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State of Minnesota
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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

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Craig Stevenson, Marie Stevenson,

Plaintiffs, File No. 56-CV-20-2928

vs. Transcript of Proceedings

Sean Stevenson, Renee Stevenson,
Lisa Stevenson-Allen, Ashley Anderson,

Defendants.

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HEARING

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The above-entitled matter came before the Honorable Kevin M. Miller, Judge of District Court, at the Otter Tail County Courthouse, via Zoom technology, Fergus Falls, Minnesota, on September 15, 2022.

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APPEARANCES

For the Plaintiffs: Matthew Schaap
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For the Defendants:
Ashley Anderson and
Lisa Stevenson-Allen
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Official Court Reporter

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(Proceedings commenced.)

THE COURT: Craig Stevenson et al. versus Sean Stevenson et al., 56-CV-20-2928. I have Mr. Schaap here on behalf of the plaintiffs, and I have Mr. Tentinger and Ms. Hansen here on behalf of the defendants.

This came at the request of Mr. Schaap as a telephone conference but honestly, Zoom is so much easier than me trying to figure out how to do a conference call. So, I put it on in that fashion. So, I have Mr. Schaap's letter of September 9th and then I did receive Mr. Tentinger's letter of yesterday.

Mr. Schaap, have you had the opportunity to review that letter?

MR. SCHAAP: Yes, I have.

THE COURT: All right. So, you may proceed Mr. Schaap at this time addressing the concerns you have. And I don't know if Mr. Tentinger's letter, how that affects your argument, but you can let me know here today.

MR. SCHAAP: Yes, and I think, you know, in many respects it does help. I received a similar letter from Mr. Tentinger on Friday the 9th outlining specific passages of the deposition for Sean Stevenson that he believes are at issue, or that are going to be addressed

by him during this upcoming deposition. And that deposition has been moved to a date in October because we're still waiting for a forensic report of Lisa's phone to show which messages she may have deleted and that can be recovered or that cannot be recovered.

So, I'm a little bit concerned in that I understand that these forensic reports are going to be fair games and the topics addressed during these passages that have been identified they're going to be fair game. I don't want to put, like, time limits on this deposition is one of my concerns. I want to just focus on the substance.

But I do think it's very unusual to be in this situation. You know his first deposition occurred in February. I believe it came to light shortly after that that he had provided false testimony about what he had deleted, what he had intentionally deleted. And I did not know about this in, in really fleshing out exactly what we were talking about until last Friday. I heard like inklings of it in prior letters they were going to make him available for, you know, another deposition. I wasn't sure exactly why. But we have had party depositions in this case that have occurred, for example, Lisa's second deposition occurred while everyone other than me, seemingly, knew that Sean lied in his deposition about deleting text messages. And we proceeded with

these depositions basically without that information. And it's just very hard to understand why, you know, if they knew and worked behind the scenes, working on these forensic reports as early as April, why I didn't know about this. I -- I think we're, we're -- we probably have a framework for a deposition, a second deposition of Sean Stevenson in October that's going to work. I just, you know, there should be latitude provided to the plaintiffs. I mean the plaintiffs have brought motions to compel asking for text messages. The Court denied them making comments like, the defendants are acting in good faith and the plaintiffs are lacking in candor. And now we know that messages that we were seeking were deleted after I sent a preservation letter to the defendants, so saying don't delete anything. There could be a sanction for spoliation.

You know, there's gonna be motion practice in October before this Court over discovery issues, and I see, you know, the defendants are kind of ramping up saying well, you know now they're making a -- they filed a motion yesterday on discovery issues. I think, you know, the Court will hear those but I think the real question is, you know, on spoliation what kind of corrective instruction is there going to be to a jury here and, you know, but I think that's beyond probably

the scope of this case but -- or this hearing today, but I do just mention that because this is not just about Sean's deposition. This is not just the scope of his deposition. Or whether, you know, a PR Rule 3.3 requires, you know, some kind of correction to the Court. I don't think it requires a deposition. Now the PR board might have, you know, given that direction to Mr. Tentinger but you know we're here to litigate the case not to, you know, make sure that, you know, Rule 3.3 is, you know, is complied with by Mr. Tentinger. I mean that's his prerogative. He's certainly obligated to comply with it. Has a duty of candor to this Court. And I think there may be some other things that need to happen before that duty is satisfied, but. I'll leave it at that.

THE COURT: Let me ask you, Mr. Schapp, what type of -- when you say, needs to be some latitude in the deposition. I'm, I'm just curious. What -- like, you know, that's a very general term, so I'm just trying to, like what topics, what, what areas do you think outside of, let's just say, information that has been disclosed to you post that first deposition. You know, I think there's probably some openness too if you've discovered new information and such since that first deposition that that might be appropriate. And clearly anything related

to the forensic findings here and the previous testimony. I mean those are questions that certainly seem to be appropriate. But what else are you thinking potentially? I mean, that's just my concern is just saying latitude is -- is really open for interpretation.

MR. SCHAAP: Yeah, I think -- so, so, what we have here is a unique situation in that some of the passages that Mr. Tentinger has identified in Mr. Sean Stevenson's first deposition, they would be things like if a lawyer asked a question and the lawyer says, do you have this text message that was sent on such and such date, around these events in the case, and the witness says, I don't have the text. And I say, did you delete it? And he says, no. Do you remember what it said? And he says, no I don't remember. If that witness lied three times, do you have it? Yes. Or did you have it? Did you delete it? The answer might be yes, I deleted it. And then do you know what it said? He probably knew exactly what it said because that's why he deleted it. He looked at it and thought, this is a concern for our case. I'm going to delete this evidence. If I then take from that exchange that he -- his answers going to be the same pretty much for any text message that I see a record of.

This case is unique in that we have tables of cross-

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referenced text messages from AT&T, Verizon, and T-Mobile, so that we can see when the three defend -- three of -- all four of the defendants sent text messages to each other around dates in this case. And we have basically a flurry of text messages, flurries of calls all around events in this case. I need to be able to ask about, and I think, I don't think this is necessarily going to be in controversy that I'll be able to ask questions like, do you remember what this text message said? The issue is that some of these reports, the forensic reports, are not perfect. So, I don't know -- it's very unusual in my view to have a forensic report done on your own client's phone unless you are concerned about something like, you know, your client lied under oath and said that text messages weren't available and now you're trying to find them somewhere built into the structure of the phone not readily visible as a deleted text message but somewhere in the memory of the phone.

Those reports were produced. Those reports were not successful in recovering most of the text messages that were deleted. So, we can -- we find some of the deleted text messages but a lot of them were deleted and they're just gone. We don't know what they say. And I guess, I'm not going to know until I take Sean's deposition or participate in this deposition whether Sean is now going

to admit or acknowledge that he remembers what some of those text messages said. And we know from the forensic report that some of them are clearly relevant. They mention my clients. They mention other events relating to the claims in this case, and they were deleted. So.

Latitude, I think we can probably, you know, the Court is aware of this. I don't want this to be a situation where we're running back to the Court, you know, on the day of the deposition and saying well they cut it off or they have some kind of dispute about -- I'll -- I'm not going to re-take Sean's entire deposition. I'm not suggesting that in any respect, but.

THE COURT: Okay.

MR. SCHAAP: These text messages and you know communications among the parties are a pretty big piece of the conspiracy portion of this case and the claims in this case. So, it is a pretty important component that I think I need to be able to ask questions about. And I don't think they disagree.

THE COURT: Okay. All right. I'm going to turn, Mr. Tentinger, like I noted I do have your letter of September 14th, so you may proceed at this time.

MR. TENTINGER: I'd like to try to just clarify a couple things. The only text messages that were deleted, the only one involved here was Sean Stevenson.

So, the averments that anyone else was involved isn't, is incorrect. And I also believe that plaintiffs were well aware of this all the way back in May as a reason why the original forensic examination of Sean's phone was provided. And it was also produced to the plaintiffs on May 4th and 6, or early May for whatever that is.

But regardless, my letter's pretty clear I think in what I plan on allowing and what I've been told I need to do. I'm just trying to -- make sure I comply with my obligation under the rules.

I'm a little bit confused still on what Mr. Schaap had to say about the latitude. I don't really know if there was an answer in there outside of the fact that clearly the forensic results, the report of any forensic examination is fair game. Whether my client would happen to remember what those messages were, you know, at the time or whether he remembers them now, fair game. You know, if he happens to remember why certain ones were deleted, fair game. But as far as the latitude he described, I guess, there's no perimeters on that.

We've taken, you know, he had Sean Stevenson deposition for seven hours now. He's had every defendant has sat for, I believe seven hours for the examination, with the perhaps Ashley Anderson who might have been six and a half hours, asking questions from his prior

divorce. Asking Ashley, you know, about her relationship. Asking Lisa Stevenson if she's ever posed nude. You know, I don't want to go back into this and have him sit there for five hours and I can't stop it. When we're going into, you know, what Sean did back in May 5th, of 2006. You know, that will be so far beyond this forensic examination.

That being said, I plan on giving, you know, a wide breadth around any questions, you know, that could potentially be related. But if counsel's seeking -- I guess, that's what this motion is about, is seeking clarification on what he can and cannot get into, I would ask that we get a little bit more specific beyond, you know, just what he's said so far today. At least articulate or attempt to articulate what type of stuff he wants to get into that would be beyond the forensic examination.

THE COURT: All right. And Mr. Schaap do you have any response to that?

MR. SCHAAP: You know, the -- it -- a couple of things. You know, this reference to Lisa posing nude, that was not a -- we can, we can brief that whole topic as to the impeachment and why that -- that was an issue in her deposition based on pictures that were found on her computer by Craig when Craig was doing a favor for

her when her computer was broken down. But the issue is -- and her not remember that fact happening -- but the issue is really this is an unusual situation. The plaintiffs are entitled to explore and review text messages that were deleted that are no longer available. They aren't available through the forensic report. They're not available anywhere. They've just been deleted, and now we know they're deleted. And we also don't know what Sean is going to testify to.

So, to the extent, there are -- this is not just a broad meandering deposition about every topic under the sun. That it's focusing on email -- or text messages, communications among the defendants, and to the extent there was, I, I, we keep getting back to this, you know, common interest doctrine but, you know, the fact that I deposed Lisa Stevenson-Allen under circumstances where she knew Sean had deleted text messages that were exchanged with her and she never disclosed that, and she wouldn't -- they wouldn't even allow her to be asked about those things because of this supposed common interest doctrine, you know, where they're communicating about things that happened, in this case, is problematic. And I think, think the fact that this was withheld, this was not a -- these things have not been disclosed properly to us. They've been withheld in ways that are

clearly strategic. They didn't want us to know about the extent of Sean's -- Sean's problems in testifying accurately during his first deposition until after other party depositions were completed. So, now we know about it after we've already taken depositions and can't use that information in those party depositions.

But I guess ultimately, I don't really know what the parameters are until I know what questions Mr. Tentinger is going to ask his client. But I know that we have probably at least three hours of questioning regarding the forensic reports. We're still waiting for one more forensic report. So, Lisa's phone -- and we don't have Ashley's -- Ashley's phone even to the forensic examiner yet and I've asked them recently for that permission. But Lisa's phone is still at our expert's facility, I believe, and the report should be produced very soon. But that is going to lead to some additional questions, presumably, if there's evidence that Lisa deleted text messages after this litigation commenced.

THE COURT: All right. Mr. Tentinger.

MR. TENTINGER: Well, first off there's no, nothing at all that says that there are messages that were deleted that are no longer available as far as I'm aware and I don't think that's going to be testified to as far as I'm aware right now. So, I don't see how

plaintiff's counsel could make that statement.

Also, this was not withheld by any sense of the word. This was notified back in April that there was going to be this second deposition. That we had to put him back on the record. It was only recently when I had the opportunity to actually go through the original deposition and pinpoint the specific lines of testimony, but that's because I've been sorting through five different forensic examinations, forty sets of discovery, and constant motions. And we just have had the ability to do so. But the idea that this was going to happen is not new. It's been out there for some time.

As far as, you know, what they want to get into, what he described right now seemed perfectly legitimate to me. I would have no qualms with that. I believe I'm obligated to do so. I have no issue with that. But then again, we get back into three hours of examination on a forensic report. The forensic report -- there's a very limited amount of material here as far as I'm aware, and you know obviously my client could testify to something different than what I expect him to but based on what I know -- and even his knowledge of the forensic examination and what would have been done is going to be all of zero. So, the idea that we're going to have hours and hours of questioning is a concern, if they can't

articulate with any specificity or even broad -- broader categories of what they want to get into.

Now, if it's clearly related to what we've discussed so far and articulated so far, I have absolutely no issue. My concern again, and I will disagree with counsel's qualifications to his question of Lisa Stevenson, I think it was one of the most abhorrent things I've ever seen in a deposition before. I don't want to get into another situation where my client's going to sit there and be harassed for what I would consider hours now, on topics that would be well beyond what, I believe I'm obligated to put Sean back on the record to address. That is my only concern right now.

THE COURT: All right. And Mr. Schaap, anything further? And I guess I haven't -- Ms. Hansen, I don't know if you have anything on this or not at this point?

MS. HANSEN: No, Your Honor, I'm -- I've got nothing.

THE COURT: All right. And I figured you hadn't filed a letter, so I didn't mean to ignore you but.

MS. HANSEN: No. I just join Mr. Tentinger, I guess, for the record for you.

THE COURT: All right. Mr. Schaap, anything

further?

MR. SCHAAP: Well, I don't know how it could be represented to the Court that there aren't missing text messages. There are 345 missing texts between Sean and Ashley, 126 missing texts between Sean and Lisa, 8 missing texts between Sean and Renee, all of which have been deleted from Sean's phone. So, I don't -- and they are missing. They are not -- some of them have been recovered. They had a little -- they were able to find them in the memory somewhere in the phone but there are a bunch of them that are missing. So, --

THE COURT: All right. Let me ask, --

MR. SCHAAP: -- and I have --

THE COURT: -- Mr. Schaap, were you able to ask about any of the -- and I'll just your term, I'm not, this doesn't mean any finding but -- you termed them as missing text, did you have the opportunity to inquire of Sean Stevenson during that deposition about texts that you didn't have that were contained within the records that you had?

MR. SCHAAP: Yes. And that's part of what this new deposition is going to be about and that's why when you have so many text messages, we can see when they were sent and received. He says he doesn't have them, and he doesn't remember them, and now we have some evidence that

there were some that were deleted. So, for example, you know, I asked him, did you receive our cease and desist letter, you know, and it contains a preservation paragraph in it. And this is one of the sections that counsel has identified, he says, yes. And you received the letter, yes.

This letter, the last paragraph right before the closing, and my signature indicates that you're obligated to preserve all relevant physical and electronic evidence, and it kind of goes on from there, do you see that? Yes.

And did you preserve all evidence that you were required to, to do? I did my best too.

Is there any evidence that you know was deleted, that you now regret deleting because you wanted to produce it in this case? And he said, I -- no.

Call detail records from AT&T show that you exchanged 239 texts with Lisa between April 1 and November 19, 2020, when this case started. Are any of these texts still available on your phone? And he says, I believe some of them are. I asked did you delete some of them? And he said, no.

So, we have a clear reason to be very interested in knowing how many of those text messages he knowingly deleted. There's just a lot of questions and just the

volume of text messages here requires there to be some, again, some latitude. I have about 175 questions already and I know that you know, based on the forensic reports and how many texts and communications there were, that's going to take a bit of time to get through.

MR. TENTINGER: Your Honor, can I respond to that real briefly?

THE COURT: You may.

MR. TENTINGER: All right. I, again, I'll say that whatever -- what Mr. Schaap described right now seemed perfectly reasonable and legitimate. I believe I'm obligated to put Sean back on the record to address those things. I will say that I believe he misrepresented the total number of text messages that were deleted. But that's not before the Court right now, so I'm not going to want to go down that path.

The last thing I said if he's got -- if Mr. Schaap already has 175 questions and everything if we could, could we perhaps have Mr. Schaap submit his outline to the Court, and the Court can take it under review. You know, to put it --

THE COURT: I don't know, you know, I, I, I get what you're saying. I just don't know that I want to --

MR. TENTINGER: Yeah.

THE COURT: -- micromanage Mr. Schaap's

approach. I don't know that that's quite where my job lies, and I don't know that -- I don't know that I'm that interested in going through Mr. Schaap's work quite like that. I think he's -- I, you know, kind of where I'm at counsel is, you know, I think Mr. Schaap -- I think Mr. Tentinger, you're acknowledging Mr. Schaap has some latitude here. I have concerns. You know, what I don't want is this being a deposition that kind of turns into a second seven hour or you know less what Mr. Tentinger's time takes out of this deposition to simply belabor points or those types of things. But Mr. Schaap clearly has some questions to ask. I think they're appropriate. You know, we've got to just kind of keep in mind the duration. You know this is the defendant's deposition. It'll be their resources that are kind of being spent here that, there has to be some tie to the questions regarding the forensic examination and such. I don't want it delving into things that could have been asked at the first deposition that maybe counsel thought of later and it would be a great question now. That's not kind of what it's for. But I think Mr. Schaap has kind of acknowledged, you know, unless the questions lead or the answers lead to something that arises, I think he's got to have some latitude. You know 175 questions seem like a lot but I don't have -- obviously I'm sitting here with

two letters from you guys and you guys probably have thousands and thousands of pages of things, so it might not be out of the realm, but I think, you know, I feel like you guys do have a general understanding of what's kind of going to be allowed, what's kind of expected. You know, I just want to caution that if there's abuses, you know, obviously the Court will review that.

But I do think there's got to be some latitude on that. And I don't have -- I don't even have the forensic reports to know like what would be appropriate or not. So, getting Mr. Schaap's outline or something like that wouldn't assist me in that cause I would have no idea. So, I'm not inclined to take that and try to hack any of his questions or anything like that. But. I do think there needs to be reasonableness to the extent of what essentially is cross examination here, which is -- this is, this is unique Mr. Schaap. I agree. I haven't seen this happen really either.

So, I just think everybody kind of has an understanding of where we should be. I know Mr. Tentinger and Mr. Schaap are going to have some difference there but I think everybody knows what's going to be allowed here. So, I think Mr. Schaap's got to be given latitude but I don't want it delving into subjects outside of the forensic evaluation and the text messages,

like I said, unless the questions somehow lead you there and that's, I know that's a great definition that nobody probably can -- we could ever necessarily agree with what that terminology means, but. I think we have an idea of what it -- what I would expect from that. But I think, I think we've got to allow those questions to take place and we'll go from there.

I don't know if that gives enough guidance, Mr. Schaap from you or to you in answering your question from your letter or not.

MR. SCHAAP: Yes, and I don't think -- I, I just wanted to get a sense of the Court's, you know, make sure the Court was aware. Make sure the attorneys all kind of understood what the Court wanted or expected, and I think I do. So.

THE COURT: Okay. Mr. Tentinger?

MR. TENTINGER: I think the way you summed it up there at the end there is about as good as it possibly could be done, so. And I'm perfectly comfortable going into this deposition with these parameters in mind and we'll go from there.

THE COURT: All right. And Ms. Hansen, anything further from you?

MS. HANSEN: No. I'm in agreement with Mr. Tentinger.

MINNESOTA JUDICIAL BRANCH

Filed in District Court
State of Minnesota
9/24/2022 9:36 AM

THE COURT: All right. That will conclude everything here today then. Thank you everyone and I guess we'll see you back, I think, sometime in October, I think I saw on my calendar. So, we'll see you then.

Thank you, everyone.

MR. TENTINGER: Thank you.

MS. HANSEN: Thank you, Your Honor.

(Proceedings concluded.)

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STATE OF MINNESOTA IN THE DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

- -

Craig Stevenson, Marie Stevenson,

Plaintiffs, File No. 56-CV-20-2928

vs. REPORTER'S CERTIFICATE

Sean Stevenson, Renee Stevenson,

Lisa Stevenson-Allen, Ashley Anderson

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I, Dana Eifert, hereby certify that I am an official court reporter in the Seventh Judicial District of the State of Minnesota; that as such reporter I digitally recorded the proceedings in the above-entitled action; that I thereafter transcribed to typewriting the foregoing transcript from the digital recordings taken in Otter Tail County, Minnesota on September 15, 2022; and that the foregoing transcript consisting of 21 pages, constitutes a full, true, and accurate transcription of said proceeding.

Dated: September 22, 2022

/s/ Dana Eifert
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