UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF ARKANSAS

LAURA LYNN HAMMETT, an individual, Plaintiff, vs. PORTFOLIO RECOVERY ASSOCIATES, LLC, a Limited Liability Company; DOES 1-99 Defendants	Case No.: 4:21-CV-00189-LPR

Plaintiff Laura Lynn Hammett's Motion to Revive the Subpoena to Court Reporter Jana Perry due to PRA Reviving the Relevancy; Brief in Support

In support of the above titled motion, I, Laura Lynn Hammett, Plaintiff in pro se, state:

1. PRA added a prejudicial and false statement ("Footnote 1") in its opposition to my motion to settle the record [Doc. 267 and 276] that can be contradicted by playing the recordings sought in the subpoena to Court Reporter Jana Perry discussed in Doc. 133 to 139.

2. Footnote 1 in full: "This effort appears to be part of Ms. Hammett's litigation playbook, as it is not the first time she has claimed that a transcript did not accurately reflect proceedings in a trial court and made significant efforts to change the content of that transcript in anticipation of appellate proceedings. See Dkt. Nos. 133-134, 136 ¶¶ 4, 11, 18-19, 22."

3. First, my motivation for making an accurate record is that I want an accurate record. Our Courts can only function if the People perceive the Courts have integrity. When transcripts are edited to comport with what a judge and one party wish had been said or know should have or have not been said, our system will no longer work and we will have anarchy or fascism.

4. Second, there is a reasonable inference in Footnote 1 that there is something unethical about preserving one's right to appeal based on an accurate record. To the contrary, it is the fictionalization of the record that is unethical, as well as illegal.

5. PRA implied that my claim that Ms. Perry fictionalized the record in Pietrczak was not completely true. The Pietrczak Court was adamant that the recording should not be played. That gives an appearance that the Pietrczak Court is hiding something.

6. What would Solomon say? One party wants transparency; the other party demands secrecy. The party that wants transparency loves the truth. The other party is fine with letting the truth die.

7. The Court mooted the motion to quash the subpoena, Doc. 133, on June 14, 2023, Doc. 232. That was probably a mistake. There is scant caselaw out of the Eighth Circuit. (See Brief below)

8. This motion and brief are written in haste, as the outcome of the dispute on this issue will affect the pending appeal and the Eighth Circuit limited the extension to file the opening brief to November 5, 2023. Ideally the Court will make an expedited schedule to avoid motions for reconsideration at the Eighth Circuit after the recordings are made available to the public.

9. I cannot afford a Westlaw subscription and it was too difficult to make it to the law library, my health appointments and perform my duties as caregiver to my granddaughter when both her parents are unavailable, and still file this motion by September 21, 2023, the day I had scheduled other activities in Little

Rock.[1] Therefore, I hope the Court will forgive me for not having as robust a selection of authorities as I might have if I could afford Westlaw.

10. I request an order granting leave to revive or reissue the subpoena and allow Ms. Perry a short time to renew her motion to quash, amended to reflect the effect of Footnote 1. Or, I ask the Court to order another just mechanism to make the subpoena live and mandate production of the recording. Perhaps the most expeditious is to issue an order to Ms. Perry's counsel at the Attorney General's Office. Because the subpoena was not quashed or mooted, this Court maintained jurisdiction. The recordings will prove that my motion in Pietrczak to settle the record was with good cause and that I did not invent dialogue that was left out of those transcripts, which would tend to give credibility to my claim that dialogue was left out of the December 1, 2021 transcript in this case also.

Brief

The Federal Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. Pro. Rule 1

[1] The denial of electronic filing to non-attorneys creates an unconstitutional barrier to a level playing field for persons who cannot afford transportation to the court clerk's office.

The Reporters Committee for Freedom of the Press ("RCFP") discusses third party subpoenas issued to reporters, rather than to court reporters. Journalists are private citizens who have work product privilege and a need to protect their sources. Court reporters are public servants tasked with protecting transparency of court proceedings. A subpoena to a court reporter should carry more weight than one to a journalist.

Still, regarding subpoenas to journalists and mootness of contempt charges after the case in controversy is closed, but before appeal, the RCFP had this to say. In the Eighth Circuit, "[n]o Eighth circuit case law addresses this issue in the context of the reporter's privilege." But, the Fourth Circuit said, "'[t]he Fourth Circuit permits appeal of a contempt order even if the trial or grand jury for which the reporter was subpoenaed has concluded, on the grounds that such a controversy is "capable of repetition but evading review.' *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *see United States v. Steelhammer*, 539 F.2d 373, 378 (4th Cir. 1976) (Winters, J., dissenting), *adopted in* 539 F.2d 539 (4th Cir. 1977) (review en banc) ('While the case is thus moot in the sense that the reporters have lost the ability to purge themselves, their contentions raise an important point difficult to advance at the appellate level before mootness ensues and likely to arise again in continuing litigation')." They continued: "Contempt orders can also be appealed even if the underlying controversy has been resolved if there is a chance of further

proceedings. *See Shain*, 978 F.2d at 853 n.2 (appeal remains live controversy because defendant has been granted a new trial and government has indicated if case is retried it intends to subpoena reporters again)." Addressing mootness questions Archives - The Reporters Committee for Freedom of the Press (https://www.rcfp.org/privilege-sections/5-addressing-mootness-questions/)

This case law is not exactly on point because they are discussing contempt charges for failing to comply with the subpoena, and in this case, we are discussing failure to comply with a subpoena while a motion to quash the subpoena was pending. The case law does inform us that as long as there was a chance that the need for a subpoena would be revived and complying with the subpoena would still be a mandate, the subpoena should not be moot.

Seventh Circuit case law discussed, id.: "Generally, courts have found that appeals concerning motions to quash subpoenas are not moot. Socialist Workers Party v. Grubisic, 604 F.2d 1005, 1008 (7th Cir. 1979) (holding that appeal of trial court's denial motion to quash subpoena is not moot when trial court can release documents to parties at any time). Matter of Special April 1977 Grand Jury, 581 F.2d 589, 591 (7th Cir. 1978) (appeal not moot if the issue could not be fully litigated and is such that the party seeking to quash the motion would be subject to the same action again)."

Ninth Circuit case law discussed, id.: "In cases that present 'federal constitutional questions affecting fundamental personal liberties,' '[a]djudication of those issues should not be thwarted by resort to narrow interpretations of the doctrines of mootness and justiciability.' *Bursey v. United States*, 466 F.2d 1059, 1088-89 (9th Cir. 1972) (reversing a contempt order against members of the Black Panther Party who refused to answer questions during a grand jury proceeding, holding that the reporter's privilege issues were not moot even though the term of the grand jury had expired during the pendency of the appeal). 'Postponement of the decisions of the[se] important constitutional issues . . . is not in the interests of the public, the Government, or the witnesses.' *Id.* at 1089."

In Arkansas, id.: "The Arkansas Supreme Court has stated numerous times that it will not address moot issues except under limited circumstances. The Court has stated that its duty is to decide actual controversies and that an issue is moot when it has no legal effect on an existing controversy. *Killam v. Texas Oil & Gas Corp.*, 303 Ark. 547, 798 S.W.2d 419 (1990). **The Court will accept an appeal of a moot issue if the issues raised are likely to recur. *See Camden Community Dev. Corp. v. Sutton*, 339 Ark. 368, 5 S.W.3d 439 (1999).** The instances in which the Court has accepted such cases, however, are rare. There are no reported cases specifically addressing a reporter's privilege once the matter in which the privilege was asserted is concluded." Bold added.

I raised this argument, though with the hesitancy of a non-attorney who had not researched the issue, at the hearing of June 14, 2023. "I have a question, just because I'm not an attorney and this is all new to me. So if you moot something but then the appellate court says, come back, and, you know, we're going to redo this, then do I have to -- do I have to do those motions all over again?" (Doc. 261, p. 111, line 6-11)

The Court gave an explanation. He was much less thorough than when he quelled my hesitancy about the confidentiality designations, two years earlier. But my inquisitiveness and jealous protection of my rights were still apparent.

"THE COURT: You do. You do.

MS. HAMMETT: Or do we take the moot out?

THE COURT: No. You'll need to do them all over again. I mean --

MS. HAMMETT: Oh.

THE COURT: That's -- that's just the way those things go.

MS. HAMMETT: Oh. Then I'd have to consider for a moment whether that is actually good for either the Perry -- Perry quashing that, because I don't want to quash it and I don't know what the next statute of limitations are and --

THE COURT: Well, really right -- really right now I just want you -- I just want to give you the ability to give me your thoughts on whether these are mooted or not and then I'm going to decide.

MS. HAMMETT: Oh, okay. Then I'll let you do that research because I don't know the answer to that, but that -- I would hate to --

THE COURT: I understand you don't -- I got it. You don't want to concede that they're mooted. That's fine. I under -- I understand that. I -- I believe they are both mooted in this situation so I am going to moot both of -- both of those motions."

In actuality, it was the motion to quash that was mooted, not the subpoena itself, so technically, the subpoena is still live. I hope the Court will issue an order that produces a just outcome, that the Court Reporter Jana Perry be given an opportunity to renew her motion to quash the subpoena amended to address Footnote 1, I be able to renew my opposition with an appropriate amendment and the Court deny the motion to quash, compelling the production of the recordings of all hearings in the *Pietrczak* case.

Respectfully submitted,

Dated September 21, 2023

Laura Hammett

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2023, a true and exact copy of the foregoing with attachment of Exhibits was filed with the Clerk of the Court for entry on the electronic filing system which will cause service upon all counsel of record via email.

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