

IN THE CIRCUIT COURT OF THE 12TH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS

IN RE THE MARRIAGE OF:)
MICHAEL EDWARD HASTINGS,)
 Petitioner,)
 and) No. 2021 D 1097
))
KATHLEEN MARILYN HASTINGS,)
 Respondent/Counter-Petitioner.)

EMERGENCY MOTION TO COMPEL DEPOSITION OF LISA STERBA

NOW COMES, Respondent/Counter-Petitioner, KATHLEEN HASTINGS (“Kate”), by her attorneys, SCHILLER DUCANTO & FLECK LLP, pursuant to Illinois Supreme Court Rules 201-206, Rule 219, and Rule 237 and in support of her Emergency Motion, Kate states:

EMERGENCY BASIS

Depositions deadlines, whereby all depositions shall be completed, are currently set for August 26, 2022. The parties are scheduled for binding arbitration hearing regarding the outstanding financial matters on October 17, 2022. Kate brings this matter as an emergency because of a third-party deponent’s, Lisa Sterba, refusal to appear for her scheduled deposition pursuant to properly served subpoena. **Ms. Sterba is a material witness regarding the financial situation of the parties.** With the deposition deadline currently scheduled for August 26, 2022, it is critical that this matter be heard, *instanter*. The affidavit of Kate’s counsel in support of this emergency is attached hereto as **Exhibit A**.

COMPEL COMPLIANCE WITH SUBPOENA AND TO SET DEPOSITION DATES

1. Deposition deadlines are currently set in this matter for August 26, 2022.
2. This matter is currently set for binding arbitration regarding outstanding financial issues beginning on October 17, 2022.
3. On August 5, 2022, counsel for Kate issued a Subpoena for Deposition of Lisa Sterba. Pursuant to that Subpoena, the deposition was set to occur via Zoom on August 22, 2022, at 11:00am. A copy of the correspondence and Subpoena are attached hereto as **Exhibit B**.

4. On August 9, 2022, a process server, Steven Bobbe, served Lisa Sterba with her Subpoena for Deposition. A copy of the affidavit from Steven Bobbe regarding service is attached as **Exhibit C**.

5. On August 15, 2022, counsel for Kate sent Ms. Sterba, via certified mail, the Notice of Deposition for Lisa Sterba.

6. The certified mail was delivered to Ms. Sterba on August 17, 2022. A copy of the United States Postal Service tracking information is attached as **Exhibit D**.

7. On August 22, 2022, counsel for Kate logged into the deposition. Ms. Sterba did not appear at 11:00am. Also present on the Zoom meeting was a court reporter.

8. A few minutes after 11:00am, counsel for Kate made a record indicating that the Zoom was the deposition of Ms. Sterba, that Ms. Sterba was not appearing, and that counsel would wait fifteen (15) minutes before terminating the deposition.

9. After the allotted fifteen (15) minutes, Ms. Sterba still failed to appear for her deposition. At that time, counsel for Kate made an additional record indicating that Ms. Sterba failed to appear and the deposition was terminated.

10. Counsel for Michael Hastings also failed to appear for the deposition leading to believe that Michael was aware Lisa Sterba would be violating the subpoena.

11. Counsel for Kate has yet to receive any correspondence from Ms. Sterba regarding her failure to appear for her scheduled deposition.

12. Illinois Supreme Court Rule 204(a)(2) provides “A deponent shall respond to any lawful subpoena of which the deponent has **actual knowledge**, if payment of the fee and mileage has been tendered.” (Emphasis added); *See also People ex rel. Illinois Department of Labor v. E.R.H. Enterprises, Inc.*, 2013 IL 115106 (2013), ¶55 (“allegedly improper service will not preclude enforcement of a subpoena where the party to which it was directed had actual notice and an

opportunity to challenge it in court.”). The right to take a deposition is basic and fundamental to our adversary system. *Slatten v. City of Chicago*, 299 NE2d 442 (1st Dist. 1973).

13. Kate has been forced to incur attorney’s fees and costs as a result of being forced to prepare, present, and prosecute this Motion.

14. Counsel for Kate attempted to resolve this issue with counsel for Michael on August 24, 2022 to no avail.

WHEREFORE, Respondent/Counter-Petitioner, KATHLEEN HASTINGS, requests that this Honorable Court enter an order as follows:

- A. Finding this matter to be an emergency;
- B. Requiring Lisa Sterba to sit for her deposition on a date and time certain;
- C. Require Lisa Sterba to pay for the necessary and reasonable attorney’s fees and costs KATHLEEN HASTINGS has been forced to incur as a result of the preparation, presentation, and prosecution of this Motion; and
- D. For such further relief the court deems just and equitable.

SCHILLER, DU CANTO AND FLECK



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