

FREEDOM COURT REPORTING

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF ALABAMA 3 EASTERN DIVISION 4 5 CASE NUMBER: CV-06-BE-0408-E 6 7 SHARON L. RUTHERFORD, 8 Plaintiff, 9 vs. 10 THE CONSOLIDATED PUBLISHING 11 COMPANY, INC., d/b/a THE 12 ANNISTON STAR, 13 Defendant. 14 15 DEPOSITION OF TRISHA FOWLER 16 PART ONE 17 18 In accordance with Rule 5(d) of 19 The Alabama Rules of Civil Procedure, as 20 amended, effective May 15, 1988, I Beth 21 C. Word, am hereby delivering to 22 Ms. Candis A. McGowan the original 23 transcript of the oral testimony taken on</p>	<p>1 IT IS FURTHER STIPULATED AND 2 AGREED that it shall not be necessary for 3 any objections to be made by counsel to 4 any questions except as to form or 5 leading questions, and that counsel for 6 the parties may make objections and 7 assign grounds at the time of the trial, 8 or at the time said deposition is offered 9 in evidence, or prior thereto. 10 IT IS FURTHER STIPULATED AND 11 AGREED that the notice of filing of the 12 deposition by the Commissioner is waived. 13 14 15 APPEARANCES 16 17 WIGGINS, CHILDS, QUINN & 18 PANTAZIS, LLC, by Ms. Candis A. McGowan 19 and Ms. Ann Robertson, The Kress 20 Building, 301 Nineteenth Street North, 21 Birmingham, Alabama 35203, (205) 22 314-0513, appearing on behalf of the 23 Plaintiff.</p>
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<p>1 the 23rd day of April 2007, along with 2 exhibits. 3 Please be advised that this is 4 the same and not retained by the Court 5 Reporter, nor filed with the Court. 6 7 STIPULATIONS 8 IT IS STIPULATED AND AGREED by 9 and between the parties through their 10 respective counsel, that the deposition 11 of TRISHA FOWLER may be taken before Beth 12 C. Word, Commissioner, at the Anniston 13 City Meeting Center, 1615 Noble Street, 14 Anniston, Alabama, on the 23rd day of 15 April 2007. 16 IT IS FURTHER STIPULATED AND 17 AGREED that the signature to and the 18 reading of the deposition by the witness 19 is waived, the deposition to have the 20 same force and effect as if full 21 compliance had been had with all laws and 22 rules of Court relating to the taking of 23 depositions.</p>	<p>1 JAMES C. AYERS, JR., Attorney 2 At Law, 10 West 11th Street, Suite 1-A, 3 Anniston, Alabama 36201, (256) 235-3903, 4 appearing on behalf of the Defendant. 5 6 ALSO PRESENT: 7 Sharon Rutherford 8 Ed Fowler 9 10 INDEX 11 12 EXHIBITS PAGE NUMBER 13 PX-1 6 14 PX-2 6 15 16 17 I, BETH C. WORD, a Court 18 Reporter of Gadsden, Alabama, acting as 19 Commissioner, certify that on this date, 20 as provided by the Alabama Rules of Civil 21 Procedure and the foregoing stipulation 22 of counsel, there came before me at the 23 Anniston City Meeting Center, 1615 Noble</p>

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<p>1 Street, Anniston, Alabama, beginning at 2 1:30 p.m., TRISHA FOWLER, witness in the 3 above cause, for oral examination, 4 whereupon the following proceedings were 5 had: 6 7 MS. ROBERTSON: We are here 8 in the Rutherford versus Anniston Star, 9 Consolidated case. We had noticed the 10 deposition of Trisha Fowler. She had 11 been subpoenaed. And it had been worked 12 out that she would be here this 13 afternoon. 14 I, Ann Robertson, am prepared 15 to take her deposition. And we were 16 informed right before lunch that she 17 would not be here, that she was seeking 18 independent counsel. This is the first 19 we had heard of it, and that they were 20 going to have Ed Fowler sit for his 21 deposition. 22 However, neither myself, nor 23 Candis McGowan are ready to take his.</p>	<p>1 MR. AYERS: Okay. Well, let 2 me just state for the record that 3 Patricia Fowler is no longer an employee 4 of The Anniston Star. She was subpoenaed 5 for deposition for Friday, April the 6 20th beginning at 1:30 p.m. 7 However, Friday at that time, 8 the Plaintiffs were continuing with the 9 deposition of Ken Warren, which had also 10 been subpoenaed that day and was not 11 concluded until about five o'clock that 12 afternoon. 13 We had talked Friday 14 afternoon about doing Patricia Fowler the 15 afternoon of April the 23rd of 2007. I 16 learned this morning that there is a 17 potential conflict of interest which 18 would prevent me from representing both 19 Patricia Fowler and The Anniston Star. 20 Ms. Fowler wanted some time 21 this morning to think about the legal 22 representation issue and to attempt to 23 contact an attorney to consult on that</p>
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<p>1 And she has been under subpoena for quite 2 some time. She has not made a motion to 3 quash her subpoena. And as I said, we 4 were not aware that there was any problem 5 until noon. 6 So I am marking for the 7 record, Plaintiff's Exhibit Number One to 8 Trisha Fowler's deposition, her subpoena 9 and the return of service. And it looks 10 like it was served on 4-7-07. 11 12 (Whereupon, Plaintiff's 13 Exhibits One and Two were marked for 14 identification and same is attached 15 hereto.) 16 17 MS. ROBERTSON: And 18 Plaintiff's Exhibit Number Two to Trisha 19 Fowler's is the notice of deposition, 20 which was served on the 27th of March, I 21 guess after consultation with Jim Ayers. 22 So there you go. And I guess we are 23 going to have to call the judge.</p>	<p>1 issue and was not able to do so by lunch. 2 And I was informed of that at the break. 3 When we broke for lunch, I advised 4 Plaintiff's counsel that Ms. Fowler was 5 seeking independent legal counsel in the 6 case and was not able to do that prior to 7 this afternoon. 8 I do not believe 9 Ms. Fowler is in violation of any 10 subpoena. Her subpoena was for Friday, 11 April the 20th at 1:30 p.m. She was not 12 subpoenaed to be here this afternoon. 13 But for the conflict of interest that we 14 found out about this morning, she 15 certainly would have been here. 16 And I had anticipated 17 representing her in the deposition. But 18 as we sit here right now, I do not 19 believe that I am going to be able to 20 represent her. And I believe that she 21 does have a right to have counsel present 22 with her at her deposition. 23 MS. ROBERTSON: Well, for the</p>

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1 record --
 2 MR. AYERS: So we have agreed
 3 that we can make Ed Fowler available
 4 starting today to start his testimony in
 5 order to try to keep things on schedule,
 6 which was not our original plan either,
 7 but in order to try to keep discovery
 8 moving. And we anticipate that
 9 Mr. Fowler, because of the allegations in
 10 this case, is one of the essential
 11 witnesses to the case, will likely be a
 12 witness whose deposition goes much longer
 13 than this afternoon in any event.
 14 MS. ROBERTSON: Well, we
 15 specifically agreed to put Ms. Fowler on
 16 call. And we asked how long it would
 17 take her to get there. And her husband
 18 specifically told me about thirty
 19 minutes. And based on that, we put her
 20 on call. And we could have had her come
 21 sit up there all day Friday waiting on
 22 us. But that would not have been polite
 23 or productive. And so we put her on

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1 call.
 2 MS. McGOWAN: Especially
 3 since she had informed our paralegal that
 4 she was having tests Friday morning at
 5 the hospital but felt like she would be
 6 through and be there by 1:30. So we were
 7 trying to be nice and not make her sit
 8 there.
 9 MR. AYERS: Well, I don't
 10 think there is any issue that she would
 11 have been there Friday if y'all had
 12 gotten to the point where you could have
 13 taken her testimony. But Ken Warren's
 14 deposition went to the end of the day --
 15 MS. ROBERTSON: Well, of
 16 course --
 17 MR. AYERS: -- which nobody
 18 anticipated at the time Ken Warren's
 19 testimony started.
 20 MS. ROBERTSON: Of course,
 21 the subpoena is ongoing. And when you
 22 are put on call with the understanding
 23 that you can respond in thirty minutes,

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1 you are not released from the subpoena
 2 because it doesn't occur on that date.
 3 MS. McGOWAN: Furthermore, we
 4 asked when Ken Warren's deposition was
 5 over with, would Ed Fowler call Trisha.
 6 And on the phone with her, the two of us
 7 standing there, and said, would she
 8 prefer to come in the morning or the
 9 afternoon because we were deciding
 10 whether to do Robert Jackson, complete
 11 his or start with hers first.
 12 And it was decided that hers
 13 would be better at 1:30 in the afternoon,
 14 is what we were told on Friday. So
 15 everybody knew it was at 1:30 today. So
 16 with all that said on the record, I guess
 17 we need to call the Judge's office and
 18 see what -- I think even though she wants
 19 counsel, she had a duty to be here and
 20 advise us of that when you are under
 21 subpoena.
 22
 23 (Whereupon, a brief recess was

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1 taken.)
 2
 3 (The following is the
 4 transcription of a conference call with
 5 Judge Bowdre.)
 6
 7 JUDGE BOWDRE: Hello.
 8 MS. McGOWAN: Judge Bowdre?
 9 JUDGE BOWDRE: Yes.
 10 MS. McGOWAN: This is Candis
 11 McGowan and Ann Robertson and Jim Ayers.
 12 Ann and I represent Ms. Rutherford in
 13 this case against the Consolidated
 14 Publishing Company doing business as The
 15 Anniston Star.
 16 JUDGE BOWDRE: Right.
 17 MS. McGOWAN: And we are in
 18 the process of taking depositions. One
 19 of the deponents is a former employee of
 20 The Anniston Star by the name of Trisha
 21 Flint Fowler. And we had her served with
 22 a subpoena for her deposition testimony.
 23 Originally the deposition was scheduled

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1 for this past Friday at 1:30. And the
 2 deposition we were taking that morning
 3 ran over.
 4 So during a break, her
 5 husband, who still works for The Star,
 6 called her. And we asked to put her on
 7 call to let her know it wouldn't start at
 8 1:30 instead of having her just sit down
 9 and wait for us to get to her.
 10 When we got through at 5:00
 11 that Friday afternoon, we all discussed
 12 having her come today, to see if she was
 13 available for today, because another one
 14 of the deponents we were supposed to be
 15 taking today was not available.
 16 And so we discussed with her
 17 which time, whether she wanted to come in
 18 the morning or the afternoon. And it was
 19 all agreed that it would start at 1:30
 20 this afternoon since we had her on call
 21 under the subpoena.
 22 Well, we find out right
 23 before our lunch break that she possibly

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1 might not be here this afternoon because
 2 she wanted to seek her own attorney to
 3 represent her in the deposition. So when
 4 we reconvened at 1:30, Ms. Fowler was not
 5 here. And there is no lawyer here.
 6 And she has made no contact
 7 to let us know that she can't be here
 8 other than through The Anniston Star's
 9 attorney to let us know and maintains
 10 that he has a conflict and cannot
 11 represent her during this deposition. So
 12 we are seeking guidance from the Court on
 13 having the subpoena enforced.
 14 JUDGE BOWDRE: All right.
 15 Mr. Ayers, are you there?
 16 MR. AYERS: Yes, ma'am.
 17 JUDGE BOWDRE: Okay. Explain
 18 to me what is going on with her wanting
 19 her own attorney and that kind of stuff.
 20 MR. AYERS: Yes.
 21 JUDGE BOWDRE: You have had
 22 some conversation with her?
 23 MR. AYERS: I have not spoken

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1 to her. I have spoken to her husband.
 2 Ed Fowler is the vice-president of
 3 operations for Consolidated Publishing.
 4 Patricia Fowler is his spouse and a
 5 former director of advertising for
 6 Consolidated Publishing.
 7 In speaking to Mr. Fowler
 8 this morning, I learned for the first
 9 time that there is potentially a conflict
 10 of interest between Patricia Fowler and
 11 Consolidated Publishing, which I feel
 12 would prohibit me from giving her counsel
 13 or asserting objection on her behalf
 14 during the course of her testimony. And
 15 I expressed that to my client, Ed Fowler.
 16 Mr. Fowler had discussion
 17 with Ms. Fowler and advised me this
 18 morning that she felt that she needed to
 19 seek legal counsel and perhaps retain an
 20 independent attorney to represent her in
 21 this deposition but wanted some time this
 22 morning to think about it.
 23 During a break, I learned --

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1 just before lunch, I learned from my
 2 client that Ms. Fowler indeed wanted to
 3 seek at least legal counsel prior to
 4 giving her deposition and probably retain
 5 independent counsel to represent her.
 6 Before we broke for lunch, I
 7 advised Plaintiff's counsel that in order
 8 to keep discovery moving, that we could
 9 go ahead and present Ed Fowler to be
 10 deposed today and start his testimony
 11 this afternoon. He's a witness that I
 12 would anticipate is probably going to be
 13 more than a full day of testimony from
 14 since he is one of the central actors in
 15 this case with respect to the retaliation
 16 claims under Title 7.
 17 So we proposed to make him
 18 available after lunch and go ahead and
 19 start his testimony. And then, as I
 20 understand it from my client, Ms. Fowler
 21 would agree to appear at another time
 22 without reissuance of a formal subpoena.
 23 Now, as far as the subpoena

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<p>1 that I see here -- and this is the first 2 time I have seen the subpoena, Your 3 Honor, that they served on her, it was 4 dated to appear February 20th, 2007 at 5 1:30. We started -- 6 JUDGE BOWDRE: February? 7 MR. AYERS: I'm sorry. 8 Friday, April 20th, 2007 at 1:30. Friday 9 the Plaintiffs deposed Ken Warren, who is 10 another former employee of Consolidated 11 Publishing who was also under subpoena 12 that day. Ken Warren's deposition went 13 to 5:00 p.m. that afternoon. 14 JUDGE BOWDRE: Right. When 15 was Ms. Fowler's subpoena issued? What 16 was the date of that? 17 MS. MCGOWAN: It was served 18 on her April the 7th. 19 JUDGE BOWDRE: Okay. Then 20 why has it taken it so long for 21 Ms. Fowler to realize that she may need 22 counsel for this deposition? 23 MR. AYERS: Well, the first</p>	<p>1 us from our office in Birmingham. We 2 came over here prepared to complete 3 Robert Jackson's deposition, which we did 4 this morning and to take Ms. Fowler's 5 deposition this afternoon. 6 MS. ROBERTSON: Judge Bowdre, 7 this is Ann Robertson. I had prepared to 8 take Ms. Fowler's deposition this 9 afternoon because Ms. McGowan had been 10 taking depositions all day yesterday and 11 Friday. And neither she nor I had 12 prepared for Mr. Fowler because A, we 13 hadn't had time and B, we didn't 14 anticipate taking his deposition until 15 sometime later in the week, a time which 16 has not been designated. 17 MS. MCGOWAN: Plus, we are 18 still working out some document 19 production. And he's going to be the 20 30(b)(6) representative. And we will 21 need some more of those documents before 22 we take his deposition. 23 JUDGE BOWDRE: All right.</p>
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<p>1 indication to me, Your Honor, that there 2 was a potential conflict of interest was 3 in talking to my client this morning, in 4 talking to Ed Fowler. And then after I 5 mentioned the conflict to Ed, he spoke to 6 his wife. And that was the first notice 7 to me that she wanted to seek independent 8 counsel in the case. 9 JUDGE BOWDRE: Okay. So when 10 was Mr. Fowler's deposition scheduled to 11 be taken? 12 MR. MCGOWAN: We haven't 13 rescheduled it. They were supposed to 14 give us -- we were trying to work him in 15 the rest of this week. However, Judge, 16 we -- 17 JUDGE BOWDRE: As I 18 understand it though, Ed Fowler is 19 willing to be deposed now. 20 MR. AYERS: Yes. 21 MS. MCGOWAN: Yes, Your 22 Honor, but we don't have our documents 23 with us. We didn't bring all that with</p>	<p>1 Well, this seems to me to be something 2 that you attorneys ought to be able to 3 work out among yourselves. Now, in terms 4 of enforcing the subpoena against 5 Ms. Fowler, if she for some reason that 6 is unknown to me needs separate counsel, 7 then she needs to get it ASAP. And I 8 expect that her deposition should be 9 taken sometime this week, particularly 10 since the 30th is the deadline for 11 completion of discovery. 12 If you need an order for me 13 compelling her to appear within the next 14 two or three days for her deposition, I 15 can get that for you. But I do think 16 that it would be appropriate, 17 particularly since she is not there now 18 and has expressed the need for counsel, 19 to give her an opportunity to get one. 20 But I think it needs to be on a very, 21 very short leash. 22 MS. MCGOWAN: Your Honor, I 23 think an order would be appropriate since</p>

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1 she is no longer employed or under the
 2 control of the company.
 3 JUDGE BOWDRE: Okay. Do you
 4 want to draft that and E-mail it to me,
 5 and I will take it from there?
 6 MS. McGOWAN: Yes, ma'am. I
 7 can do that.
 8 JUDGE BOWDRE: And if you and
 9 counsel can agree on a time for her to
 10 appear, then include that in that draft
 11 order as well.
 12 MS. McGOWAN: Yes, ma'am.
 13 JUDGE BOWDRE: Okay. Have
 14 you got Chamber's E-mail address?
 15 MS. McGOWAN: No, ma'am. Let
 16 me get something to write with real
 17 quick.
 18 MS. ROBERTSON: Your Honor,
 19 may I raise this?
 20 JUDGE BOWDRE: Yes.
 21 MS. ROBERTSON: Would the
 22 Court allow, since I had prepared to take
 23 the deposition and my schedule for the

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1 rest of the week is completely booked up,
 2 would the Court allow us to take her
 3 deposition outside the discovery deadline
 4 given the problem we've had today?
 5 JUDGE BOWDRE: Well, the 30th
 6 is next Monday.
 7 MS. McGOWAN: Yes, ma'am.
 8 JUDGE BOWDRE: Could you not
 9 get it done next Monday?
 10 MS. McGOWAN: Ms. Robertson
 11 is going to have to go to take some
 12 depositions in Dothan tomorrow. And I
 13 don't know how --
 14 MS. ROBERTSON: It's my
 15 belief, without knowing for sure, I think
 16 my Monday is also booked up with another
 17 set of depositions. I don't want to
 18 represent that to the Court without being
 19 sure, but I think that's the case.
 20 MS. McGOWAN: We know she is
 21 going to be in Dothan tomorrow.
 22 MS. ROBERTSON: Right. And
 23 for the rest of the week.

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1 MS. McGOWAN: If we could get
 2 something agreed upon by the end of the
 3 following week?
 4 JUDGE BOWDRE: Yes. I would
 5 give you until Friday the 4th only as to
 6 her deposition. Only as to her
 7 deposition.
 8 MS. McGOWAN: Yes, ma'am.
 9 MS. ROBERTSON: I think I can
 10 figure that out. Thank you, Judge
 11 Bowdre.
 12 JUDGE BOWDRE: Okay.
 13 MS. McGOWAN: Can you give me
 14 your E-mail address, please, ma'am?
 15 JUDGE BOWDRE: I'm not quite
 16 sure I know what Chamber's E-mail is.
 17 MS. McGOWAN: I can have a
 18 paralegal call back and get that from
 19 your office.
 20 JUDGE BOWDRE: Okay. That
 21 would be wonderful.
 22 MS. McGOWAN: All right.
 23 Thank you.

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1 JUDGE BOWDRE: Okay. Thank
 2 you.
 3 MS. McGOWAN: Bye-bye.
 4 JUDGE BOWDRE: Bye-bye.
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1 CERTIFICATE
2
3 STATE OF ALABAMA
4 ETOWAH COUNTY
5
6 I hereby certify that the
7 above and foregoing deposition was
8 taken down by me in stenotype and the
9 questions and answers thereto were
10 transcribed by means of computer-aided
11 transcription, and that the foregoing
12 represents a true and correct transcript
13 of the testimony given by said witness
14 upon said hearing.
15 I further certify that I am
16 neither of counsel, nor of kin to
17 the parties to the action, nor am I
18 in anywise interested in the result
19 of said cause.
20
21
22 BETH C. WORD
23

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