

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

FILED

2010 JUL -7 P 12:50

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEPT. CLERK

ROY L. DENTON,
Plaintiff

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Case No. 1:07-cv-211

Chief Judge Curtis L. Collier

v.

STEVE RIEVLEY,
in his individual capacity
Defendant

JURY DEMAND

PLAINTIFF ROY L. DENTON'S RESPONSE TO DEFENDANT STEVE RIEVLEY'S
MOTION FOR RELIEF FROM THIS COURT'S JUNE 14, 2010 ORDER
and
PLAINTIFF'S MOTION TO SHOW CAUSE

Comes now, the Plaintiff Roy L. Denton, *pro se*, to Respond to the Defendant Steve Rievley's instant motion and additionally, to move this court for an Order be issued to Verizon to Show Cause why it should not be held in contempt for failure to comply with a federal subpoena.

In support of this Response and Motion for a Show Cause Order, the plaintiff respectfully states the following:

INTRODUCTION

On June 11, 2010 a hearing was held by this Court regarding the defendant's Motion to Quash, or in the Alternative, for a Protection Order. In that hearing, the Honorable Magistrate Judge Carter held an *in camera* hearing where Mr. Ronald D. Wells appeared on behalf of the defendant with Mr. Denton appearing for the plaintiff, *pro se*.

At the conclusion of this hearing, the Honorable United States Magistrate Judge Carter

entered an order dated June 14, 2010, directing that: “[D]efendant Steve Rievley shall provide to the plaintiff copies of the records for defendant’s personal cell phone and his county issued cell phone for September 9, 2006 from midnight to 3 am. Defendant shall provide these records to plaintiff by placing a copy of these records in the United States mail on or before **Friday, June 25, 2010.** (*emphasis in original*)

Although Mr. Wells is the lead attorney for the defendant and was the attorney that participated in the hearing of June 11, 2010, his colleague Mrs. Dickson *Roderick* filed this instant motion. Her motion as presented, appears to place some sort of emphasis, or some sort of importance concerning how the cellular phone records where Steve Rievley is not the true owner or customer of either cellular phone provider, as “*reason justifying relief from the operation of judgment*”, as specifically required under the Rule in which she relies being Federal Rule of Civil Procedure 60(b)(6).

The plaintiff is perplexed as to any reasoning in such logic, in that since the defendant Steve Rievley is not the “*owner*” or “*customer*” of his city issued Verizon cellular phone, then somehow that complicates whether or not Verizon can, cannot or will not comply with a federal subpoena. The effect upon whether Steve Rievley owns the phone or someone else does not release or exempt Verizon from obeying the lawfully issued subpoena issued and served upon Verizon.

Furthermore, Verizon has made no objection, made no appearance or otherwise filed any pleading with this court concerning the subpoena served upon it. In the absence of any presentment to this court on behalf of Verizon, then all the court has to rely upon are the words in the Affidavit of Mrs. Dickson *Roderick* which simply states what she did and what she was told, and so forth. In any event, within her affidavit she is in essence attempting to prove for fact

something that she says someone else told her, which is clearly inadmissible hearsay in the very least. It is the position and legal argument of the plaintiff, that Verizon is in contempt of court for not complying with the subpoena under Rule 45(e) of the Federal Rules of Civil Procedure and show be ordered to Show Cause why they be not held in contempt.

The record thus far also shows that the defendant has made no attempt to use “*due diligence*” in enforcing compliance, or having subpoena compliance enforced upon Verizon. Restated, Verizon accepted the subpoena and has made no objection to it, nor has Verizon attempted to quash the subpoena. As a matter of law, unexplained failure of a party to obey the orders of a court are very serious, rather than less serious as the defendant somehow assumes. The disobedient party cannot be purged of contempt by a lapse of time. Simply put, Verizon accepted a subpoena that was lawfully issued and served upon it. The subpoena clearly stated a compliance date of June 23, 2010. Regardless of what excuse Verizon states, or more specifically, the perceived hearsay words that Mrs. Dickson *Roderick* “*says*” Verizon stated to her, the subpoena simply cannot be cast aside and ignored. Verizon should comply or appear before this court and explain “*why*” it cannot comply. The primary purpose of a contempt proceeding is not to afford any remedy to the complaining party. It’s purpose is to vindicate the authority and dignity of the court. Deeply rooted case law supports this assertion. Moreover, an affidavit of an attorney says nothing, is not admissible evidence, nor carry any legal weight in regards to Verizon’s non-compliance to a subpoena lawfully issued upon it by a United States District Court. Unmistakably, Verizon could have easily filed some sort of legal appearance or pleading on behalf of Verizon and just as easily, counsel for the defendant could have prompted Verizon to comply. After all, it is the defendant’s counsel that didn’t want the plaintiff to subpoena the cellular phone records, yet rather insistent that they wanted to obtain the records.

Interestingly, the Defendant Rievley claims the **Sprint** phone he uses on duty as a police officer to be “his personal phone”. *However, according to Sprint, Steve Rievley is not the owner or even a customer of Sprint.* But nonetheless, Sprint timely complied with the command of the subpoena. Just as with the defendant’s **Verizon** cellular phone, *his attorney states that he does not own that phone either.* Counsel for the defendant states that Sprint told them that due to “*high volume of requests*”, that it would take Sprint about three or four weeks to comply. Sprint received the subpoena from defense counsel on June 15, 2010. Sprint lawfully complied with the command of a subpoena and defense counsel promptly mailed the plaintiff a copy of the Sprint information on June 24, 2010, in which the plaintiff appreciates.

But in spite of the fact that counsel states that Sprint stated to them that it would take Sprint *three to four weeks* to get the information commanded in the subpoena, they managed to timely comply and get the phone records to defendant’s attorney well within the commanded time. Therefore, evidence shows that on June 15, 2010 Sprint was served a subpoena for a phone record and that record was given to defendant’s attorney prior to June 24, 2010 which is a mere seven (7) days later. So whatever Sprint may have said, or not said, they in fact complied with a federal subpoena and did so by the date commanded in which for them to comply even though Steve Rievley is not the owner or customer of Sprint.

Absent any direct showing of cause or explanation on the part of Verizon then it is the position of the plaintiff that Verizon is in contempt of this court in not complying with the subpoena and should show cause as to why this court should not impose a punishment upon Verizon.

Therefore, the Plaintiff Roy L. Denton moves this court to order the following:

1. This court enter an order requiring Verizon appear before this court and Show Cause as to


why they should not be held in contempt for not complying with a federal subpoena;

2. Deny the defendant the relief sought in their instant motion and order defendant counsel to use “due diligence” and show cause to this court why defendant’s counsel should not be sanctioned by this court for not obeying an order of this court;

3. Any other relief entitled to the plaintiff.

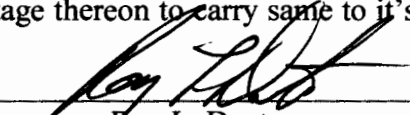
In the alternative, this court enter an order to mandate the Defendant Steve Rievley, who testified in a trial held in this matter in the United States District Court of Chattanooga to appear, or otherwise state for the record under oath or affirmation, either upon his own sworn testimony, or by and through his counsel, to simply advise this court and the plaintiff as to “*which*” cellular phone he testified under oath in this court at trial on April 13, 2010 to have used. If Mr. Rievley used his Sprint phone and not his Verizon phone to call the jail in which he testified, then this whole matter becomes much less complicated and essentially moot. But for the defendant to give some sort of hearsay reasoning based solely upon what is claimed by defendant’s counsel some reason or excuse Verizon told them in their neglect to obey the subpoena is clearly not sufficient “*reason justifying relief from the operation of judgment*” as set forth by the Rule of Law.

Respectfully submitted this 6th day of July, 2010.


Roy L. Denton, *pro se*
120 6th Ave.
Dayton, TN 37321
423-285-5581

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to its destination, on this 6th day of July, 2010.



Roy L. Denton

Copy mailed to:

Ronald D. Wells, BPR# 011185
Suite 700 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450
Phone:423-756-5051