

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

* * * * *

RICHARD E. BURGESS,
Plaintiff,

V

TOWN OF WALLINGFORD; CHIEF DOUGLAS
L. DORTENZIO, in his Official and
Individual Capacities; SERGEANT
MICHAEL COLAVOLPE, in his Official
and Individual Capacities; OFFICER
GABRIEL GARCIA, in his Individual
Capacity; OFFICER DEVIN FLOOD, in
his Individual Capacity; AND MARK
VANAMAN,

Defendants.

* * * * *

DEPOSITION OF MARK VANAMAN - VOLUME I

Taken on behalf of the Plaintiff in the above-entitled
cause, before Patricia Tyszka, Registered Merit Reporter,
License No. 46, Notary Public, in and for the State of
Connecticut, on Friday, July 27, 2012, at 10:33 a.m., at
the Law Office of Rachel M. Baird, Stonegate Professional
Building, 379 Prospect Street, Torrington, Connecticut,
pursuant to the Rules of Civil Procedure.

TYSZKA COURT REPORTING SERVICES
189 Old Forge Road

West Hartland, Connecticut 06091

pat7995@charter.net

Phone/Fax (860)379-7955

APPEARANCES

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For the Plaintiff:

LAW OFFICES OF RACHEL M. BAIRD
379 Prospect Street
Torrington, Connecticut 06790-5238
BY: RACHEL M. BAIRD, ESQ.
(860) 626-9991

For Defendants Town of Wallingford, Chief Dortenzio,
Sergeant Colavolpe, Officer Garcia, Officer Flood:

HOWD & LUDORF
65 Wethersfield Avenue
Hartford, Connecticut 06114-1121
BY: KRISTAN MACCINI, ESQ.
(860) 249-1361

Also Present:

Joseph Gasser, Law Clerk to Attorney Baird
Richard Burgess

STIPULATIONS

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IT IS STIPULATED by counsel that formalities as to the proof of the authority of the Notary Public and sufficiency of Notice are waived.

IT IS STIPULATED and agreed between counsel that all objections, except as to form, are reserved to the time of trial.

IT IS FURTHER STIPULATED and agreed that the reading and signing of the deposition is waived.

1 notice under the Rule. So what is the objection
2 under the Rule? I'm not sure I understand.

3 MS. MACCINI: I'm asking you, counsel, is
4 there another recording going on other than the
5 court reporter here?

6 MS. BAIRD: Well, there probably is because
7 we --

8 THE WITNESS: I'm not even going to go
9 through with this then.

10 MS. MACCINI: And I would agree with the
11 co-defendant. Pursuant to Rule 28, it has to be
12 an authorized person appointed by the court. It
13 can't be your client and it can't be you. So if
14 you're doing that, I agree with the
15 co-defendant. We're not going to --

16 MS. BAIRD: I thought we had went through
17 this with the judge and he had indicated that
18 because we didn't give notice we couldn't do it.
19 But let me look up that rule.

20 MS. MACCINI: I'm referring to Rule 28.
21 You need to have an authorized video recorder --
22 if you're going to videotape it you need to have
23 a person appointed by the court, and if you're
24 going to do an audio recording, the same holds
25 true. You can't just come in here with a

1 digital recorder and record this deposition.

2 We're on the record. Yes?

3 COURT REPORTER: Yes.

4 MS. BAIRD: Yes. I can see her typing
5 there.

6 THE WITNESS: Let it also be known that I
7 was never notified of this deposition until
8 yesterday when I received a phone call.

9 MS. MACCINI: Well, that's interesting.

10 MS. BAIRD: Did you want to reschedule; is
11 that what you're saying?

12 THE WITNESS: No. I'm just saying that,
13 you know --

14 MS. BAIRD: But if you're objecting in any
15 way to the deposition, we should reschedule.

16 THE WITNESS: Well, we're here. Let's do
17 it if everything can be worked out.

18 MS. BAIRD: But I don't want to go through
19 with the deposition, then you to have an
20 objection. You just stated an objection, so --

21 THE WITNESS: I'm stating a fact.

22 MS. BAIRD: -- I'm concerned --

23 THE WITNESS: Not an objection, a fact.

24 MS. BAIRD: Okay.

25 Okay. So you're at Rule 28?

1 MS. MACCINI: Yes.

2 MS. BAIRD: Which section?

3 MS. MACCINI: The entire rule, and going
4 beyond to Rule 30. If you're going to record
5 this deposition, it needs to be a person
6 authorized to administer oaths. And that goes
7 for whether it's audio recorded or video
8 recorded.

9 I don't see the difficulty. Indicate to me
10 who else is recording this. I think that's only
11 fair that you tell us that.

12 MS. BAIRD: Well, I think Mr. Burgess is
13 recording it.

14 Are you recording it? No?

15 MR. BURGESS: No, I'm not recording it.

16 MS. BAIRD: So if we indicate to you who is
17 recording it, it's okay? Or are you objecting
18 to the recording?

19 MS. MACCINI: If there is anybody here
20 present today that's recording this deposition
21 other than this court reporter, then I object.

22 MS. BAIRD: Okay. Well, there is. We gave
23 notice of it.

24 MS. MACCINI: Your notice --

25 THE WITNESS: I wasn't given any notice.

1 MS. MACCINI: The co-defendant has just
2 indicated --

3 MS. BAIRD: You weren't given any notice?

4 MS. MACCINI: He didn't receive the --

5 THE WITNESS: No.

6 MS. MACCINI: -- depo notice. The
7 problem --

8 MS. BAIRD: Okay. Then I think we need to
9 reschedule so we can provide you notice of that.
10 That's what I think we need to do. And then I
11 think we need to file motions with the court to
12 resolve this, because I know it came up last
13 time and I thought we had resolved it last time.

14 MS. MACCINI: First of all, this is the
15 first depo notice where you have put this in
16 here that you're saying pursuant to Federal
17 Rules of Civil Procedure 30(b)(3)(B), the
18 plaintiff hereby provides notice that he
19 reserves the right to record the proceedings of
20 the deposition by digital audio recorder in
21 addition to the means stated above.

22 MS. BAIRD: Right.

23 MS. MACCINI: Pursuant to Rule 30(b) he can
24 do that, but you need to have an authorized
25 person appointed by the court here to do it.

1 Mr. Burgess is not an authorized official court
2 reporter. And that's my objection.

3 MS. BAIRD: Okay. And our understanding is
4 we have to have a court reporter here who is
5 certified by the court, and we do have that.

6 MS. MACCINI: And she's recording an
7 official transcript.

8 MS. BAIRD: And then we can record it
9 otherwise, separate from --

10 MS. MACCINI: Well, I disagree. That's not
11 an official transcript.

12 MS. BAIRD: So what should we do about it?
13 Disagree?

14 MS. MACCINI: I think we should go forward
15 and you should stipulate that you're not
16 recording this. If you want to have another
17 recording, then you need to get somebody
18 appointed by the court or somebody that's
19 sufficient pursuant to Rule 28. Mr. Burgess
20 isn't sufficient. You aren't sufficient. Your
21 law clerk is not sufficient. You're not
22 official court reporters. I don't understand
23 the difficulty with that. It's absurd.

24 MS. BAIRD: We've actually been through
25 this issue before, and my understanding is that

1 there aren't any individuals who record or
2 videotape appointed by the court.

3 MS. MACCINI: Did you just take a look at
4 Rule 28? And have you ever attended a
5 deposition before where a person walked in and
6 videotaped the deposition, not an authorized,
7 court-appointed person? Because I haven't.

8 MS. BAIRD: Wow. I think you're being a
9 little bit rude, and I'm trying to discuss this
10 in a professional manner.

11 What was your first question? Have I ever
12 attended a deposition before? Yes.

13 MS. MACCINI: My question was have you
14 ever --

15 MS. BAIRD: And then you had another
16 question.

17 MS. MACCINI: My question was -- my
18 complete question was have you ever attended a
19 deposition where somebody other than a
20 court-appointed videographer or a
21 court-appointed court reporter came in and
22 recorded the deposition? Either by video or
23 audio.

24 MS. BAIRD: Yes, I have. On December 1st,
25 2011, I deposed Judge Danaher at the AG's office

1 in Hartford. The attorney of record was Robert
2 Snook; he's an attorney general. And Mr. Edward
3 Peruta videotaped and recorded the entire
4 deposition of Judge Danaher. So my answer to
5 that question is yes, I have done that.

6 MS. MACCINI: Well, I find that
7 interesting. But in this particular case --

8 MS. BAIRD: Well, you asked me, so I
9 answered.

10 MS. MACCINI: -- which is a federal
11 matter --

12 MS. BAIRD: That was a federal matter.
13 It's the matter of Kuck versus Danaher in front
14 of Judge Bryant.

15 MS. MACCINI: Okay. Well, I object to any
16 other recording other than an official court
17 reporter or somebody authorized pursuant to Rule
18 28. I object, I believe the co-defendant
19 objects; and if you're going to record it, then
20 I guess we can't go forward.

21 MS. BAIRD: Okay. So are you going to file
22 a motion with the court, objecting?

23 MS. MACCINI: No, I'm not. I don't need to
24 do that. You can't record this other than by an
25 official court reporter. I don't care if you've

1 done it in the past.

2 MS. BAIRD: Well, but you asked me, so I
3 answered. That's why I answered. If you didn't
4 care, then you shouldn't have asked me. You did
5 ask me, right? I answered. I didn't offer it
6 without you asking me. You asked me.

7 MS. MACCINI: Your client has just said
8 that he's not recording it. If you can indicate
9 that you --

10 MS. BAIRD: I'm not -- no. I'm going to
11 instruct Mr. Gasser to record this.

12 MS. MACCINI: Okay. Then yes, we can't go
13 forward.

14 MS. BAIRD: Okay. And we're relying on --
15 I think we put it in the notice as well -- 30,
16 subsection -- I can't read the first on your
17 computer. You tell me.

18 MR. GASSER: Yeah. It's 30(b)(3)(B).

19 MS. BAIRD: Okay. The additional method of
20 recording.

21 This is my position. My position is that
22 we want to take a deposition today and record
23 it, and that you're objecting on behalf of your
24 client. Certainly not Mr. Vanaman, because you
25 don't represent him and he's the one being

1 deposed, but I understand he is objecting as
2 well.

3 That's correct?

4 THE WITNESS: Correct.

5 MS. BAIRD: Okay. And we didn't receive
6 any prior notice of objection. I believe you
7 received notice, Miss Maccini, but Mr. Vanaman
8 says he didn't receive a prior notice, so he
9 wouldn't have --

10 THE WITNESS: Right. Correct.

11 MS. BAIRD: So you wouldn't have had a
12 chance to object --

13 THE WITNESS: Correct.

14 MS. BAIRD: -- prior to the deposition --

15 THE WITNESS: Correct.

16 MS. BAIRD: -- because you didn't receive
17 notice.

18 But this is where we stand. If I want to
19 do something and you don't want to do it, don't
20 you have to file an objection with the court?
21 Or do you want me to file a motion with the
22 court saying you object?

23 MS. MACCINI: Attorney Baird, you indicate
24 that you're going to reserve your right to
25 record the proceedings --

1 MS. BAIRD: Right.

2 MS. MACCINI: -- by digital recorder in
3 addition to the means stated above.

4 MS. BAIRD: Right.

5 MS. MACCINI: That would mean to me that
6 you're reserving the right to have an official
7 court reporter do that. You haven't stated in
8 your notice of deposition "I, Rachel Baird, am
9 going to record it." You are not a certified
10 court reporter. You are not authorized pursuant
11 to Rule 28 to do so.

12 MS. BAIRD: I think we've already
13 established for the record that we disagree.
14 That's clear. The issue we've gone to now is
15 what do we do about the disagreement. Are you
16 going to file a motion with the court or shall
17 I?

18 MS. MACCINI: I believe that you should.
19 If you want permission to -- if you want to be
20 appointed by the court as a recorder, then you'd
21 need to make that motion.

22 MS. BAIRD: So it's your position that I
23 should file a motion saying I want to do
24 something, but you object to it.

25 MS. MACCINI: No. If you want to be

1 appointed by the court to make an audio
2 recording of this deposition, you need to do so.

3 MS. BAIRD: Well, I'm not going to file a
4 motion to be appointed by the court, because
5 under our interpretation of the Rule, that's not
6 required.

7 MS. MACCINI: Well, it says clearly under
8 Rule 28 --

9 MS. BAIRD: This is what I'm trying to
10 establish, Attorney Maccini. I'm going to file
11 a motion saying what I want to say. Are you
12 going to file a motion saying anything or should
13 I speak for you? I don't want to speak for you.
14 I would like you to speak for yourself.

15 MS. MACCINI: I am trying to articulate for
16 you --

17 MS. BAIRD: And you --

18 MS. MACCINI: -- what you're doing is
19 completely improper.

20 MS. BAIRD: And you already have. I've
21 been through this. In the other deposition I've
22 been through this.

23 MS. MACCINI: Okay. Let me get out my
24 objection for the record, if you would, please.

25 MS. BAIRD: Okay.

1 MS. MACCINI: Pursuant to Rule 28 it says,
2 "Within the United States or a territory or
3 insular possession subject to United States
4 jurisdiction, a deposition must be taken before
5 an officer authorized to administer oaths either
6 by federal law or by the law in the place of
7 examination; or a person appointed by the court
8 where the action is pending to administer
9 oaths."

10 You are neither of those things. Your law
11 clerk is neither of those things. Your law
12 clerk is not an admitted attorney to the Bar.
13 He is not somebody who is authorized to record
14 this deposition.

15 Mr. Vanaman and I want to make sure that we
16 have an accurate transcription of his
17 deposition. You're making another recording. I
18 don't know what purpose you're going to use that
19 for. I don't know why you would want to have
20 another recording other than the official
21 recording. I object to it.

22 MS. BAIRD: Well, for the record, one
23 reason I would like to have another recording
24 and why I always want to have another recording
25 is -- and I forget the date. There was a

1 deposition taken in the matter of Barbara Doutel
2 versus Town of Norwalk and it was probably a
3 couple of months ago, and I'd asked Ms. Tyszka
4 to be the court reporter in that matter and she
5 could not attend, so she referred another court
6 reporter to me to attend. And when we received
7 the transcript, there were two places in the
8 transcript that I recalled very differently from
9 what the transcript said, and I brought that to
10 the attention of the court reporter and she
11 corrected -- she corrected that transcript based
12 on my memory of it. Thank goodness she had
13 recorded it; otherwise, my memory of it would
14 have been tested against what she had
15 typewritten and, of course, the typewritten
16 transcript would have prevailed.

17 So I know that sometimes errors are made, a
18 word can be left out here or there that make all
19 the difference in a proceeding, and I think
20 that's why Rule 30 exists.

21 THE WITNESS: Isn't that why she records it
22 at the same time, so she has two different
23 transcripts to go by, just in case one is in
24 error?

25 MS. BAIRD: I would like my own in case

1 something happened to her recording. But I
2 didn't -- did I interrupt you? I didn't mean to
3 interrupt you. I don't know what --

4 MS. MACCINI: That --

5 MS. BAIRD: Because I wanted you to be able
6 to get everything out.

7 MS. MACCINI: That calls for another
8 objection on my part. I'm not -- I don't -- let
9 me just say on the record I object to you
10 calling this court reporter and requesting any
11 change to Mr. Vanaman's testimony as she records
12 it, based on your recording which is not an
13 authorized recording. And that's the whole
14 problem here, from my viewpoint. If you want to
15 have a videotaped deposition or you want to have
16 another means of recording this deposition, it
17 needs to be a means by which all the parties are
18 able to receive a copy from that certified,
19 authorized reporting agency, whether it be a
20 videographer or a court reporter. It can't be
21 your separate videotape or audio recording that
22 I don't have access to.

23 MS. BAIRD: Well, I wouldn't object to you
24 recording the proceeding as well.

25 THE WITNESS: Well, this is my deposition.

1 This is the way I'm going to look at it, all
2 right? I'm not going to go through a deposition
3 with anybody other than somebody appointed by
4 the court to do it. And if anybody else is
5 going to do it, we're just not going to do it,
6 whether I'm in contempt of court or not. It's
7 not going to happen. So --

8 MS. BAIRD: Mr. Vanaman, I actually don't
9 think you would be in contempt of court.

10 THE WITNESS: Well, I don't know.

11 MS. BAIRD: I think it's an interesting
12 issue that needs to be resolved --

13 THE WITNESS: Right.

14 MS. BAIRD: -- and we're taking different
15 positions on it.

16 THE WITNESS: Okay.

17 MS. BAIRD: And I always think it's
18 interesting when there is language in a rule or
19 a statute that can be interpreted differently,
20 to have it finally resolved. And I know this
21 came up at the last deposition, and I thought
22 Judge Haight had said because we hadn't given
23 notice, we couldn't do it. I actually
24 thought -- in fact, let's look at his order.
25 I'm on-line here, so while we're here we might

1 as well look at it and see what he said.

2 So I'm reading from an order that was
3 issued on March 16th, 2012. It's entry No. 28,
4 and it says: This is a civil rights action
5 commenced by plaintiff against the defendant
6 town. Defendant noticed plaintiff's deposition
7 for today, including in the notice a statement
8 that the testimony would be recorded by a
9 qualified court stenographer. And it refers to
10 Rule 30(b)(3)(A). When plaintiff appeared to be
11 deposed, he brought with him and began to use a
12 tape recorder to record his testimony in
13 addition to the services of the court
14 stenographer. Defendants' counsel objected to
15 the use of the tape recorder on the grounds that
16 no prior notice had been given by plaintiff of
17 that additional method of recording his
18 testimony. See Rule 30(b)(3)(B). An
19 inappropriate use might thereafter be made of
20 the recording. After hearing counsel argue to
21 question during a telephone conference, the
22 Court sustained defendants' objection, directed
23 that no tape recording be made of the
24 deposition, and that the initial portion that
25 had been recorded not be published or

1 promulgated by the plaintiff in any fashion.
2 The Court further directed the plaintiff read
3 and sign the transcript of his testimony before
4 it is filed, noting on the transcript any
5 portion of his testimony which plaintiff
6 believed in good faith had not been accurately
7 transcribed by the court stenographer. This
8 order memorializes those oral directions which
9 the Court concluded the conference.

10 So I had interpreted your objection at that
11 time, and I think the Court did as well, that
12 the fact that we hadn't given prior notice was
13 the problem. And now there is an additional
14 reason. Correct?

15 MS. MACCINI: I don't recall at that time
16 whether that was the sole basis of my objection,
17 but I am reading the same order as you've just
18 read and that was the basis for the Court's
19 ruling, was lack of notice. The Court didn't
20 comment on whether his recording of the
21 deposition was proper pursuant to Rule 28. I
22 don't recall whether I objected on the basis of
23 Rule 28, but I'm objecting on the basis of
24 Rule 28 today, and I believe Mr. Vanaman is as
25 well. And I believe he just said that he's not

1 going to sit here and go forward if your law
2 clerk is going to record it.

3 So I think it's very simple. You have a
4 decision to make. Either you're not going to
5 record it, in which case we can go forward, or
6 you are, in which case we need to suspend this
7 deposition and come back; and perhaps I'll file
8 a motion for protective order and you can file
9 whatever motion you need to file. So the
10 decision is yours.

11 MS. BAIRD: Okay. Well, we did reserve our
12 right to record this proceeding.

13 It sounds like you didn't get notice of the
14 proceeding, so you may not have known --

15 THE WITNESS: Correct.

16 MS. BAIRD: -- that we reserved that right,
17 Mr. Vanaman. So certainly nobody's threatening
18 to hold you in contempt --

19 MS. MACCINI: No.

20 MS. BAIRD: -- of court or anything like
21 that.

22 THE WITNESS: Yeah; I just put it out just
23 in case.

24 MS. BAIRD: Yes. So I think this issue
25 needs to be resolved because we may depose other

1 people in this matter and we're going to
2 continue to reserve that right.

3 THE WITNESS: Correct.

4 MS. BAIRD: So we're going to based on your
5 objection and based on the town's objection, go
6 ahead and file something to have this issue
7 finally worked out.

8 THE WITNESS: Okay.

9 MS. BAIRD: Okay?

10 THE WITNESS: Works for me.

11 MS. BAIRD: Okay. Great. Thank you.

12 THE WITNESS: So we're done?

13 MS. BAIRD: Yes.

14

15 (Whereupon, the witness was excused and the
16 proceedings were adjourned at 10:52 a.m.)

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CERTIFICATE

STATE OF CONNECTICUT)

) SS: West Hartland, Connecticut

COUNTY OF HARTFORD)

I, Patricia Tyszka, a Notary Public duly commissioned and qualified in and for the County of Hartford, State of Connecticut, do hereby certify that pursuant to notice there came before me on the 27th day of July 2012, at 10:33 a.m., the following named person, to wit: MARK VANAMAN, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that the reading and signing of the deposition is waived.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

In witness whereof, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, 2012.

Patricia Tyszka, LSR, RMR
Notary Public
License No. 00046

My Commission Expires
May 31, 2015

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