

Defendant, a married prominent businessman, came up from behind Plaintiff and without warning or permission lifted Plaintiff's skirt while she was bent over her scooter. Defendant then rubbed his hand over Plaintiff's buttocks and vagina while Plaintiff's friend watched in disbelief.

Plaintiff filed a one count Complaint against defendant for Battery. Defendant filed an Answer in which he denied he committed a battery against Plaintiff and he counter-sued for Extortion and Malicious Prosecution.

ISSUE AT BAR

On Wednesday, March 7, 2018, the deposition of Plaintiff was scheduled to be taken by means of transcription and videography. During a conference between Plaintiff's attorney, Bradley Bennett, and Defendant's attorney, Wesley Few, counsel for Defendant indicated he was planning on introducing a close-up photograph of Plaintiff's vagina.

Defendant's counsel indicated he believed Plaintiff had sent the photograph via text to Defendant. Counsel further stated it was his intent to show the photograph during the deposition and have it captured on the video and then made an exhibit to be included within the deposition record.

Counsel for Plaintiff objected. He requested that no nude photograph be shown on the video or made part of the record as an exhibit. In an effort to reach an agreement on this issue, Plaintiff's counsel proposed multiple remedies which would allow the deposition to proceed as scheduled.

Initially, counsel for Plaintiff suggested Defendant's counsel could question the Plaintiff regarding the photograph without introducing the photograph into the proceedings. This would

alleviate any need to even show the photograph on the video or make the photograph a part of the record.

Counsel for Defendant refused.

Counsel for Plaintiff then suggested the transcript and video of the deposition could be sealed by mutual agreement of the parties in an effort to avoid any embarrassment to Plaintiff.

Counsel for Defendant refused.

Counsel for Plaintiff then suggested the photograph could be shown to Plaintiff but not shown on the video. He suggested the photograph could be shown to Plaintiff and she could authenticate the photograph and ascribe her signature and date on the back of the photograph. The photograph would then be returned to Defendant's counsel for safe keeping under a mutual agreement not to disseminate unless or until the Trial Court admitted the photograph into evidence.

Counsel for Defendant refused.

Plaintiff's counsel then informed Defendant's counsel he believed the inclusion of the photograph within the deposition was not reasonably calculated to lead to the discovery of admissible evidence, but was instead, intended to embarrass or harass the Plaintiff and thus, was in bad faith.

No mutually agreeable remedy could be reached and the deposition was postponed.

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ARGUMENT

SCRCP Rule 26(c) provides the trial court with the discretion to prohibit litigants from engaging in discovery tactics designed for the purpose of embarrassing, annoying or oppressing a deponent. The instant matter is such a case contemplated by the law.

SCRCP Rule 26(c) states in part, "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court...may make any order which justice requires to protect a party or a person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court."

The instant matter is one in which the Plaintiff asserts she is entitled to have the Court issue an order that excludes any nude photographs of the Plaintiff. This motion has been filed within the guidelines and time constraints provided for by SCRCP Rules 26(c) and 30(j) and is properly before this Court. SCRCP Rule 30(j)(3) states in part, "Counsel directing that a witness not answer a question on those grounds or allowing a witness to refuse to answer a question on

those grounds shall move the court for a protective order under Rule 26(c), SCRCPP, or 30(d), SCRCPP, within five business days of the suspension or termination of the deposition.”

Plaintiff proposed several means by which the Defendant could ask his questions regarding nude photographs being sent to the Defendant, the nature and extent of those photographs, the purpose of the photographs, etc. Defendant refused and continues to insist a photograph of the Plaintiff's vagina be made a part of the record. Plaintiff maintains Defendant's refusal to either: 1) Refrain from introducing a picture of Plaintiff's vagina during the course of her deposition; 2) Mutually agree to seal the transcript and record of the deposition; or 3) entering into a protective order to prohibit the public dissemination of a photograph of Plaintiff's vagina is in bad faith and done to embarrass Plaintiff and or further harm her reputation in the community for filing this action.

In addition, the South Carolina Supreme Court case of *Hamm v. South Carolina Public Service* 312 S.C. 238 (1994) demonstrates this Court's wide ranging authority to fashion a remedy to protect Plaintiff from the embarrassment she would suffer should the Defendant be allowed to introduce nude photographs of her during her deposition or any deposition in this matter.

The Court in *Hamm* memorialized this authority when it stated, “[w]hen the discovery process threatens to become abusive or to create as particularized harm to a litigant or third party, the Rules allow the trial judge broad latitude in limiting the scope of discovery. See *Palmetto Alliance v. South Carolina Pub. Serv. Comm'n*, 282 S.C. 430, 434 319 S.E. 2d 695, 698 (1984) (scope and conduct within sound discretion of trial judge).

EMBARRASSMENT TO PLAINTIFF

It is obvious that a single mother who lives, raises a young daughter and practices law in a state as religious and conservative as South Carolina would be embarrassed by a photograph of her vagina being made public.

The high likelihood that the photograph would end up being seen by relatives, colleagues, clients, as well as, the public at large increases the embarrassment to Plaintiff. In today's digital world of social media and modern communication, this embarrassment would be as limitless as modern broadcast capabilities. Such embarrassment would not only affect Plaintiff's business and personal life, but would most assuredly also cause stress and potential harm to her young daughter.

What is the purpose, but to embarrass the Plaintiff, of showing the photograph of Plaintiff's vagina in the deposition instead of just asking her questions about the photograph?

None of the elements of battery or the Defendant's defenses and counterclaims are met by or even made stronger by the inclusion of a photograph of Plaintiff's vagina. Showing a picture of Plaintiff's vagina cannot reasonably be calculated to lead to the discovery of admissible evidence as is required in the law. A photograph of a vagina does not itself provide any information to counsel for Defendant. Counsel for Defendant could obtain all of the same testimonial evidence from Plaintiff with or without introducing the photograph into the proceedings. Thus, the only benefit to Defendant in introducing the photograph is to embarrass, annoy and oppress Plaintiff during her deposition and memorialize such embarrassment and annoyance in a transcript and on video.

There is no prejudice to Defendant by not allowing him to introduce a picture of Plaintiff's vagina. Any question Defendant's counsel could ask of Plaintiff, designed to lead to admissible evidence could be asked without the introduction of the photograph. To allow the photograph to be introduced would unreasonably embarrass Plaintiff without providing any legal benefit to Defendant. The only conceivable benefit that can be deciphered by Defendant's gusto for wanting to introduce the photograph is to embarrass and oppress Plaintiff. Well established statutory and case law in South Carolina prohibits such actions by litigants.

BAD FAITH IN ATTEMPTING TO INTRODUCE PHOTOGRAPH

Counsel for Defendant rejected three separate often used and practical solutions to obtain deposition testimony from Plaintiff about the existence and history of the photograph. He rejected all three proposed remedies and refused to assist in coming up with a workable agreement which would allow the deposition to proceed as scheduled.

When asked repeatedly as to why Defendant felt compelled to insist upon introducing and making the photograph an exhibit, counsel for Defendant argued Plaintiff had brought the case and her reputation into the public eye and thus, Defendant wanted the deposition to also be public.

Judge Gawthrop described the correct purpose of a deposition by saying, "[t]he underlying purpose of a deposition is to find out what a witness saw, heard or did and what the witness thinks." *In re Anonymous Member of South Carolina Bar*, 346 S.C. 177 (2001). Nowhere in this well established explanation of a deposition is there anything related to the publicity of a case or the dissemination of the deposition contents to the public.

It seems as though the only goal of Defendant's intent to introduce the nude photograph was to embarrass Plaintiff and retaliate against her bringing her legal case against Defendant.

CONCLUSION

As a result of the bad faith of Defendant attempting to introduce a photograph of Plaintiff's vagina into her deposition for no other purpose than to embarrass, annoy or oppress her as contemplated by SCRPC Rule 26 (c). Plaintiff respectfully requests this court use the broad powers granted to it under that rule and issue an order that Defendant's Counsel shall not introduce any nude photographs into the depositions in this matter.

Respectfully Submitted,



J. BRADLEY BENNETT, ESQ.

Attorney for Plaintiff

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Dated: March 14, 2018
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2018 MAR 14 4:17 PM
CASE NO.: 2017-CP-23-00483

Nathalie M. Morgan,)
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Richard B. Erwin,)
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Defendant.)

FILED CLERK OF COURT
THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE, SC

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

vs.

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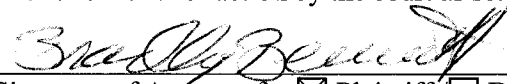
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion to Limit Discovery Pursuant to SCRPC 26(C)
Estimated Time Needed: 1 Hour Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 - Form Motion/Order
- I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

March 14, 2018
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$ 25.00 _____
- EXEMPT: (check reason)
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
- Name of Court Reporter: _____
- Other: _____

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
- Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: SD Date Filed: _____
 MOTION FEE COLLECTED: \$ 25.00 # 10105
 CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)