

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Justino Rupard v. County of San Diego

Rupard · No. 23CV1357 CAB (BLM) · Decided April 30, 2025

OPINION

Justino Rupard v. County of San Diego

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 Case No.: 23CV1357 CAB (BLM) 11 JUSTINO RUPARD, et al., 12 Plaintiffs, ORDER
GRANTING IN PART MOTION

FOR PROTECTIVE ORDER REGARDING

13 v. DEPOSITION

14 COUNTY OF SAN DIEGO, et al., ECF No. 205 15 Defendants. 16 17 Currently before the
Court is Defendants’ Ex Parte Motion for Protective Order regarding 18 the Deposition of Dr.
Bethann Schaber. Mot., ECF No. 205. None of the Plaintiffs have opposed 19 this request. See
Docket. For the reasons set forth below, Defendants’ motion is GRANTED in 20 part.

21 RELEVANT BACKGROUND

22 Plaintiff Ronnie Rupard, proceeding in , is currently in custody and housed at the 23 San Diego
Central Jail. Id. On April 22, 2025, this Court granted the parties limited relief from 24 the current
stay in discovery to allow them to take the deposition of Dr. Bethann Schaber. ECF

25 No. 204. This deposition has been scheduled for May 5, 2025. Mot. at 4. In December of 2024,
26 Plaintiffs Justino Rupard and the Estate of Lonnie Rupard first noticed the deposition of Dr. 27
Schaber, the medical examiner who performed the autopsy of Lonnie Rupard. Id., Schaber Decl.,
1 called the San Diego County Medical Examiner’s Office (“SDCME”) and made threats against
Dr. 2 Schaber and staff. Schaber Decl. at ¶ 4. On March 13, 2025, the SDCME obtained a
restraining 3 order against Plaintiff Ronnie Rupard to protect Dr. Schaber and all other medical
examiner 4 employees. Id., Ex. A. This restraining order prohibits Plaintiff Ronnie Rupard from
contacting 5 Dr. Schaber “either directly or indirectly, in any way.” Id. 6 Dr. Schaber seeks relief
from this Court by issuing an order excluding Plaintiff Ronnie 7 Rupard from physically or
remotely attending Dr. Schaber’s deposition and instead allowing 8 Plaintiff Ronnie Rupard to
provide written questions in advance that will be asked at the 9 deposition. Mot. at 5.

10 DISCUSSION

11 A. Standard of Review 12 Fed. R. Civ. P. 26(c) allows a party from whom discovery is sought

to “move for a 13 protective order in the court where the action is pending -- or as an alternative on matters 14 relating to a deposition, in the court for the district where the deposition will be taken.” Fed. R. 15 Civ. P. 26(c)(1). “The court may, for good cause, issue an order to protect a party or person 16 from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* The burden is 17 on the person seeking the protective order to demonstrate good cause. *Grano v. Sodexo 18 Management, Inc.*, 335 F.R.D. 411, 414(S.D. Cal. 2020). “For good cause to exist, the party 19 seeking protection bears the burden of showing specific prejudice or harm will result if no 20 protective order is granted.” *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 21 1206, 1210–12 (9th Cir. 2002), citing *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 22 (9th Cir. 1992) (holding that “broad allegations of harm, unsubstantiated by specific examples 23 or articulated reasoning, do not satisfy the Rule 26(c) test”). The court has wide discretion to 24 determine what constitutes a showing of good cause and to fashion a protective order that 25 provides the appropriate degree of protection. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36, 26 104 S.Ct. 2199, 81 L.Ed.2d 17 (1984). 27 “A party’s right to attend a deposition has a constitutional dimension and is therefore 1 “extraordinary circumstances.” *Valentine v. Neilsen*, 2018 WL 1281797, *4 (S.D. Cal. Mar. 9, 2 2018) (citation omitted). 3 B. Analysis 4 The Court finds that this matter involves “extraordinary circumstances” and that 5 Defendants have established good cause for a protective order excluding the physical presence 6 of Plaintiff Ronnie Rupard at the deposition of Dr. Schaber. However, the Court finds that under 7 the circumstances of this case, Defendants have not established good cause to exclude Plaintiff 8 Ronnie Rupard from participating in the deposition in any manner and requiring him to provide 9 written questions prior to the deposition that another person will read to Dr. Schaber. 10 Dr. Schaber declared that the basis of this request to exclude any participation by Plaintiff 11 Ronnie Rupard, other than by submitting written questions, is because she does “not want to 12 be seen on camera by Ronnie Rupard so he is not able to identify what I look like, as he has 13 made direct threats to me and about me.” *Schaber Decl.* at ¶ 8. Dr. Schaber notes that the 14 protective order prohibits Ronnie Rupard from communicating with her in any way. *Id.* at ¶ 6, 15 Ex A. ¶ 6(a)(4) (Ronnie Rupard is prohibited from “contact[ing Dr. Schaber], either directly or 16 indirectly, in any way, including, but not limited to, in person, by telephone, in writing, by public 17 or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic 18 means.”). The party moving for exclusion of another party must make a “specific showing of 19 harm” that is “more than ordinary garden variety or boilerplate good cause facts which will exist 20 in most civil litigation.” *Esebag v. Whaley*, 2019 WL 8013118, *3 (C.D. Cal. Sept. 9, 2019) (citing 21 *Jones v. Circle K Stores, Inc.*, 185 F.R.D. 223, 224 (M.D.N.C. 1999)). 22 The circumstances of this case, including the issuance of the protective restraining order 23 and the threats against Dr. Schaber, clearly show that the risk of harm to Dr. Schaber is more 24 than a typical case with “garden variety” facts. The Court finds that the facts of this case warrant 25 the physical exclusion of Plaintiff Ronnie Rupard from Dr. Schaber’s deposition. The Court also 26 finds that the facts

warrant the exclusion of Ronnie Rupard from participating by 27 videoconference from prison as the video appearance would allow Ronnie Rupard to observe 1 that a video appearance would enable Ronnie Rupard to engage with Dr. Schaber or others in 2 an inappropriate manner. See Schaber Decl. at ¶4 (Ronnie Rupard “made threats against other 3 staff and [Dr. Schaber], including making statements that he would show up, “force his way in 4 with handcuffs”, and “take care of business”, and that he liked to “scare everyone and see fear 5 on their faces.””). Accordingly, the Court grants Defendants’ motion to exclude Plaintiff Ronnie 6 Rupard from participating in Dr. Schaber’s deposition in person or by videoconference. 7 On the other hand, the Court finds that Defendants have not established good cause to 8 prohibit Ronnie Rupard from participating in the deposition by any means other than written 9 questions provided before the May 5, 2025 deposition and further finds that given Ronnie 10 Rupard’s current circumstances, there is prejudice to him, as a party to this action, if he were 11 to be restricted to only providing written questions. In reaching this conclusion, the Court notes 12 that Plaintiff Ronnie Rupard currently is proceeding in this litigation and is in the physical 13 custody of the San Diego County Sheriff’s Department at the San Diego Central Jail.¹ In addition, 14 as the parties stated in their previous motion seeking the limited discovery stay, Plaintiff Ronnie 15 Rupard is scheduled for a competency hearing on May 2, 2025, only three calendar days before 16 the scheduled deposition. See ECF No. 203 at 3. Moreover, although Dr. Schaber is not leaving 17 her employment until the end of May, the parties selected a deposition date in early May and 18 filed the instant motion only five court dates before the scheduled deposition. As such, it is not 19 reasonable to expect that Ronnie Rupard would be able to provide written questions to counsel 20 for Defendants or to Plaintiff Justino Rupard prior to the May 5, 2025 deposition. The Court 21 further notes that Defendants do not provide any information regarding the logistics of their 22 request including Ronnie Rupard’s current access to legal materials regarding this litigation, his 23 current access to a law library, his ability to draft the deposition questions, or the method by 24 which the questions would be provided to counsel for the other parties for use during the 25 deposition. For all these reasons, the Court finds that total exclusion of Ronnie Rupard from the 26 27 1 See <https://apps.sdsheriff.net/wij/wijDetail.aspx?BookNum=H%2bF0ir%2bdywQX6q0in9vxV3nhgir>

1 || deposition constitutes prejudice to him that outweighs the potential harm to Dr. Schaber and 2 || therefore denies Defendants’ request to exclude Ronnie Rupard from the deposition completely 3 || and to participate only by written questions submitted before the deposition. 4 In summary, the Court prohibits Plaintiff Ronnie Rupard from participating in Dr. 5 || Schaber’s deposition in person or by videoconference but authorizes him to attend and 6 || participate in the deposition telephonically. Telephonic participation will ensure that Dr. Schaber 7 not seen on camera by Plaintiff Ronnie Rupard and will minimize any potential harassment or 8 || improper conduct by Ronnie Rupard while still preserving his rights as a party to the litigation 9 || to participate in the deposition. Ronnie Rupard must be given the opportunity to ask relevant 10 questions during the deposition but he is not permitted to ask any questions or make any 11 statements that threaten or

harass Dr. Schaber. In issuing this order, the Court modifies the 12 || protective restraining order for this deposition only and only as set forth in this order. Plaintiff 13 || Ronnie Rupard must continue to comply with the protective restraining order in all other regards. 14 || Counsel for the County of San Diego is ORDERED to personally serve (via a legal service) this 15 || Order on Plaintiff Ronnie Rupard and to take all necessary and available steps to facilitate access 16 || for Plaintiff Ronnie Rupard to attend the deposition telephonically. 17 IT IS SO ORDERED. 18 19 Dated: 4/30/2025 lobe Mager 20 Hon. Barbara L. Major United States Maqistrate Judde 22 23 24 25 26 27 28