The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 17, 2025

[Cite as *03/17/2025 Case Announcements #3*, 2025-Ohio-909.]

MOTION AND PROCEDURAL RULINGS

2024-1585. Henderson v. Washington Court House.
In Mandamus. On respondent's motion for protective order. Motion granted. Sua sponte, relator permitted to submit questions via interrogatory.

Kennedy, C.J., dissents, with an opinion.

Brunner, J., dissents, with an opinion.

KENNEDY, C.J., dissenting.

{¶ 1} Because I would overrule respondent Washington Court House's motion for a protective order, I dissent.

{¶ 2} Civ.R. 26(C) authorizes a court to issue a protective order and states, "Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ." A protective order therefore is not appropriate unless necessary to avoid "annoyance, embarrassment, oppression, or undue burden or expense" by the opposing party. *See id.*

{¶ 3} The majority agrees that discovery is appropriate in this case because it permits Henderson to submit interrogatories. The issue is whether that discovery should be limited solely to interrogatories.

{¶ 4} Washington Court House's primary reason for seeking a protective order is to prevent relator, Ryan Henderson, from video recording the deposition so that he cannot broadcast it over the internet. However, that is not a sufficient basis for denying Henderson the

opportunity to depose the city attorney. No one would say that a newspaper could not take a video deposition—or one without video—solely because the newspaper was planning to publicize what it learned. Henderson is no different. He considers himself a citizen journalist, *In re Disqualification of Wollscheid*, 2024-Ohio-6176, ¶ 70, and "the press . . . includes citizen journalists who use technology for mass communication," *id.* Henderson's plans to exercise his rights under the First Amendment to the United States Constitution are not a valid basis for preventing him from deposing the city attorney. Justice does not require issuance of a protective order in this case.

{¶ 5} But there is a more basic reason to deny the motion for a protective order. Civ.R. 26(C) states: "Before any person moves for a protective order under this rule, that person shall make a reasonable effort to resolve the matter through discussion with the attorney or unrepresented party seeking discovery. A motion for a protective order shall be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph." Beyond the timing of the deposition, Washington Court House does not explain what steps it has taken to resolve the discovery dispute without involving this court. Nor does the motion for a protective order provide any statement regarding the efforts the city has taken to resolve that dispute. That is fatal to the city's motion.

{¶ 6} For these reasons, I would hold that Washington Court House has not satisfied its burden to show good cause for the issuance of a protective order—it has not shown that the purpose of the deposition is to cause "annoyance, embarrassment, oppression, or undue burden or expense," Civ.R. 26(C), to the city or its law director. I therefore would deny the motion for a protective order in full. Because this court does not, I dissent.

BRUNNER, J., dissenting.

{¶ 7} Even though this court has broad discretion in original actions before it to rule on discovery matters, including motions for protective orders, *see State ex rel. Citizens for Open, Responsive & Accountable Govt. v. Register*, 2007-Ohio-5542, ¶ 18, this case does not call for a protective.

{¶ 8} This court's rules of practice for original actions provide specifically for discovery by deposition. *See* S.Ct.Prac.R. 12.06(A) ("All other evidence shall be submitted by affidavits, stipulations, depositions, and exhibits."). When time for discovery may be limited,

such as in original actions, depositions are a direct and efficient way to discover admissible evidence that could help reveal the truth of a matter relevant to the disposition of a case. Here, the parties had 20 days to file their respective evidence. *See* 2025-Ohio-705 (granting alternative writ, setting schedule for the presentation of evidence and filing of briefs). However, unless a shorter time is imposed by the court, a party may generally take up to 28 days to respond to written interrogatories—without the clarification provided by back-and-forth clarification of questions posed at a deposition. *See* Civ.R. 33(A)(3).

{¶ 9} Second, although respondent, the City of Washington Court House, argues broadly that a deposition is unnecessary because the "foundational facts here are both straightforward and not disputed," that view is by its nature based on the city's self-interest in avoiding a deposition and the potential for a video recording of the deposition to appear on an online social-media platform such as YouTube or TikTok. The Civil Rules do not list that concern as an exception to discovery. Nor does the city offer any other cogent or specific reason why a deposition is disproportionate to the needs of this case or generally should not go forward. Relator, Cody Ryan Henderson, explains that he is seeking information about why the city has denied his public-records requests and how those requests were handled when the city received them. In its answer to Henderson's complaint, the city argued that Henderson is not entitled to any records he seeks because, according to the city, those records are exempt from disclosure under R.C. 149.43(G). Relevant and proportionate discovery would include a reasonably short deposition—Henderson is proposing 1.5 hours—to ascertain what specific exemptions the city claims apply and to which requests they apply. Further, Henderson is wanting to understand the record-keeping procedures of the city, including the process it used to address Henderson's public-records request.

{¶ 10} Finally, as the movant, the city bears the burden of establishing that it has made reasonable efforts to resolve the discovery issues with Henderson and that good cause exists for this court to issue a protective order. The city has speculated about Henderson's motives in conducting a deposition, but it has not established the necessity of a protective order to prevent "annoyance, embarrassment, oppression, or undue burden or expense," Civ.R. 26(C).

{¶ 11} Leaving Henderson with only the option to conduct written discovery with the deadlines that presently exist in this case does not serve the ends of justice. Why have discovery at all if it cannot be freely and fairly used to discover the truth?

{¶ 12} I therefore dissent.