

IN THE DISTRICT COURT, FIRST JUDICIAL DISTRICT

STATE OF WYOMING, COUNTY OF LARAMIE

DOCKET NO. 176-092

LARAMIE COUNTY COMMUNITY,)
 COLLEGE,)
)
 Plaintiff,)
)
 v.)
)
 THE CHEYENNE NEWSPAPERS)
 INCORPORATED, dba WYOMING)
 TRIBUNE EAGLE,)
)
 Defendant.)

FILED *aw*

MAY 25 2010

GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

THIS MATTER came before the Court upon Defendant's MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO DENY FURTHER INJUNCTION AGAINST PUBLICATION. The parties agreed the Court could rule on the motion of the Defendant to dissolve the restraining order upon a review of the pleadings and without the necessity of a hearing. The Court, after a thorough review of the facts, having reviewed the pleadings and after calm deliberation, being fully advised, FINDS:

1) This case involves documents prepared by or submitted to the "CARE Team" at Laramie County Community College (LCCC) concerning the handling of a situation that developed with an LCCC student while on a college-sponsored class trip to Costa Rica. According to forms contained within the packet of documents, "The CARE Team is a coordinating group of student services staff and instructional faculty and staff who assist 'individuals of concern' with accessing the appropriate campus resources in an effort to assist them with meeting their educational goals at Laramie County Community College."

2) On April 7, 2010 Defendant requested that Plaintiff provide it with copies of the CARE Team report pertaining to the Costa Rica trip in which the Plaintiff's president, Dr. Darrel Hammon took part. On April 12, the Plaintiff denied the request asserting the disclosure would be a violation of the Family Educational Rights and Privacy Act (FERPA). Thereafter, Defendant received 16 pages of documents which consisted of a two page report submitted to Dr. Hammon by the CARE Team and several CARE Team Referral forms from an anonymous person on or before May 21, 2010. Prior to publishing any of the documents, to its credit, the Defendant notified the Plaintiff that it had copies of the documents. On May 21, 2010, fearing a

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loss of federal funding the Plaintiff requested and this Court entered a TEMPORARY RESTRAINING ORDER which enjoined Defendant "from viewing, copying, disseminating or in any way releasing information related to the Costa Rica CARE Team Report."

3) Pursuant to agreement between the parties, the Plaintiff on Saturday, May 22, 2010 electronically provided the Court with copies of the documents at issue for an *in camera* review. The Court conducted its *in camera* review on Saturday and Sunday, May 22nd and 23rd, 2010. On Monday, May 24, 2010, the Defendant electronically provided the Court with copies of the documents it received from the anonymous source. The documents provided to the Court by the Defendant are identical to the great majority of those provided to the Court by the Plaintiff.

4) Plaintiff's MOTION FOR TEMPORARY RESTRAINING ORDER suggests that FERPA prohibits the Plaintiff from disclosing its students' education records. Plaintiff further suggests that Defendant's mere use of the documents for publication or other purposes regardless of how the Defendant came into possession of the documents would violate the Family Educational Rights and Privacy Act (FERPA) which would result in Defendant losing "millions of dollars in federal funding." (MOTION FOR TEMPORARY RESTRAINING ORDER, p. 3).

5) Upon a careful review of FERPA, the Court is not satisfied that in the circumstances before the Court, publication of the questioned material would in fact be a violation resulting in the loss of federal funding to the Plaintiff. The parties appear to agree that at no time did the Plaintiff disclose, permit access to or release any of the documents at issue to the defendant. In addition, generally speaking, FERPA mandates that an educational agency or institution shall not receive federal funds if it has "a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section)..." 20 U.S.C.A. 1232g(b)(1) (West 2010). There is no evidence before the court which demonstrates that the Plaintiff operates with a "policy or practice" of releasing the type of information which might trigger the sanctions contemplated by FERPA. Rather, the information before the Court currently is that an anonymous third person provided the documents to Defendant without the knowledge or permission of the Plaintiff. Plaintiff is adamantly opposed to Defendant publishing or even retaining copies of the documents in question, however the Plaintiff's reliance upon an assertion of jeopardized funding pursuant to the FERPA should Defendant be allowed to

publish the documents is misplaced. In short, the proposition that Plaintiff is going to lose federal funding if Defendant publishes any of the documents is purely speculative and not supported by any evidence properly before the Court.

6) Prior restraint of expression comes with a "heavy presumption against its constitutional validity." *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317, 114 S.Ct. 912, 914 (1994). When such a restraint is imposed against news media, "each passing day may constitute a separate and cognizable infringement of the First Amendment" and the "gagging of publication has been considered acceptable only in exceptional cases." *Id.* Given such stringent constitutional standards, and after a careful review of the pleadings and the documents, the Court finds that the Plaintiff has not satisfactorily shown an "immediate and irreparable injury, loss, or damage" as required by W.R.C.P. 65 to justify continuation of the temporary restraining order.


7) Plaintiff argues that publication of this information would be detrimental to the privacy interests of the student of concern described in the CARE Team Report. However, she is not a party to this suit and the Court questions whether the Plaintiff has standing to protect her interests. Ultimately, Plaintiff has moved for a restraining order on the basis of FERPA. The Court cannot agree that such a basis warrants a continuation of the temporary restraining order.

8) The CARE Team Referral forms provide that, "All referral information is confidential". While the person who anonymously delivered the documents to the Defendant apparently gave that advisory little respect, there is nothing in the record which reflects that the Plaintiff participated in the delivery of the forms and other documents to the Defendant. On the contrary, those documents were delivered to the Defendant without the consent and/or knowledge of the Plaintiff.

9) The documents contain very sensitive material and the Court would hope the Defendant and others will treat the documents with the respect contemplated by the CARE Team, but this Court is without authority to give such a desire the force of an order of this Court.

IT IS THEREFORE ORDERED that the MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER is GRANTED and the TEMPORARY RESTRAINING ORDER entered by this Court on May 21, 2010 is DISSOLVED.

Dated this 25th day of May, 2010.


PETER G. ARNOLD
DISTRICT JUDGE

cc: Henry F. Bailey Jr. B & F (6387749)
Lance T. Harmon
Bailey, Stock & Harmon, P.C.
P.O. Box 1557
Cheyenne, WY 82003

Bruce T. Moats B & F (6381227)
Law Office of Bruce T. Moats, P.C.
2515 Pioneer Avenue
Cheyenne, WY 82001

I hereby certify that I distributed a true and correct copy of the foregoing this 25th day of May, 2010, as indicated. [M-mail; B-box in Clerk's Office, H-hand delivery; F-facsimile transmission.]


Deputy Clerk/Judicial Assistant