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LORAIN COUNTY

2018 AUG 22 PM 3:13

COURT OF COMMON PLEAS  
TOM ORLANDO

**LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk  
JOURNAL ENTRY  
John R. Miraldi, Judge**

Date 8/22/18 Case No. 17CV193761

GIBSON BROS INC BRANDON W MCHUGH  
Plaintiff Plaintiff's Attorney (330)455-6112

VS

OBERLIN COLLEGE CARY M SNYDER  
Defendant Defendant's Attorney (216)241-2838

**ENTRY AND ORDER ON MOTION TO QUASH SUBPOENA AND/OR  
PROTECTIVE ORDER OF JASON HAWK AND OBERLIN NEWS TRIBUNE  
and  
DEFENDANTS' MOTION TO COMPEL DEPOSITION TESTIMONY OF  
JASON HAWK**

This cause came to be heard upon the Motion to Quash Subpoena and/or Protective Order of Jason Hawk and Oberlin News Tribune (hereinafter "ONR") and the Defendants' Motion to Compel Deposition Testimony of Jason Hawk.

At issue is the testimony of non-party Jason Hawk, a reporter for the Oberlin News Review. Mr. Hawk has been deposed once already, and has been served with a second subpoena seeking further testimony. Hawk and the ONR move to quash this subpoena. Defendants move the court to compel Mr. Hawk's second deposition arguing that his counsel prevented him from answering questions, under an asserted privilege. Whether or not Mr. Hawk should be compelled to answer further questions relative to his observations and interactions with Defendant Dr. Meredith Raimondo, (specifically on November 10, 2016), and student protesters when gathering information for two separate articles that ONR published is at the center of this controversy.

Mr. Hawk claims that his testimony, as a reporter for the ONR, is privileged under Ohio's Shield Law, R.C. 2739.12 as well as under the First Amendment to the U.S. Constitution and the Ohio Constitution, Art. I, Sec. 11.

Ohio Revised Code §2739.12 provides:

Journal \_\_\_\_\_ Page \_\_\_\_\_





No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or committee thereof.

While the court recognizes that infringements upon this statute and the protections under the Ohio and United States' Constitutions are limited, courts have applied a three prong test in order to balance the asserted privilege with a civil litigant's right to discover evidence and/or compel testimony. See, in general, *Fawley v. Quirk*, Summit App. No. 11822, 1985 WL 11006, (9<sup>th</sup> Dist., 1985). These factors include: 1) whether the information is relevant; 2) whether the information can be obtained by alternate means; and, 3) whether there is a compelling interest in the information.

What appears to be at issue here is Hawks answers to questions addressing his interaction(s) with Dr. Meredith Raimondo at the student demonstrations in front of Plaintiff's bakery, his observations while present at the demonstrations and personal observations related to the alleged shoplifting incident. It appears that, initially, counsel for the parties agreed (at least in principle) as to the scope of Hawks' deposition testimony. Defendants argue that at that actual deposition, counsel for Hawk instructed him not to answer many questions that fell within the purview of the previously agreed questioning. Upon review, this court agrees.

Clearly, the information sought by defendants from Mr. Hawk are relevant to their defense of plaintiffs' claims. The court is not persuaded that because Dr. Raimondo is a party and some of the interactions involve her, that the information sought by the defendants is available through alternate means. Hawk is also the only individual identified by Plaintiff as having received a flyer from Dr. Raimondo at the demonstrations. Lastly, the court finds that there is a compelling interest on the part of the defendants to obtain this information, not the least of which goes to their defense of plaintiffs' claims.

As a result, Jason Hawk and the Oberlin New Tribunes' Motion to Quash Subpoena and for Protective Order is granted in part and denied in part. Likewise, Defendants' Motion to Compel the Deposition Testimony of Jason Hawk is granted in part and denied in part. Both parties motion for oral hearing are denied.



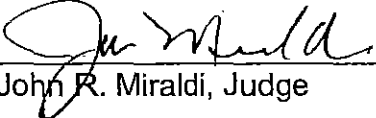


The parties are reminded that this case is in the discovery phase and the court is not necessarily making a ruling that information obtained from Mr. Hawk will be admissible, however, the court finds that Mr. Hawk should answer questions related to his personal observations and interactions while present at the demonstrations, including his discussions with individuals, including Dr. Raimondo, present at the same.

However, the court will place the following limitations on questions which Mr. Hawk may be asked at this deposition. Any questions going to the identity of sources not previously identified by plaintiffs<sup>1</sup> are considered privileged. Likewise any discussions that Mr. Hawk had with his editors, *i.e.*, internal communications, are likewise privileged and shall not be the subject of inquiry. Lastly, Mr. Hawk shall not be required to give his personal opinion as to the information that he has gathered.

IT IS SO ORDERED.

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John R. Miraldi, Judge

cc: All Parties

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<sup>1</sup> Including those identified as a result of this Court's prior order.

