

2016 MAR -7 AM 11:50

DAVID CHASE,)	
)	
Plaintiff,)	No. 2015-CV-200
)	
v.)	
)	
CHRIS STEWART, et al.)	
)	
Defendants.)	

**SCRIPPS MEDIA, INC.'S MOTION TO INTERVENE FOR THE LIMITED PURPOSE
OF SEEKING TO UNSEAL DOCUMENTS FILED IN THIS ACTION
AND TO LIFT PROTECTIVE ORDER LIMITING ACCESS**

Scripps Media, Inc. ("Scripps") hereby seeks leave to intervene in this matter for the sole purpose of asking this Court to unseal the pleadings and other documents that have been filed herein under seal and to lift any protective order that purports to block access to documents filed herein or court proceedings. Scripps owns and operates the television station that broadcasts as NewsChannel 5, WTVF in Nashville, Tennessee.

In support of such Motion, Scripps would show that allowing documents filed herein to remain under seal and any restriction on public access to these documents and court proceedings herein violates the Tennessee Constitution, the First Amendment to the United States Constitution and the public's statutory and common law rights to open courts and open records. For the reasons set forth in this Motion and accompanying Memorandum, this Court should lift the restrictions of any protective order entered herein that would allow pleadings or documents filed in this case to remain under seal or to restrict the ability of the public or press to attend at any hearings in this case.

Respectfully submitted,

NEAL & HARWELL, PLC

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THIS MATTER IS EXPECTED TO BE HEARD ON THE 31ST DAY OF March, 2016
AT 9:20 A.M. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE
TO THIS MOTION MAY RESULT IN THE MOTION BEING GRANTED WITHOUT
FURTHER HEARING.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 7th day of March, 2016.

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WILLIAMSON COUNTY
CIRCUIT COURT
2016 MAR -7 AM 11: 50

DAVID CHASE,)	
)	
Plaintiff,)	No. 2015-CV-200
)	
v.)	
)	
CHRIS STEWART, et al.)	
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Defendants.)	

**MEMORANDUM IN SUPPORT OF SCRIPPS MEDIA, INC.’S MOTION TO
INTERVENE FOR THE LIMITED PURPOSE OF SEEKING TO UNSEAL
DOCUMENTS FILED IN THIS ACTION AND TO LIFT PROTECTIVE ORDER
LIMITING ACCESS**

Scripps Media, Inc. (“Scripps”), a non-party, has asked this Court for leave to intervene for the limited purpose of asking this Court to unseal pleadings and other documents that have been filed herein under seal and to lift any protective order that purports to block access to such documents or any court proceedings in this case. As set forth in this memorandum, allowing documents filed herein to remain under seal and permitting any such restriction on access to the documents or court proceedings herein would violate the Tennessee Constitution, the First Amendment to the United States Constitution and the public’s common law and statutory rights to open courts and open records. Scripps also seeks to lift any protective order or court order herein that would restrict access to any documents filed herein or further court proceedings.

PROCEDURAL BACKGROUND

This lawsuit arises out of the domestic assault case in Nashville, Davidson County, Tennessee against David Chase, Plaintiff herein. That case received a substantial amount of media attention which included reports that a Davidson County General Sessions judge acted improperly in releasing the Plaintiff who had been accused of domestic assault. Plaintiff David Chase has claimed that he was wrongfully accused of such charges.

The domestic assault charges in Davidson County against Mr. Chase were dismissed. That dismissal was also reported in the local media. The circumstances surrounding the dismissal of those charges have become an issue in this litigation. Defendants have subpoenaed the Davidson County District Attorney General Glenn R. Funk for a deposition in this case. Mr. Funk has objected to the subpoena. A Motion to Compel Mr. Funk's deposition and the exhibits to that motion were filed under seal and access to such filings has been blocked.

Intervenor Scripps Media, Inc. owns and operates the television station in Nashville that broadcasts as NewsChannel 5. Undersigned counsel for Intervenor has reviewed portions of the file in the Circuit Court Clerk's office that are available to the public. (Undersigned counsel has requested copies of certain pleadings but such copies have not yet been provided.)

Several pleadings in this case have referenced and sought protective orders; some were filed by non-parties to the lawsuit. There have been prior proposed agreed protective orders that appear to have been submitted and withdrawn. The only protective order that counsel has been able to determine was entered was an order dated November 9, 2015. (Counsel has requested a copy of that order but has not yet received a copy.) It also appears from a review of the file and docket sheet in this case that there may still be pending motions that are relating to the issues of protective orders.

This case has been the subject of local media news stories. In one news story reported by WSMV-Channel 4, it was shown that a reporter and camera person from television station WSMV were asked to leave the courtroom in an earlier hearing. The news report cited a “protective order” as the stated basis for exclusion. Undersigned counsel is not aware of any specific written order that sets forth the basis for any exclusion of the media from these proceedings. It appears that the next hearings on motions in this case are set for March 10, 2016.

AUTHORITY AND ARGUMENT

Article I, Section 17 of the Tennessee Constitution expressly provides that “the courts shall be open.” The United States Supreme Court has recognized that the public and press have a presumptive First Amendment right of access to judicial proceedings in criminal cases. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980). That presumptive right to access has also been extended to civil cases. *E.g. NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 980 P.2d 337 (Cal. 1999). The California Supreme Court stated that “every lower court opinion of which we are aware that has addressed the issue of the First Amendment access to civil trials and proceedings has reached the conclusion that the constitutional right of access applies to civil as well as criminal trials.” *Id.* at 358.

“The openness of judicial proceedings extends to judicial records.” *In Re NHC-Nashville Fire Litigation*, 293 S.W.3d 547, 560 (Tenn. Ct. App. 2008), *citing Knoxville News-Sentinel v. Husky*, 982 S.W.2d 359, 362-363 (Tenn. Crim. App. 1998). “The public and press have a First Amendment right of access to pretrial documents in general.” *Associated Press v. District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983).

Before the United States Supreme Court specifically articulated the constitutional right to access, courts had long recognized a common law right to access to judicial records. In *Nixon v. Warner Communications, Inc.*, the United States Supreme Court stated that “the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” 435 U.S. 589, 598 (1978).

The Tennessee Supreme Court has described the origins and reasons for the public’s rights to access judicial records as follows:

The public’s right to access provides public scrutiny over the court system which serves to (1) promote community respect for the rule of law, (2) provide a check on the activities of judges and litigants, and (3) foster more accurate fact finding. *Grove Fresh Distributors, Inc.*, 24 F.3d at 898. The right of access to judicial proceedings and records was originally justified by common law traditions predating the enactment of the federal Constitution. The common law right of access establishes that court files and documents should be open, unless the court finds that the records are being used for improper purposes. *Id.* Moreover, the First Amendment to the Constitution presumes that there is a right of access to proceedings and documents which have “historically been open to the public” and which disclosure would serve a significant role in the functioning of the process. *Id.*

(Emphasis added.) *In Re NHC-Nashville Fire Litigation, supra* at 560-561 quoting *Ballard v. Hertzke*, 924 S.W.2d 652, 961 (Tenn. 1996).

While the rights to access are not absolute, it is clear that any restriction on public access “must be narrowly tailored to accommodate the competing interests without unduly impeding the free flow of information.” *Knoxville News-Sentinel v. Husky, supra* at 363.

The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.

(Emphasis added.) *In Re NHC-Nashville Fire Litigation, supra* at 560, citing *State v. Drake*, 701 S.W.2d 604, 607-08 (Tenn. 1985).

In addition to the constitutional and common law rights to access to judicial records, Tennessee has codified the public rights to access in the Tennessee Public Records Act. Tenn. Code Ann. §§ 10-7-101, et seq. That Act defines “public records” to which the public has access as “the pleadings, documents and other papers filed with the Clerk of all courts.” § 10-7-403.

These constitutional, common law and statutory rights of access should not be restricted or limited absent strong and compelling proven reasons. *In Re NHC-Nashville Fire Litigation, supra*. Rule 26.03 of the Tennessee Rules of Civil Procedure provides that a protective order may be entered “to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense” but that it must be upon motion of a party and “for good cause shown.” To establish “good cause” under this rule, the moving party must show that the disclosure will result in a clearly defined injury to the party seeking to deny access. *Ballard v. Herzke*, at 658. “Mere conclusory allegations are insufficient.” *Id.* “The burden of justifying the confidentiality of each and every document sought to be covered by a protective order is on the party seeking the order.” *Id.*

PROTECTIVE ORDER – ACCESS TO DOCUMENTS

It is well-settled that the public and the media have the right to intervene for the purpose of petitioning the Court to unseal documents and allow public inspection of them. *E.g. Knoxville News-Sentinel v. Huskey, supra* at 362. At this time, from a review of the public portion of the file, it is not clear to Intervenor the extent of the protective order(s) entered in this action or the reasons argued by the parties (or non-parties) for such order or orders. Undersigned counsel has been working with the Circuit Court Clerk in an attempt to get copies of the pleadings that are not under seal and appear to be related to these issues. That process continues. The copies were marked and designated for copying on February 22, 2016, but to date the copies have not yet

been provided. In response to the latest inquiry about the status of the requested copies, the Clerk's office has expressed concern about the protective order in this case and the need to check with the Judge before any of the requested copies can be provided.

In resolving requests for a protective order, there should be a balancing of interests. "Protective orders are intended to offer litigants a measure of privacy, while balancing against this privacy interest the public's right to obtain information concerning judicial proceedings." *Ballard* at 658. The Tennessee Supreme Court in *Ballard* listed some of the factors for the balancing of interests in determining if good cause exists to enter a protective order. *Id.* at 658-659. Specifically, the Court said that "Factors in the balance weighing against a finding of good cause include: (1) the party benefiting from the protective order is a public entity or official, (2) the information sought to be sealed relates to a matter of public concern; and (3) the information sought to be sealed is relevant to other litigation and showing it would promote fairness and efficiency." *Id.* at 658. (Emphasis added.)

All of these factors are present in this case and militate against a broad protective order restricting access to documents filed herein. As previously noted, this case arises from a high profile alleged domestic assault case in Davidson County. The allegations in this current case here in Williamson County very much involve how that prior case was resolved. One set of documents that has been filed under seal is the Motion to Compel the deposition of Davidson County District Attorney Glenn Funk and exhibits filed in support of such motion. (There may be others.)

Mr. Funk is an elected public official, the District Attorney General for the 20th Judicial District. The allegations in this current lawsuit involve the actions of him and his office in relation to the bringing and ultimate dismissal of the domestic assault charges against Mr. Chase

(Plaintiff herein), as well as the dismissal of Plaintiff's civil lawsuit against the Metropolitan Government of Nashville, Davidson County. It is clearly a matter of public concern and public interest. NewsChannel 5-WTVF, Channel 4-WSMV, the Nashville Scene and other local media have already reported on the allegations in this lawsuit.

On February 3, 2016, NewsChannel 5 broadcast a news story reporting on allegations made in this current lawsuit. The next day, District Attorney Glenn Funk filed a libel lawsuit against NewsChannel 5 based upon that news story. Mr. Funk has been subpoenaed for a deposition in this case but has sought to avoid being deposed. Information regarding enforcing the subpoena for his deposition testimony has been allowed to be filed under seal.

The factors listed by the Tennessee Supreme Court in *Ballard* as "weighing in favor of a finding of good cause include (1) the litigation involves private litigants (2) the litigation concerns matter of private concern or of little public interest; and (3) disclosure would result in serious embarrassment or other specific harm." *Id.* at 659. As previously noted, Intervenor is not fully aware of the extent of the current protective order(s) and what interests were put forward to obtain any such order. This Intervenor is not seeking to obtain clearly private information or any proprietary business information of the parties or non-parties, but rather does believe that there is a substantial public interest in the information regarding the bringing and dismissal of the criminal charges brought against Plaintiff Mr. Chase in Davidson County.

Restricting access to pleadings and other documents filed in this action would violate the Tennessee Constitution, the First Amendment to the United States Constitution and the public's common law and statutory rights to access to these judicial documents. Any such relief granted to restrict such access is constitutionally suspect and must be very narrowly drawn.

COURT CLOSURE

Intervenor Scripps has not seen an order closing any proceedings in this matter. Upon information and belief, and as supported by the video in a news story broadcast by WSMV-Channel 4, it appears that a news reporter and camera person were excluded from a prior hearing in this matter. The basis of such an exclusion is not clear and the issues that caused any such exclusion may no longer be at issue.

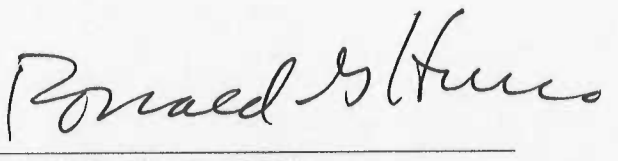
As previously discussed herein, there is a constitutional presumption of access to judicial proceedings. When closure of those proceedings is sought, the First Amendment requires that trial courts consider the following factors: whether there is any overriding interest that makes closure essential to protect higher issues; whether a closure order can be narrowly tailored; whether there are reasonable alternatives. *Press-Enterprise Co. v. Superior Court (Press Enterprise)*, 478 U.S. 1, 13-14 (1986); *State v. Drake*, 701 S.W. 2d 604, 608-609 (Tenn. 1985). A closure order must be supported by specific findings of fact, not mere speculation that closure is required. *Id.*

If NewsChannel 5 seeks to bring a camera in any future proceeding in this action, it will make requests pursuant to Supreme Court Rule 30, so that the Court can hold the appropriate hearings if a request for closure or limitation of coverage is requested.

This current motion is directed toward lifting any portion of any prior protective order or other order that has been used to exclude members of the press or the public from such proceedings. For the reasons set forth herein, any such order that infringes upon the constitutional rights of access and does not follow the mandates of Rule 30 must be lifted.

Respectfully submitted,

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