IN THE COURT OF COMMON PLEAS
LANCASTER COUNTY, PENNSYLVANIA
CIVIL

Ronald P. Harper, Jr., Christiaan Hart Nibbrig, SkyZlimit, LTD t/a Lancaster Post, 19 North Mulberry Street, Lancaster, Pennsylvania 17603, Petitioner

vs.

Franklin and Marshall Department of Public Safety Maureen Kelly, Director, P.O. Box 3003, Lancaster, PA 17604-3003, Respondent

No. CI-08-11490

BUSINESS COURT PETITION

BEFORE: HONORABLE DENNIS E. REINAKER

DATE : Monday, October 20, 2008

PLACE : Courtroom Number 8
Lancaster County Courthouse
50 North Duke Street
Lancaster, Pennsylvania

APPEARANCES:

RONALD P. HARPER, JR.
Pro Se

KENDRA D. McGUIRE, ESQUIRE
Barley, Snyder, Senft & Cohen
126 East King Street
Lancaster, PA 17602
For - Respondent

P R O C E E D I N G S

(4:25 p.m.)

THE COURT: Good afternoon. As much as I know of this, I believe we received a call earlier this afternoon from Mr. Harper indicating that you had an emergency petition that you wished to submit.

Have you had an opportunity to review this, Ms. McGuire?

MS. McGUIRE: No, I have not, Your Honor.

THE COURT: Do you have any idea of the genesis or background of this?

MS. McGUIRE: A bit.

THE COURT: Okay.

Mr. Harper, has this been filed or is this something that you're just submitting?

MR. HARPER: Your Honor, I apologize, first of all, for my casual appearance. I was rushed to get this and was assembling this on 222 while my wife was driving. So, no, it has yet to be filed. And I basically was gonna ask the Court's instructions on that.

But, Your Honor, I had called Ms. McGuire and we had discussed and attempted a stipulation on this particular request. In the past, Ms. McGuire and I have come to an agreement on such an activity. I think -- I don't know how much Your Honor is aware of the no trespass notice, et

cetera, with the Lancaster Post, but Ms. McGuire and I had worked out an agreement where I could attend an event.

And if you look at Exhibit E, which is the copy, the tabloid, Lancaster Post, there, you can see the -- one of the respondents is pictured on the front cover, pointing his finger, doing exactly the opposite of what Ms. McGuire and I had agreed that they would be doing on that particular day.

So I've gone to this extraordinary step in order that we would get a judge's order, permitting me to attend a public event -- two public events held at Franklin & Marshall grounds on Tuesday, this coming Tuesday, and this coming Sunday.

One is the League of Women Voters on the Home Rule. It's the only forum to be held on Home Rule in Lancaster County. It's the first change of government in 300 years. It's obviously an important issue that the Lancaster Post would like to cover. And right now, Franklin & Marshall Public Safety is threatening to arrest me were I to attend this event.

The other event is the -- ironically, the ACLU has their annual meeting on Sunday, also held at Franklin & Marshall grounds.

I have been told that it's a public event and that I am welcome to attend that event. However, again, Franklin & Marshall Public Safety has threatened to arrest me. Ms.

McGuire was unable to say that I could attend these events. All of the respondents, but Maureen Kelly in particular, was given the authority under Pennsylvania Statute and by the Honorable Judge Cullen, in particular Maureen Kelly, to uphold the laws of the Commonwealth, et cetera, and you -- your Court has been -- has the authority to appoint these officers. And, of course, as you have also uphold -- taken an oath to uphold the Constitution, my First Amendment right to attend public meetings, et cetera, should not be restricted by an officer supposedly upholding the Constitution of Pennsylvania and United States.

THE COURT: All right.

Ms. McGuire -- just so I understand, your request is that you be permitted to attend as a private citizen or as a representative of the news media?

MR. HARPER: Frankly, it should be either, but I really want to attend as a reporter with the Lancaster Post, as is my partner, Chris Hart Nibbrig.

THE COURT: This would be for the League of Women Voters Program, which has to deal with the Home Rule initiative which is scheduled for Tuesday, October 21st, 2008, presumably sometime in the evening?

MR. HARPER: Yes, sir. 7 p.m., I believe.

THE COURT: All right. And also to attend the annual event of the ACLU, which is scheduled for sometime on

Sunday, October 26th?

MR. HARPER: That's correct.

THE COURT: Do you know what time that's scheduled?

MR. HARPER: 1 to 2:30, 1 to 3, somewhere in there. Early afternoon.

THE COURT: All right.

MR. HARPER: I think it's on the -- that is an exhibit, Exhibit Number F. The last page lists that from 1:00 to 2:30. That's from the ACLU's website. You can see it's held at the Stair Auditorium Stagger Hall at Franklin & Marshall College.

THE COURT: All right. Ms. McGuire, what's the position of the respondent with regard to Mr. Harper's request?

MS. McGUIRE: A number of issues, Your Honor.

And, first, as a general matter of housekeeping, I see that the petition, that I have not had an opportunity to read in full, is brought on behalf of Mr. Harper, another individual, and two entities. Mr. Harper is here representing himself, so I would ask that the remainder of the petition with respect to Mr. Hart Nibbrig, Sky-Z-Limit, LTD, and the Lancaster Post be dismissed.

Mr. Harper is not a member of the bar and is not able to represent either entity or Hart Nibbrig in this petition.

THE COURT: Mr. Harper, do you have a position with either --

MR. HARPER: As it says in number one, I am a stockholder in Sky-Z-Limit, and I am the secretary of Sky-Z-Limit.

THE COURT: Which is the --

MR. HARPER: In the interest of -- I am a pro se litigant. And I guess I -- again, I'm offended that I, first of all, need to come to this Court in order to exercise my First Amendment right, but that you would ask that my co-publisher, who is listed in this paper as co-publisher, you would want to, again, limit his rights. We'll be back in court tomorrow. He'll be back in court tomorrow. It's a waste of the Court's time for us to be here because you wouldn't stipulate, and it's a waste of the Court's time for you to ask the Court --

THE COURT: Okay. Okay. I'm just trying to make sure that we're all on the same page as far as what it is that you're asking. I understand --

MR. HARPER: Mr. Hart Nibbrig would like to attend Tuesday's event. I would like to attend Sunday's event and possibly Tuesday's event. But the bottom line is --

THE COURT: Let's move on to my question, Ms. McGuire.

What's Franklin & Marshall's position with regard to

the request that Mr. Harper and Mr. Nibbrig be permitted to attend both of these functions?

MS. McGUIRE: Well, Your Honor, just by way of additional background, this all stems from Mr. Harper's entry onto Franklin and Marshall College property back in May. And then on May 28th, 2008, a defiant trespass warning was issued to Mr. Harper.

I think procedurally this petition is premature. Mr. Harper has not appeared for admittance to either program. I think he's asking for prospective relief, so I'm not sure that the College's position has much to do with anything at this moment.

I also will note that the event -- I have little or no information about the ACLU event. I do now see that Mr. Harper has attached as Exhibit F something from there -- from their website. I have been unable to verify any information about that.

I can tell you that the League of Women Voters is holding the event on the Home Rule Charter and they have invited the Government Study Commission to come to the college, the Simon College building at the College. I believe it is their event. I do not know what the parameters are for attendance at that event. I don't know that it is an open-to-the-public event. If Mr. Harper says it is, I'm sure it is.

I don't know. I mean, I think that's a burden that he has to meet.

The League of Women Voters are not a party to this. I've not had an opportunity to ask them what their position is with respect to Mr. Harper's attendance.

The College issued the defiant trespass warning based on --

MR. HARPER: I object. If she is going to libel me, I object on the basis that she is unaware of any facts. She's not -- there's nothing -- there's been no evidence submitted or given for her to testify of anything with regard to why that trespass notice -- she is not -- she is not here to present any evidence whatsoever, other than hearsay.

THE COURT: Okay.

MR. HARPER: I do not want on record -- you'll see on Exhibit D that I issued their -- I presented their trespass notice in full disclosure, Exhibit D. And you will see that I have redacted their libelous comments that they have distributed to the media. And I do not wish to have on record any more of their -- of her slander today or their libelous comments in writing.

THE COURT: All right.

MS. McGUIRE: If I may respond?

Mr. Harper has placed this issue before the Court for disposition. I believe that -- and in response to a

question from the Court, I believe I'm allowed to tell the Court what has led us to where we are.

MR. HARPER: If I may respond.

MS. McGUIRE: Mr. Harper --

THE COURT: Mr. Harper, let her finish. And if there's something at the conclusion of what Ms. McGuire has to say that you wish to respond to, then you can do that.

MR. HARPER: I'm concerned about her putting defamation on record. I do not want her defamatory comments, which her clients have been so quick to do, to be on record.

Your Honor, obviously, my conduct at both of these meetings will be within the confines of the Constitution and the law. Obviously, this is -- I'm not asking you for carte blanche to do whatever I want. I must conduct myself as a citizen of the Commonwealth within the laws of the Commonwealth. So that is not an issue.

THE COURT: Okay. We're all in agreement, I think, that based upon Exhibit D, there has been a notice provided to Mr. Harper by Franklin & Marshall College --

MR. HARPER: Stipulated. I gave it. So stipulated.

THE COURT: -- that you are not to be on the College property.

MR. HARPER: Exactly.

THE COURT: That's what the notice says.

MR. HARPER: No question.

THE COURT: So, Ms. McGuire, we're all in agreement with that. I don't believe there's any need for me to get into or hear anything about why that notice was issued or anything with regard to that.

MR. HARPER: Your Honor, if I may respond as to why we are here today.

THE COURT: I know why you're here. No, I've heard enough about that.

Ms. McGuire, is there anything further you wish to say with regard to the College's position? As I see it, the reason we're here is because this notice has been issued to Mr. Harper by Franklin and Marshall College directing that he not be on any Franklin & Marshall facility -- or property. And he is requesting to, as a member of the media and a private citizen, to attend these two events, which are on Franklin & Marshall property.

MS. McGUIRE: Yes. And, Your Honor, if you want legal argument on some case law that Mr. Harper cites to support the proposition that he should be permitted, I would like to respond to it.

THE COURT: Well, it's my understanding, according to Tate, that I'm required to balance the varying competing interests in this.

Now, I will say right up-front, this is a -- certainly it's private property. But this is quasi private

property, I'll say. It's premises that are ordinarily open to the public, and that aside, these two particular events, I don't think there's any real disagreement that most likely they are open to the public.

Now, my position, without hearing anything further, and if you want to provide me argument, I will certainly hear that, but the College has made a decision to permit these public events to occur on college property. Mr. Harper is a member of the news media of this community. And I am inclined, balancing the interest of the parties involved here, to permit him to attend these events during the course of their occurrence.

MS. McGUIRE: Although, Your Honor, he is not the only reporter at the Lancaster Post. I mean, insofar as he would suggest that the Lancaster Post cannot cover this event because he can't personally be there, I think that's an improper suggestion. There are other reporters at the Lancaster Post who could attend. And the Court should balance --

MR. HARPER: That is not true.

MS. McGUIRE: -- those --

THE COURT: Please, Mr. Harper, don't interrupt her.

MS. McGUIRE: The Court should balance Mr. Harper's right to attend as a citizen in this event that is talking about politically-connected issues, we do recognize and

acknowledge that, versus the College's equally important property rights.

And I think that certainly if the Court wishes to enter a TRO, we are going to request our hearing within three days to bring further the appropriate testimony to show the Court there has been substantial interaction between Mr. Harper and the College since the defiant trespass warning was issued and that this body of interactions and behavior bolsters the College's --

MR. HARPER: Objection again, Your Honor.

THE COURT: Let her finish.

MS. McGUIRE: Bolsters the College's position and provides the reason for the College's position that Mr. Harper should not be permitted to attend these events.

MR. HARPER: Your Honor, if I may, she is absolutely not --

THE COURT: She's not said anything about what is alleged that you've done or anything about that.

MR. HARPER: I understand.

Your Honor, there are only two staff members of the Lancaster Post. We have a subcontract with Lime Hat Company to do our graphic design, and we also have a subcontract with an advertising salesperson. The only two reporters on staff at the Lancaster Post are listed as respondents.

She has -- Ms. McGuire, the reason why we are --

have come to the point that I'm asking you, Your Honor, to interact, Ms. McGuire made promises that she would, her terms, relax the no trespass notice, unquote, and that she was, quote, working on that.

I have given enough time, and I realize she's neither worked on it nor has there been a relaxation, her words, of the no trespass notice. And that's why this extraordinary measure of asking Your Honor to do it, the fact that she couldn't even stipulate to any order, which I offered to do, you write it, you write it, and let's see if we can come to a stipulation, she wouldn't even -- she couldn't even -- she said, I don't have the authority to do that.

So the position of the College is that we are banished from covering anything on their property. And honestly, what I would like, there's absolutely no harm in you issuing this order to the College. She can show no harm whatsoever why you shouldn't give this order.

And furthermore, I think you should -- as she has requested, let's have a hearing. Let's have a full hearing and make this a permanent injunctive relief against the police officers that you have given the authority to do this, give them a permanent injunctive relief against using their police powers to harass, threaten, intimidate, falsely imprison me, molest me, et cetera, that they have done.

THE COURT: All right. Is there a no trespass warning which has been issued with regard to Mr. Nibbrig?

MS. McGUIRE: Yes. But I must say that Mr. Nibbrig has not had the subsequent interactions with the College to raise a concern as to Mr. Nibbrig. I believe if Mr. Nibbrig wanted to attend these events, I could secure the College's agreement for him to attend the events.

It is the type and nature of Mr. Harper's continued targeting of the College, interactions with the College, that makes the College so concerned about his attendance.

So we would not object to an order permitting Mr. Hart Nibbrig to attend these events.

THE COURT: All right. Well, Mr. Harper, what I'm going to ask you to do at this point is to go down and file this proceeding with the Prothonotary's Office, and then ask them, whoever dockets this, to bring it up to me immediately and I will -- I doubt that there's enough time for me to do this today, but I will enter an order in this case by noon tomorrow.

Now, so that nobody leaves here today with the wrong impression, I am going to direct that Mr. Harper and Mr. Nibbrig be permitted to attend the event tomorrow evening with regard to the Home Rule session. I don't feel that it's necessary to be specific -- that specific that time deadlines are imposed. The event is at 7 p.m.

When it's concluded, and by concluded, if there's a question and answer period or whatever afterwards, that you will be permitted to stay for the course of that, Mr. Harper. But, again, the purpose of this is to attend that event. So if there are persons from Franklin & Marshall College or there are other individuals there, the purpose is not to give you carte blanche to begin asking questions about any of these other matters that you have raised.

MR. HARPER: Yes, sir. Understood.

THE COURT: I just want to make sure that we're both on the same page.

MR. HARPER: I guess I would like some assurances -- if you see the paper, this particular man -- and the last time that Ms. McGuire asserted that I was permitted on -- she brokered a deal, this guy came up to me and started ordering me about. He followed me.

I would like Ed Carroll, specifically, this is the guy who molested me while I was handcuffed, he was the chief instigator when I was assaulted --

THE COURT: There's not been any court order issued at this point with regard your attendance of any events at F&M?

MR. HARPER: I'm sorry?

THE COURT: Is there any court order entered?

MR. HARPER: No, sir. We have attempted, Ms.

McGuire and I, to avoid wasting the Court's time.

THE COURT: I can appreciate your position, but I really doubt if, in fact, you are in possession of an order from the Court granting you permission to attend that you will secure any difficulties from the security personnel at Franklin & Marshall. But I don't know that there's anything I can do in advance to prevent that. I believe your recourse will be after the fact in the event that that occurs and --

MR. HARPER: I can tell you I fear -- I am very afraid, Your Honor, of walking on that campus when this particular guy is around, given what -- the history of this particular gentleman.

And so, Your Honor, while I appreciate exactly what you're saying, I guess what I'm saying to you is that my fear is very real in that if you had been assaulted by a uniformed officer and been thrown in jail, I think you might feel a little reason why I am very concerned about Brett Mitchell and Ed Carol, the two main assailants on June 3rd.

THE COURT: I can appreciate that. I'm not trying to minimize your feelings in this regard, but as I said, I don't believe that there's any necessity for me to make this order specific to any individual personnel at Franklin & Marshall College.

I am going to enter an order granting you permission to attend the event, and I am fully confident that that will

suffice in terms of both your interests and the College's for tomorrow night.

Now, obviously the situation with regard to Sunday is a little bit different. If both of you are intent on having a hearing later in the week about that, I am sure that I can find a time to do that.

But I would say in terms of perhaps an advisory opinion, Ms. McGuire, that I would hope that that wouldn't be necessary.

Fair enough?

MR. HARPER: I would -- I guess my comment was that I wanted a permanent ruling that all public events -- you know, there are public events; hence, her request for a full hearing, I think, is prudent.

I think if Ms. McGuire would assent to the Sunday event, that we could schedule it out in the next fortnight and have a permanent --

THE COURT: Well, I'm not going to entertain any kind of permanent order at this point. I mean, frankly, there are a number of events that occur on that campus on a regular basis and some of them may be public, some not. I really don't know that there's any way that I could enter an order that would cover completely, from both parties' standpoints, whatever may come up in the future.

Hopefully the two of you will be able to resolve any

differences with regard to those specific events as they arise. But in terms of a permanent order, I'm not inclined to do that. And, frankly, I'm not really sure that it would be the type of permanency that you're looking for anyway, because each of these events, perhaps, is somewhat different in terms of its scope.

MR. HARPER: Obviously, Your Honor, I'd like to resolve it on a permanent basis.

THE COURT: I understand that.

MR. HARPER: And Ms. McGuire and I, despite our appearance today, I have a lot of respect for her and I have the -- am optimistic that we can work out some sort of arrangement. But it's rough going the last few hours.

THE COURT: I take it that's the case, as well.

For now, I'm going to limit it to these two occasions.

MS. McGUIRE: I'm concerned about the League of Women Voters and any preconditions they have to attending this meeting, such as a ticket, such as --

MR. HARPER: The secretary of the League of Women Voters, Bonnie Miller, personally invited myself and my partner. She is on the front cover of the most recent Post. She's an advertiser and a personal friend, and she has invited me and assured me that the League of Women Voters welcomes any and all, unlike Franklin & Marshall, apparently.

THE COURT: The scope of these proceedings is strictly limited, as I understand it, to Franklin & Marshall's involvement in terms of Mr. Harper's presence there.

In the event that these are outside agencies, which both of them appear to be, that are hosting these events, if there are prerequisites or what have you, that they would place on things, but, again --

MR. HARPER: That's on them.

THE COURT: Again, in the interest of resolving any disputes in advance, I hope that it would be those agencies that would be asserting their position and not Franklin & Marshall College.

But I'm going to give this back to you now, Mr. Harper, since it hasn't been docketed. I realize you may get to the Prothonotary's Office before 5. In the event that at least you get it filed, just have someone there bring it up or else I'll have my secretary go down first thing in the morning and get whatever has been filed and then I'll enter an appropriate order based on that.

MR. HARPER: Thank you.

MS. McGUIRE: Thank you, Your Honor.

(The hearing concluded at 4:50 p.m.)

REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present upon the hearing of the above-entitled matter and there reported stenographically the proceedings had and the testimony produced; and I further certify that the foregoing is a true and correct copy of my said stenographic notes.

In testimony whereof, I have hereunto subscribed my hand this 22nd day of October 2008.

_____
Bridget A. Marchio, RPR
Official Court Reporter

AND NOW, _____, _____, this transcript is approved and ordered to be filed.

_____
DENNIS E. REINAKER, Judge

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION

Ronald P. Harper, Jr. Christiaan Hart Nibbrig SkyZlimit, LTD t/a Lancaster Post 19 North Mulberry Street Lancaster, Pennsylvania 17603	:	
PETITIONER	:	
vs.	:	CI-08-11490
Franklin and Marshall Department of Public Safety Maureen Kelly, Director P.O. Box 3003 Lancaster, PA 17604-3003	:	
RESPONDENT	:	

ORDER

AND NOW, this 21st day of October, 2008, Petitioners' Request for Emergency Relief is **GRANTED**. As one of the stockholders of the business entity responsible for publication of "Lancaster Post" and as an officeholder, Petitioner Harper has standing to request relief on his own behalf and on behalf of Petitioner Nibbrig as well. Consequently, this Order shall apply to both Petitioners Harper and Nibbrig.

Petitioners shall be permitted to attend the program sponsored by the League of Women Voters scheduled for Tuesday, October 21, 2008, at 7:00 p.m. Petitioners are authorized to be personally present at the Booth Ferris Room of the Steinman College Center, or any other location should the meeting site change, on the campus of Franklin and Marshall College for the entire portion, including any question and answer period.

Petitioners shall also be permitted personal access to the annual meeting of the Lancaster Chapter of the American Civil Liberties Union of Pennsylvania on Sunday, October 26, 2008, at 1:30 p.m., in Stahr Auditorium of Stager Hall, or any other location should the meeting site change, on the campus of Franklin and Marshall College. This authorization shall include the entire public portion of the meeting.

At the conclusion of both sessions, Petitioners are directed to depart the college campus in a reasonably appropriate period of time.

BY THE COURT:

DENNIS E. REINAKER
JUDGE

Attest: