings, however, do not raise a first-amendment religion issue. As for the Turners' argument in their Motion to Quash that the subpoenas are "chilling their rights of expression," the Turners cite no case authority for such a first-amendment defense to a subpoena. At any rate, Rose's

¹ Reply, paragraph 1.

² <http://www.rosespeaks.com/rose-blog/?p=279#comments>. See Rose's comments #218 and #219 (as of June 2, 2008).

many comments on her website demonstrate that her freedom to express herself has not been “chilled” by the subpoenas.³

The specious character of the so-called “objections” in the Motion to Quash also is evident in the Turners’ reliance on the Texas Constitution and a state statute.⁴ Virgie Arthur, through her counsel, is not unfamiliar with the concept of federalism,⁵ and her counsel has found no case in which a federal subpoena has been held to violate a state constitution or state statute. The Turners cite no such case. That is no surprise, in light of the Supremacy Clause. *See* U.S. Const., Art. VI, cl. 2.

As for the argument that the Turners are protected by TEX. CIV. PRAC. & REM. CODE section 73.002, that provision applies to a “newspaper or other periodical” that has given “a fair, true, and impartial account” of a government proceeding or a “reasonable and fair comment on or criticism of an official act of a public official or other matter of public concern published for general information.” *Id.*(b)(1); (2). The provision may be a defense to a libel action. It is not a defense to a federal subpoena.

Furthermore, no objective observer would characterize the venom spewing from Rose Turner as “fair” and “impartial.” Her “Rose Speaks” website is, by her own description, Pro-Howard K. Stern and Anti-Virgie Arthur. As shown by the voluminous evidence provided to this Court by Virgie Arthur,⁶ Rose has described herself as

³ See comments referenced in Note 4, above.

⁴ Motion to Quash, paragraph 4. Rose Turner’s comments about religion have sparked some debate. See Einy & Kerry, “The Anna Nicole Smith Saga Through *Rose-Colored* Glasses,” The Red Couch, May 19, 2008 <http://the-red-couch.blogspot.com/>.

⁵ See Neil C. McCabe (ed.), COMPARATIVE FEDERALISM IN THE DEVOLUTION ERA (Lexington Books 2002). http://books.google.com/books?hl=en&id=xwF09ITM-V0C&dq=%22comparative+federalism+in+the+devolution+era%22&printsec=frontcover&source=web&ots=qOPYd_UBhX&sig=FBv0yvhlM7wXggdAjnamAz2z7o.

⁶ See, e.g., Amended Memorandum in Support of Plaintiff’s Motion for Leave to Amend Original Petition (Complaint) to Add Additional Party Defendants and Jurisdictional Facts, filed in the main case in the

dedicated to “destroying” Virgie Arthur.⁷ She has promoted false and defamatory accusations of incest on the part of Virgie Arthur.⁸ Rose has not denied any of this in these proceedings or in any proceeding by way of affidavit or other evidence.

Rose Turner and her husband Kenneth were key players in a conspiracy to defame Virgie Arthur. Bonnie Stern, who is Defendant Howard K. Stern’s sister, directed Rose Turner for the benefit of Howard Stern.⁹ Rose also was directed by Krista Barth for the benefit of Howard Stern.¹⁰ Rose sought to promote a defamatory story about Virgie Arthur committing incest¹¹ or any story that could tarnish Virgie Arthur’s reputation.¹² Rose directed other co-conspirators who shared the same goal of doing “anything they could to help Howard [Stern], regardless of the cost, regardless of the consequences or repercussions.”¹³

The evidence from Rose Turner’s and Kenneth Turner’s¹⁴ computers is highly relevant. Consider, for example, the email below, which shows Rose Turner, aka “cajunrose,” communicating with the Stern family in such a way as to indicate that Howard Stern was in a position to dictate to her the details of her work on his behalf, so as to make her his agent in Texas, for purposes of conspiracy law and jurisdiction.

From: cajunrose
To: Howard K Stern ; Gary Stern ; Bonnie Stern
Sent: Friday, May 25, 2007 8:45 PM
Subject: media spread sheet

Southern District, attached hereto as Exhibit A, and the exhibits to that Amended Memorandum, attached hereto as Exhibit B.

⁷ See Exhibit B, page 4 of 16. See also Exhibit B attached to Plaintiff’s Reply to Response to Motion to Compel Subpoena in this action, page 96.

⁸ Exhibit B attached to Plaintiff’s Reply to Response to Motion to Compel Subpoena in this action at 28-9, 47-8, 65.

⁹ Id. at 9-10.

¹⁰ Id. at 15, 90.

¹¹ Id. at 28-9, 47-8, 65.

¹² Id. at 71.

¹³ Id. at 81, 90-1.

¹⁴ Id. at 74-5.

Chrystal did this spread sheet for the media quite a few days ago... I am so sorry but I forgot to forward it on to see if this is how Howard would like it done for easy reference.

Just let me know and we will go forward and get it all listed once we know how it is the easiest for him to utilize.

Rose

In jurisdictional motion practice in the case pending in the Southern District, Defendant Howard K. Stern has attacked such emails as being unauthenticated.¹⁵ For jurisdictional purposes, as well as for merits discovery, Arthur is entitled to the information in the Turners' computers that is subject to the subpoenas in question. This Court issued the subpoenas, and this Court is the one authorized to enforce them. The Turners cite no case, and Arthur's counsel has found no case in which venue has been transferred when, as in the present case, (1) the person seeking transfer resided in the district from which transfer was sought, (2) pursuant to Rule 45, FED. R. CIV. P., the subpoena was issued in that district, (3) pursuant to Rule 45, enforcement was sought in that district, and (4) the evidence sought was in that district.¹⁶ The Turners have made little effort to analyze the factors to be considered in deciding whether to transfer venue, and the burden is on them, not on Virgie Arthur. *In re Volkswagen of Am. Inc.*, 506 F.3d 376, 384 (5th Cir. Tex. 2007), rehearing, en banc, granted by *In re Volkswagen of Am., Inc.* 208 U.S. App. LEXIS 3322 (5th Cir. Feb. 14, 2008).¹⁷

¹⁵ See Defendant Howard K. Stern's Supplemental Reply in Support of his Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction, filed in the Southern District and attached hereto as Exhibit C.

¹⁶ Indeed, counsel for Arthur has found no case involving even a request for a change of venue on a motion to compel, and the Turners have cited none.

¹⁷ The Motion to Quash also claims a common law privilege but does not tell the Court what privilege that might be. The Turners further complain of the lack of a witness fee, but no fee is required for a documents-only subpoena or for persons, such as the Turners, whose attendance is not required at court. 28 U.S.C. § 1891. The Turners incorrectly state that the subpoenas were not signed by an officer of the court. The Turners also incorrectly state that the subpoenas were not delivered to counsel for the Turners, as counsel requested. The subpoenas have been delivered to counsel for the Turners.

Prayer

Virgie Arthur prays that this Court deny the Motion to Transfer Venue and expeditiously grant the Motion to Compel Production.

Respectfully submitted,

THE O'QUINN LAW FIRM

/s/ Neil C. McCabe

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on the 4th day of June 2008, a true and correct copy of the foregoing Reply to Respondents' Reply to Plaintiff's Response to Motion to Transfer Venue served upon the following counsel electronically via the CM/ECF system to the following counsel of record:

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