



Connie Taylor, Clerk of Superior Court
Cobb County, Georgia

IN THE SUPERIOR COURT OF COBB COUNTY

STATE OF GEORGIA

NATHAN J. WADE,)
Plaintiff) CASE NO.:
v.) 21-1-08166
)
JOYCELYN WADE,)
Defendant)
)
)
_____)

EMERGENCY MOTION

BY NON-PARTY DEPONENT FOR PROTECTIVE ORDER

COMES NOW, FANI T. WILLIS, Non-Party Deponent in the above-styled action, and hereby moves this Court for a Protective Order, pursuant to O.C.G.A. § 9-11-26 and 9-11-26.1, because justice so requires.

Defendant Joycelyn Wade seeks to conduct a deposition of Willis on January 23, 2024 at 10:00 a.m. In support of Non-Party Deponent's Emergency Motion for Protective Order, Non-Party Deponent shows this Court the following:

FACTS

Fani T. Willis is the elected District Attorney of the Atlanta Judicial Circuit (commonly known as the Office of the Fulton County District Attorney). Fani T. Willis was elected as District Attorney in November of 2020 and began serving in this capacity on January 1, 2021.

The Office of the Fulton County District Attorney executed a contract with Nathan J. Wade, P.C., which is the legal entity that employs the Plaintiff, Nathan J. Wade. This contract was executed in compliance with state and local rules and regulations. The contract commenced in November 2021. As a part of the contract, Nathan J. Wade worked as a special prosecutor on the case charged under indictment 23SC188947 concerning the former president of the United States and other alleged co-conspirators (hereinafter, "the Election Interference Case").

On January 8, 2023 at 12:01 p.m., Defendant Joycelyn Wade, through her attorney Andrea Hastings, attempted to serve Fani T. Willis with a Notice of Deposition (See Exhibit A). Joycelyn Wade is the defendant wife in the above titled domestic case involving Fulton County special prosecutor Nathan J. Wade. The subpoena was presented to an employee at the Office of the Fulton County District Attorney.

Contemporaneously on January 8, 2023, Michael Roman, who is a defendant in the Election Interference Case, through his attorney Ashleigh Merchant, filed a Motion to Unseal the above styled divorce matter.

Additionally, on January 8, 2023 at 4:42 p.m., the same date of the deposition notice to Non-Party Deponent, Michael Roman, the defendant in the Election Interference Case, filed a Motion to Disqualify the District Attorney, her office, and Special

Prosecutor Nathan J. Wade from further prosecuting the Election Interference Case alleging a "conflict of interest" among the lawyers prosecuting on behalf of Fulton County.

ARGUMENT

I. A protective order should issue and the subpoena for the deposition of District Attorney Fani T. Willis should be quashed pursuant to O.C.G.A. 9-11-26.1 as the deposition is not reasonably calculated to lead to the discovery of relevant or admissible evidence.

Section 26.1 of Chapter 11 of the Georgia Civil Practices Act, which is titled, "**Protective orders for certain high-ranking members of a governmental body or public or private entity,**" provides that "good cause for a protective order to prohibit the deposition of an officer may be shown by proof that such person is an officer and lacks unique personal knowledge of any matter that is relevant to the subject matter involved in the pending action." (O.C.G.A. 9.11.26.1).

There can be no serious dispute that Ms. Willis is an officer as defined by the statute given that in her position as Fulton County District Attorney with authority over criminal prosecutions for the entire Atlanta Judicial District, she is a "high-ranking officer" of a "governmental entity" and has "extensive scheduling demands and responsibilities." (O.C.G.A. § 9-11-26.1(a)).

More importantly, District Attorney Willis "lacks unique personal knowledge of any matter that is relevant to the subject

matter involved in the pending action” and Defendant Joycelyn Wade has not alleged otherwise. Indeed, the deposition of District Attorney Fani T. Willis cannot provide unique personal knowledge of any matter that is relevant to Defendant Wade’s divorce; because on Information and belief, the Plaintiff filed for divorce on November 2, 2021, on the grounds the marriage was irretrievably broken, and on November 30, 2021, the Defendant answered and agreed the marriage was irretrievably broken.¹ By definition, as reasoned by the Supreme Court in *Harwell v. Harwell*, 233 Ga. 89, 91, 209 S.E.2d 625, 627 (1974), “an ‘irretrievably broken’ marriage is one where either or both parties are unable or refuse to cohabit and there are no prospects for a reconciliation.”

Examination of the docket reveals that for the 26 months prior to attempting to serve this non-party witness subpoena for a deposition, the parties have not amended their pleadings.² Thus,

¹ Attorney of record has confidence that the facts as presented, under information and belief, are true and correct. Because the record is sealed, no pleading or record entry has been cited to confirm the information and facts presented.

² Counsel also notes that the subpoena for the deposition of Fani T. Willis was not properly served. Counsel will address the improper notice in a future pleading. O.C.G.A. § 9-11-45 (a)(1)(C) provides that a subpoena “shall be issued and served in accordance with law governing issuance of subpoenas for attendance at court, except as to issuance by an attorney.” O.C.G.A. § 24-13-24, a “[s]ubpoena may be served by any sheriff, by his or her deputy, or by any other person not less than 18 years of age. Proof may be shown by return or certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery...” Non-Party Deponent was not served personally or by certified mail. On January 8, 2024, an employee of the Office of the Fulton County District Attorney was summoned to the reception area. The employee accepted service of Defendant Joycelyn Wade’s Notice of Deposition. No employee of Fulton County is authorized to accept *personal service* on behalf of Fani T. Willis. The subpoena is also defective. O.C.G.A. § 9-11-30, “notice shall state the time and place for taking the deposition, the means by which the testimony shall be recorded, and the name and address of each person to be examined.” The Subpoena of Deposition fails to indicate topics, dates, or subjects which the deposition is to cover. It further fails to state the means by which the deposition shall be recorded.

they each separately allege and maintain that their marriage was and remains irretrievably broken.

It is well-established that when both parties in a divorce proceeding assert that a marriage is irretrievably broken, which is a legal conclusion signifying that there is no hope for reconciliation, there is no genuine issue of fact that remains to be decided concerning the divorce. *Friedman v. Friedman*, 233 Ga. 254, 210 S.E.2d 754 (1974) (per curiam). In *Friedman*, the Supreme Court of Georgia affirmed the trial court's ruling that since the parties admitted in their pleadings that the marriage was irretrievably broken, the fact-finder was not required to decide whether the wife was additionally entitled to divorce based on her allegations of cruel treatment by the husband as there was no genuine issue of fact to be decided by a jury and it was proper to grant the divorce based solely on the pleadings. *Id.* at 255.

On information and belief, Plaintiff and Defendant do not live together, and the Defendant has lived outside the state of Georgia separate and apart from the Plaintiff since 2021. Thus, there is no prospect of reconciliation and genuine issue of material fact in need of resolution. Defendant Joycelyn Wade has not alleged otherwise.

In fact, the Defendant has not made a specific request for information from District Attorney Willis. If, however, media reports are any indication, the Defendant may intend to ask

questions regarding the nature of any relationship with the Plaintiff. Because the parties agree that the marriage is irretrievably broken and the concept of fault is not at issue, there is no information that District Attorney Willis could provide that might prove relevant to granting or denying the divorce. Thus, any information sought from District Attorney Willis would be irrelevant to the divorce proceedings pending in this Court. See *Dickson v. Dickson*, 238 Ga. 672, 674, 235 S.E.2d 479, 482 (1977) (holding judgment of divorce on pleadings is permitted where parties agree marriage irretrievably broken (citing *Friedman v. Friedman*, 233 Ga. 254, 210 S.E.2d 754 (1974); *Marshall v. Marshall*, 234 Ga. 393, 216 S.E.2d 117 (1975); *Whitmire v. Whitmire*, 236 Ga. 153, 223 S.E.2d 135 (1976); "*Loftis v. Loftis*, 236 Ga. 637, 225 S.E.2d 685 (1976); *Anderson v. Anderson*, 237 Ga. 886, 230 S.E.2d 272 (1976) decided October 20, 1976." *Adams v. Adams*, 232 S.E.2d 919, 238 Ga. 326 (Ga. 1977)).

As a result, the sought-after deposition in this case is outside the scope of the pending divorce action and outside the scope of discovery. On information and belief, Defendant is using discovery as a vehicle to harass Non-Party Deponent Willis. The sought-after deposition of District Attorney Willis is not relevant to the subject matter involved in the pending action and should not be permitted.

For these reasons, there is good cause for a protective order under O.C.G.A. § 9-11-26.1 to prohibit the deposition of Non-Party Deponent, Fani T. Willis.

II. Defendant Joyce Wade's failure to identify a relevant purpose for the sought-after deposition suggests that it is intended to harass.

On information and belief, as early as 2017, prior to Plaintiff Nathan J. Wade ever meeting Non-Party Deponent Willis, the parties to the above-styled divorce agreed that their marriage was irretrievably broken after the Defendant Joycelyn Wade confessed to an adulterous relationship with the Plaintiff's longtime friend. The Defendant Joycelyn Wade's adultery precluded any chance of reconciliation. To protect the interest of both parties, Plaintiff and Defendant agreed to seal the records in their divorce case; however, the parties delayed filing for the benefit of their children - specifically to allow the children to reach the age of majority.

Defendant Joycelyn Wade has not objected to Michael Roman's motion to unseal the proceedings despite having previously sought it and having benefited from its protection for more than two years.

On further information and belief, the subpoena for the deposition of District Attorney Willis is being sought in an attempt to harass and damage her professional reputation. It is

also being sought in an unreasonable manner to annoy, embarrass, and oppress the deponent.

On further information and belief, Defendant Joycelyn Wade has conspired with interested parties in the criminal Election Interference Case to use the civil discovery process to annoy, embarrass, and oppress District Attorney Willis. In support of this contention:

- (1) A defective subpoena for the Deposition of District Attorney Fani T. Willis was conspicuously coordinated with pleadings in the Election Interference Case. Specifically, criminal Defendant Michael Roman filed a motion seeking to unseal Mr. and Mrs. Wade's divorce proceedings on the same day and within hours of Defendant Joycelyn Wade's public request to depose Ms. Willis as part of the divorce proceedings involving Plaintiff Nathan J. Wade.
- (2) Prior to the attempted service of the subpoena on District Attorney Willis, Plaintiff Nathan J. Wade and Defendant Joycelyn Wade filed a consent motion to seal their divorce proceedings to keep them private. The Court sealed the divorce on February 10, 2022. It was only after Defendant Joycelyn Wade sought to subpoena District Attorney Fani T. Willis that there was a request to unseal the divorce proceedings. This

sequence of events, coupled with the absence of any relevant basis for deposing District Attorney Willis in an uncontested no-fault divorce where the parties have been separated for over two years, suggests that Defendant Joycelyn Wade is using the legal process to harass and embarrass District Attorney Willis, and in doing so, is obstructing and interfering with an ongoing criminal prosecutions.

- (3) On information and belief, because the parties to the above-styled divorce have no minor children and they each contend that the marriage is irretrievably broken, the only potential issue that might be relevant to Plaintiff Nathan J. Wade's current employment would be how his compensation relates to the division of marital property. Yet, even this is not an issue presently in dispute. And even if it were, Defendant Joycelyn Wade has acknowledged through counsel receipt of all financial documents related to Plaintiff Nathan J. Wade's employment by the Office of the Fulton County District Attorney. In fact, the custodian of records for the Fulton County District Attorney, pursuant to O.C.G.A. § 24-8-803(6), has provided Defendant Joycelyn Wade with all documents related to Plaintiff Nathan J. Wade's compensation.

As a result, Defendant Joycelyn Wade has released from deposition the Deputy of Operations for Fulton County who would have the most relevant information related to the practices and procedures concerning employee and contractor compensation. Defendant Joycelyn Wade has not identified any other relevant basis for questioning or seeking discovery from the District Attorney Willis.

III. The non-party Witness Subpoena Deposition of District Attorney Fani T. Willis is overburdensome and unreasonable.

The non-party Witness Subpoena Deposition was improperly served on January 8, 2024 specifies that the deposition shall take place on January 23, 2024, at 10:00 a.m., a mere fifteen (15) days after improper service. A fifteen-day compliance deadline is unreasonable and is overburdensome for District Attorney Fani T. Willis to prepare to give sworn testimony.

IV. The Subpoena of Deposition is unlimited in scope, is overbroad and should be quashed.

The one-page Notice of Deposition fails to state how the oral testimony will be recorded, written, or transcribed. It does not provide a list of documents, evidence or information requested from Fani T. Willis. As a result, it is not reasonably calculated to lead the District Attorney, or her counsel, to know what information is being sought. This

overbroad Notice of Deposition is nothing more than a fishing expedition designed to vex its recipient. Based on the foregoing, Non-Party Deponent respectfully requests this Court's assistance to enter an order GRANTING her Motion for Protective Order.

WHEREFORE, Petitioner prays that:

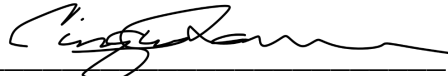
- (a) This Court grant a protective order quashing the attached subpoena for deposition;
- (b) Non-Party Deponent be awarded attorney's fees and expenses incurred in preparing, filing, and litigating this response;
- (c) In the alternative, that Non-Party Deponent, be given 180 days to complete a review of the filings in the instant case, investigate and depose relevant witnesses with regard to the interference and obstruction this motion contends;
- (d) Barring a protective order quashing the subpoena for deposition, this Court should:
 - 1. Order the Defendant Joycelyn Wade to provide a scope of information sought in the deposition.
 - 2. Order the Defendant Joycelyn Wade be required to state the method of deposition they request to perform.

3. Order the Defendant Joycelyn Wade be required to use a reasonable means, other than deposition, to retrieve the information she is seeking.

(e) Non-Party Deponent be awarded any other and further relief as this Court deems appropriate.

This 17th day of January 2024.

Respectfully submitted,



Cinque Axam
Attorney for Non-Party Deponent
Georgia Bar No. 812810

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STATE OF GEORGIA
COUNTY OF COBB

WITNESS SUBPOENA

SUPERIOR COURT

DEPOSITION

TO WITNESS:

NAME: Ms. Fani T. Willis
ADDRESS: 141 Pryor Street SW
Atlanta, GA 30303

DIVISION: CIVIL
 CRIMINAL

CASE NO.: 21-08100

YOU ARE COMMANDED that, laying all business aside, you be and appear at the time set forth below to testify at a deposition to be taken in this case. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE: Hastings Shadmehry LLC DATE AND TIME: January 23, 2024 @ 10:00 am
3650 Mansell Road
Suite 475
Alpharetta, GA 30022

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material, or those set forth in an attachment:



HEREIN FAIL NOT UNDER PENALTY OF LAW.

Witness my hand and the seal of this court, this the 4th day of January, 2024.

Connie Taylor, Clerk, Superior Court of Cobb County.

[Signature]
Signature of Clerk or Deputy Clerk

OR

Attorney of Record

If you have questions, contact:

Attorney's Name: Andrea Dyer Hastings
Telephone No.: 770-641-8200
Address: 3650 Mansell Rd Ste 475
Alpharetta, GA 30022
andee@hsfamilylaw.com

Pursuant to O.C.G.A. 24-13-21 a subpoena must be completed prior to being served on a witness. Any person misusing a subpoena is subject to punishment for contempt of court and may be fined not more than \$300.00 and imprisoned for not more than 20 days, or both. Witnesses may contact the Office of the Clerk of Court, telephone 770-528-1300 to verify that this subpoena was issued for a valid case.