

NOT ORIGINAL

DOCUMENT

05/02/2024 02:34:59

PM

COMMONWEALTH OF KENTUCKY
SCOTT CIRCUIT COURT
24-CI-_____
DIVISION _____

MEDIA5022

KELLI KEARNEY

PLAINTIFF

V.

SHARON MUSE JOHNSON

DEFENDANT

Serve: Sharon Muse Johnson
1158 Crumbaugh
Georgetown, Kentucky 40324

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND INJUNCTIVE RELIEF**

Comes Plaintiff, by counsel, and submits this Memorandum of Law in Support of her Motion for Temporary Restraining Order pursuant to CR 65.03, and Injunctive Relief pursuant to CR 65.04 against the Defendant, seeking without limitation:

(a) prohibiting Defendant from continuing to make dishonest statements to the voting public of the 14th Judicial Circuit that Defendant is the “only candidate endorsed by the fraternal order of police.” And,

(b) prohibiting Defendant from placing Plaintiff in a false light and preventing Defendant from further lying to the voting public about Plaintiff’s endorsement by the fraternal order of police (“FOP”).

STATEMENT OF THE CASE

PLAINTIFF

1. Kelli Kearney is an individual, resident of Scott County, Kentucky. She is a licensed and practicing attorney who is seeking the nomination of the Republican party to run for the Commonwealth’s Attorney Office in the 14th Judicial Circuit.

DOCUMENT

PM

DEFENDANT

MEDIA5022

2. Sharon Muse Johnson is an individual resident of the Commonwealth of Kentucky, who resides in Scott County. She is a licensed and practicing attorney who is seeking the nomination of the Republican party to run for the Commonwealth’s Attorney Office in the 14th Judicial Circuit.

RELEVANT FACTS

1. Defendant states on publicly posted signs throughout the 14th Judicial Circuit that she is the “only candidate endorsed by the fraternal order of police.” See, **Exhibit 1** a photograph taken May 1, 2024 of a publicly displayed sign in Scott County. The sign contains the notation that the sign is paid for by Defendant. Defendant also makes the same claim on public social media postings. See, **Exhibit 2**, a photograph documented on May 1, 2024 on the video library page of Defendant’s Facebook account named Sharon Muse Johnson for Commonwealth’s Attorney. See also, **Exhibit 3**, a photograph from Defendant's husband’s Facebook page in which he and a campaign supporter install a sign purportedly on April 30, 2024 in Woodford County. See also, **Exhibit 4**, a photograph from Defendant’s husband’s Facebook page, taken May 1, 2024, in which he maintains a post encouraging people to share a false statement attributed to be from the Royal Springs FOP Lodge #59.

2. Defendant is not the only candidate for the Commonwealth’s Attorney Office endorsed by the fraternal order of police (“FOP”) and Defendant received a letter telling her this from the FOP’s president on April 26, 2024. See **Exhibit 5**, a copy of the letter from FOP President Berl Perdue, Jr.

3. Defendant acknowledged receipt of the FOP president’s letter in her personal Facebook account. However, Defendant has made no mention of the FOP President’s letter on her

Presiding Judge: HON. KATHRYN GABHART (614428)

MEM : 000002 of 000006

election Facebook account. See **Exhibit 6**, a copy of Defendant’s posting on her personal Facebook account on or about April 26, 2024.

4. Defendant declared in Exhibit 6 that “it would not be appropriate to change campaign material this late in the campaign” and apparently uses that as justification for failing to correct the false statement made on her campaign signs and on-going statements on her social media.

ARGUMENT

CR 65.03 authorizes the issuance of a temporary restraining order by the Court if “it clearly appears from specific facts shown by verified complaint or affidavit that the applicant’s rights are being or will be violated by the adverse party and the applicant will suffer immediate and irreparable injury, loss or damage...” Similarly CR 65.04 provides for temporary injunctive relief by providing as follows:

A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

To obtain temporary injunctive relief the movement must show:

- 1) That he will suffer immediate and irreparable injury pending a final judgment in the action or that the Defendants’ acts will render a final judgment ineffectual;
- 2) There is a substantial question as to the merits of the action;
- 3) That the equities are in favor of issuance of the injunction; and
- 4) That the public interest will not be harmed by the issuance of the temporary injunction.

Maupin v. Stansbury, 575 S.W.2nd 695 (Ky. App. 1978).

To meet the injunctive relief standard of harm, the movant must show she will suffer immediate and irreparable loss, damage or violation of a concrete personal right which will not be fully remedied by a favorable final judgment. CR 65.01; *Commonwealth ex. Rel. Cowan v. Wilkinson*, 828 S.W.2nd 610, 612-613 (Ky. 1992). A serious or substantial question warranting a trial on the merits is all that is required, and a substantial probability of success is not required under *Maupin*, 575 S.W.2nd at 699; *Wilkinson*, 828 S.W.2nd 610, 612-613.

1. Plaintiff will suffer immediate and irreparable injury pending a final judgment in the action; Defendants’ acts will render a final judgment ineffectual.

The primary election for the Commonwealth’s Attorney Office is May 21, 2024. As set forth in the Complaint filed contemporaneously herewith, Defendant has and continues to deceive the voting public of the 14th Judicial Circuit into believing Defendant is the “only candidate endorsed by the fraternal order of police.” By implication, Defendant is also making demonstrably false statements that Plaintiff is not endorsed by the FOP. Immediate action is required to meaningfully address the issues created by Defendant otherwise the primary election will have already occurred.

2. There is a substantial question as to the merits of the action.

Defendant is under an obligation as a practicing attorney to abide by all ethical rules, one of which specifically states, “a lawyer shall not knowingly make a false statement of fact...or fail to correct a false statement of material fact or law previously made...” SCR 3.130(3.3). As such, a substantial question is established in this action.

Defendant continues to make the false statement in public that she is the “only candidate endorsed by the fraternal order of police” despite knowing and acknowledging that Plaintiff has also been endorsed by the FOP. Defendant’s excuse that it is too late in the campaign to stop

making these statements ignores her duty as an attorney to correct false statements previously made. Regardless of the duties an attorney has to follow pursuant to the rules of ethics, it is deceitful of Defendant to tell the voters something she knows to be wrong, and there is no legal excuse for Defendant to continue to do so. Plaintiff has presented a substantial question as to the merits of her claims.

MEDIA5022

3. The equities are in favor of issuance of the injunction.

The equities favor issuance of an injunction as Defendant’s continued lies to the public create on-going problems for the voters and election officials to have fair elections free from fraud. Defendant’s knowingly false statements also place Plaintiff in a false light about Plaintiff’s endorsement by the FOP. Particularly disturbing is Defendant continuing to have agents place signs along the roadway deceiving the public.

4. The public interest will not be harmed by the issuance of the temporary injunction.

If Plaintiff’s claims are successful, then Defendant will have to publicly acknowledge the falsity of her statements and immediately cease her deceptive efforts. Defendant has no right to make knowingly false statements, rather she is required by multiple duties to tell the truth and correct statements when they are shown to be wrong.

If the requested injunction is not entered and Defendant is allowed to continue to lie to the public, Plaintiff will suffer irreparable harm of being placed in a false light, the public will receive knowingly fraudulent information about an election, and this election will be tainted. The public interest will not be harmed by entry of the requested injunctive relief – in fact, entry of the requested injunctive relief serves the public interest by providing the public with the most truthful and factual information as they make their decision on which candidate to elect on May 21, 2024.

CONCLUSION

NOT ORIGINAL

DOCUMENT

05/02/2024 02:34:59

PM

Without a restraining order and/or injunctive relief, Plaintiff will suffer immediate and irreparable injury pending a final judgment in the action; Plaintiff has shown a substantial question as to the merits of the action; the equities are in favor of issuance of the injunction; and the public interest will not be harmed by the issuance of the temporary injunction.

MEDIA5022

For the foregoing reasons, Plaintiff’s Motion for Temporary Injunction should be granted, and Defendant should be required to refrain from and remove immediately all false statements associated with the FOP.

Dated: May 2, 2024.

Respectfully submitted,

/s/ Luke Morgan
 LUKE MORGAN, KBA #83181
 VALERIE MICHAEL, KBA #98958
 MCBRAYER PLLC
 201 East Main Street, Suite 900
 Lexington, Kentucky 40507
 Email: lmorgan@mcbayerfirm.com
 vmichael@mcbayerfirm.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law was served upon Defendant along with the Complaint and Motion for Temporary Restraining Order filed contemporaneously herewith on May 2, 2024.

/s/ Luke Morgan
 COUNSEL FOR PLAINTIFF

Presiding Judge: HON. KATHRYN GABHART (614428)

MEM : 000006 of 000006