

Harris v. Varner

CANDY HARRIS, Plaintiff, v. ALARIC VARNER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action - Law, No. 326 of 2005, Custody

Child custody, Discovery, Subpoena

1. Pa.R.C.P. 1930.5 and Pa.R.C.P. 1915.5 bar discovery in custody cases without first seeking permission from the Court.
2. Based on the placement of the rules for subpoenas in the chapter on Depositions and Discovery and the explanatory comment to Pa.R.C.P. 4009, it is clear that the Rules of Civil Procedure include subpoenas as a form of discovery.
3. Pa. R.C.P. 1930.5(a) and Pa.R.C.P. 1915.5(c) allow the Court to consider a special Order for limited discovery in custody cases.

Appearances:

Sharele T. Tucker, Esq., Counsel for Plaintiff/Mother

Stephen D. Kulla, Esq., Counsel for Defendant/Father

Memorandum Opinion

Walsh, J., December 19, 2005

This case began when Candy Harris recently filed a Complaint for custody of the parties' child, Cassidy, age 4. Shortly after the filing of a Temporary Order and Directive for Conciliation, Defendant filed a Petition for Special Relief and, following evidentiary hearing, the Court modified the Temporary Order. The matter appears to be unusually contentious.

The issue currently before the Court is whether the Court should grant Plaintiff's Motion to Quash a Subpoena which Defendant's counsel served upon the Fulton County Domestic Relations Office. The subpoena in question, attached as Exhibit 2 to Plaintiff's Motion to Quash, orders the Fulton County Domestic Relations Office to produce "copy of entire Domestic Relations file in re the above referenced matter." In support of her argument that the Defendant's subpoena should be quashed, Plaintiff cites to Pa. R.C.P. 1930.5(a)[1] governing domestic relations generally and 1915.5(c)[2] governing custody matters specifically. Defendant appears to assert that the issuance of a subpoena under these circumstances is not discovery. Further, Defendant claims that he believes there is specific information by way of notes taken by the hearing officer contained in the file of the Domestic Relations Office that will bear some relevancy and/or be grist for impeachment at the custody trial.

Defendant's recitation of the issues in his brief presents an apt framework for resolving the matter. Defendant raises these issues:

1. Is the subpoena in question in violation of Pennsylvania Rules of Civil Procedure 1930.5(a) and/or 1915.5(c) which prohibit **discovery** (emphasis added) in custody proceedings absent Order of Court?
2. Is not the subpoena in question a proper method of gathering evidence?

3. If the Court finds in favor of Harris (i.e. Plaintiff) on the above issues, should not the Court "authorize" the issuance of the proposed subpoena as allowed by 1915.5(c)?

With regard to the first issue, both parties agree that the referenced Rules of Civil Procedure bar discovery in custody cases without first seeking permission from the Court. Defendant, in asking us to enforce the subpoena, argues that service of a subpoena upon a non-party falls outside the scope of discovery and is not prohibited by Rule 1930.5(a) or 1915.5(c).

The rules relating to depositions and discovery in Pennsylvania are found at Pa.R.C.P. 4001 through 4025. The rules are comprehensive and they are detailed. More specifically, the rules regarding production of documents and things and entry for inspection and other activities are now all found at Rules 4009.1 through 4009.33. The explanatory comment - 1997 to the rules is instructive and reads as follows:

Rule 4009 governing production of documents and things and entry upon land has been rescinded and replaced with a new chapter of rules, Rule 4009.1 et seq. The new chapter is divided into two (2) parts, one relating to production of documents and things and the other relating to entry upon property. Each part is in turn divided into three (3) sections: first, a general provision describing the discovery method; second, a provision relating to discovery from a party to an action; and finally, a provision relating to discovery from a person not a party.

It is abundantly clear, based both on the placement of the rules for subpoenas in the chapter on Depositions and Discovery, and upon the explanatory comment, that the Rules of Civil Procedure in Pennsylvania include subpoenas as a form of discovery. Accordingly, the fair and logical answer to the Defendant's first posed issue is that the subpoena in question - seeking production of documents from a non-party -- does violate Pennsylvania Rules of Civil Procedure 1930.5(a) and 1915.5(c) because it was obtained without first applying to the Court for a special Order.

In his third issue, the Defendant effectively asks the Court to authorize the issuance of the proposed subpoena as allowed by Pa. R.C.P. 1915.5(c) if we were to find in favor of the Plaintiff on the earlier issue, as we have. In support of his argument that the subpoena ought to issue, the Defendant makes the following assertions in his brief:

In Harris' Custody Complaint, and in the two proceedings thereafter, Harris alleged that but for two (2) weeks prior to the initial custody proceeding that Varner had expressed no interest in Cassidy. The purpose of the subpoena is/was twofold:

1. To obtain notes from support conferences where Varner expressed his desire(s) to see Cassidy, but was rebuked by Harris in front of a Hearing Officer, and the date in which Harris first alleged, via pleading, that Varner was Cassidy's father.
2. To substantiate Varner's position that Harris is untruthful and a bad role model for Cassidy. Varner believes that comments that Harris made to the Hearing Officer(s) about her failure to appear at scheduled support conferences, her living situation and total household income (i.e.: Max McQuait issue) have been memorialized.

Defendant's Brief at Pages 3 and 4.

Arguably, Defendant believes that there may be notes in the hearing officer's file that may have relevance at the custody trial. Where discovery is allowed, a party may obtain it regarding matters not privileged which are relevant to the subject matter involved in the pending action. See Pa.R.C.P. 4003.1(a). Further, we note that it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Pa.R.C.P. 4003.1(b).

In this case, the production of the entire Domestic Relations Office file appears to be overkill because, based on Defendant's assertions in his brief, it is clear that production of the entire file would cause the copying and production of documents not germane to the Defendant's specific concerns. Discovery shall not be permitted which would cause unreasonable annoyance, oppression, burden or expense to any person. Pa.R.C.P. 4011(b). Moreover, to the extent that the Defendant seeks information contained in a pleading, pleadings are matters of public record and all the Defendant needs to do is to walk into the office and to ask to review the pleadings. To the extent that Defendant seeks additional specific information focused on things "reasonably calculated to lead to the discovery of admissible evidence," his requests bear consideration. It appears that Varner seeks hearing officer notes regarding Varner's expression of his desire to see Cassidy. He further asserts that he believes the hearing officer may have memorialized comments made to the hearing officer by Harris "about her failure to appear at scheduled support conferences, her living situation and total household income." Defendant's brief at

Pages 3 and 4. Whether such notes actually exist can only be determined by the Custodian of the Records in the Fulton County Domestic Relations Office after a review of their file. We cannot say that the information sought is beyond the scope of reasonable discovery; but as we noted above, we are certain that production of the entire Domestic Relations Office file, given Defendant's poignant inquiries, would have the Domestic Relations Office producing far more than the Defendant needs and it amounts to a burden and an expense that should not be placed upon the Domestic Relations Office. Pa.R.C.P. 4011.

With regard to the Defendant's third issue, we will consider it a request for a special Order for limited discovery. Pa.R.C.P. 1930.5(a) and 1915.5(c). Based on the foregoing, we will authorize a subpoena to the Fulton County Domestic Relations Office which seeks hearing officers' "notes from support conferences where Varner expressed his desire(s) to see Cassidy, but was rebuked by Harris in front of a hearing officer" as well as hearing officers' notes containing "comments that Harris made to the hearing officer(s) about her failure to appear at scheduled support conferences, her living situation and total household income." Accordingly, to the extent that such hearing officer notes exist in the Fulton County Domestic Relations file, Defendant is authorized to obtain them by subpoena. Any subpoena issued shall be fully limited in scope to obtain the information authorized by this Memorandum Opinion.

Finally, we note that Defendant's well-reasoned arguments in the latter-half of his brief are precisely the kinds of arguments that need to be made to the Court upon application in certain Domestic Relations cases for a special Order of Court authorizing discovery. It is clear, however, that the Rules of Civil Procedure relating to Domestic Relations matters generally and to custody matters in particular envision potential abuses in Domestic Relations matters; and those rules therefore forbid discovery unless a cogent case can be made to the Court for a special Order allowing necessary and focused discovery.

ORDER OF COURT

December 19, 2005, upon consideration of the Plaintiff's Motion to Quash, the Defendant's Answer thereto, the briefs and arguments of the parties, the record of these proceedings and the law, it is hereby ordered that the Plaintiff's Motion to Quash is granted in part and denied in part. Plaintiff's motion is granted insofar as the subpoena seeks a copy of the entire domestic relations file in this matter. Plaintiff's motion is denied and Defendant shall be permitted to serve a subpoena limited to seeking copies of those specific notes of the hearing officer, if such notes exist, as they relate to: (a) statements in which Varner expressed his desire to see Cassidy but was rebuked by Harris in front of a hearing officer and (b) comments that Harris made to the hearing officer(s) about her failure to appear at scheduled support conferences, her living situation and total household income.

[1] Subsection (a) of the rule reads as follows: There shall be no discovery in a simple support, custody or Protection from Abuse proceeding unless authorized by Order of Court.

[2] Subsection (c) of the rule reads as follows: There shall be no discovery unless authorized by special Order of Court.