

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ORLEANS

AB 511 DOE,

Plaintiff,

v.

LYNDONVILLE CENTRAL SCHOOL
DISTRICT AND LYNDONVILLE
ELEMENTARY SCHOOL,

Defendants.

**AMENDED AFFIRMATION IN
SUPPORT**

Index No.: 20-46602

The undersigned, Leah Costanzo, Esq., an attorney at law, affirms that the following statements are true, under the penalties of perjury:

1. I am an attorney at law, associated with the law offices of Steve Boyd, P.C., attorneys for plaintiff in this lawsuit and familiar with the facts herein.

2. This affirmation is submitted in support of plaintiff's motion seeking an order (1) holding Hon. Joseph V. Cardone, the Orleans County District Attorney's Office, Sheriff Christopher Bourke, and the Orleans County Sheriff's Department in contempt of Court and (2) issuing a judicial subpoena to the Orleans County Probation Department for its entire file regarding Terry Houseman, along with such other and further relief as this Court deems just and proper.

PROCEDURAL BACKGROUND

3. This action is a claim brought under the Child Victims Act for sexual abuse of plaintiff by Terry Houseman, an employee of defendant Lyndonville Central School District, from approximately 1986 to 1987.

4. The following relevant pleadings were served in this matter:

- Plaintiff's Summons and Complaint ([NYSCEF Doc. 2](#));
- Plaintiff's Amended Complaint ([NYSCEF Doc. 5](#));
- Defendants' Answer ([NYSCEF Doc. 6](#));

ARGUMENT

MOTION FOR FINDING OF CONTEMPT

5. CPLR § 2308 provides that failure to comply with a subpoena issued by a judge shall be punishable as a contempt of court. Judiciary Law § 753[1] further authorizes a court to punish by fine or imprisonment “an attorney, counsellor, clerk, sheriff, or other person” whose disobedience to the lawful mandate of the court defeats, impairs, impedes or prejudices a right or remedy of a party to a civil action.

6. This Court previously granted plaintiff's application for judicial subpoenas requiring the Orleans County District Attorney's Office and the Orleans County Sheriff's Department to submit to the Court copies of their “entire, unredacted file regarding the investigation of Terry Houseman in approximately 1990 to 1991, but not limited to, unredacted copies of all reports, statements taken, recordings, and all notes, testimony and accounts of the investigating officers.” A copy of the subpoenas signed by the Court on October 27, 2022 is attached as **Exhibit A**. The return date was November 30, 2022.

7. The subpoenas were personally served on District Attorney Joseph V. Cardone and on Sheriff Christopher Bourke on November 14, 2022. Affidavits of Service are attached as **Exhibit B**.

8. On November 16, 2022, Orleans County District Attorney Joseph Cardone submitted a letter and certification of records to plaintiff stating that he had checked with Orleans

County Records Department and the requested records had been destroyed “some years past” and no longer existed.

9. No separate response has been submitted by the Orleans County Sheriff’s Department.

10. Attached as **Exhibit C** is a copy of defendant’s response to plaintiff’s request for production of documents dated July 20, 2021. In response to requests four and nine, defendant provided plaintiff with copies of redacted copies of records they obtained from Orleans County in response to a FOIL request. A copy of the provided documents is attached as **Exhibit D**. They include a partial transcript of court proceedings, a pre-sentencing report, and various documents generated or received by the Orleans County Sheriff’s Department. There is also a document indicating that at least some of this documentation was provided in response by the Orleans County Sheriff’s Department in response to a FOIL request received June 11, 2021 (Ex. D, BATES No. 000385).

11. In an effort to determine if Mr. Cardone was responding on behalf of both the District Attorney’s Office and the Sheriff’s Office as he had when plaintiff moved for issuance of the subpoenas and to determine the cause of the discrepancy in the responses to the subpoenas and defendant’s recent FOIL requests, plaintiff has emailed Mr. Cardone on January 19, 2023 and left multiple messages at his office. A copy of the email is attached as **Exhibit E**. To date, there has been no response.

12. The records requested involved child sexual abuse by Terry Houseman, an employee at defendant’s school. Plaintiff is alleging child sexual abuse by Houseman, and the records regarding his investigation and prosecution are clearly relevant to this action. Failure to comply with this Court’s subpoena and submit the unredacted records to this Court for a

determination regarding whether redaction is appropriate before they are reviewed by plaintiff has impaired and impeded plaintiff's right to fully investigate the issues surrounding child sexual abuse by Houseman in pursuit of his claim against defendant. There is no other source for the unredacted documents.

13. As a result, plaintiff requests that the Hon. Joseph V. Cardone, the Orleans County District Attorney's Office, Sheriff Christopher Bourke, and the Orleans County Sheriff's Department be held in contempt of Court for failure to reply to the subpoenas issued by this Court.

MOTION FOR JUDICIAL SUBPOENAS

14. Plaintiff respectfully requests that the Court issue judicial subpoenas for the complete files of the Orleans County Probation Department and the Orleans County Clerk's Office regarding Terry Houseman. A copy of the proposed judicial subpoenas is attached as **Exhibit F**.

15. During the course of discovery, defendants provided plaintiff with some documentation related to the criminal prosecution pursuant to requests made under the Freedom of Information Act. These documents were heavily redacted regarding the identity of others allegedly abused by Houseman and potential witnesses who may have relevant information regarding defendants and evidence regarding Houseman's propensity to sexually abuse minors.

16. As a result, plaintiff is requesting the issuance of judicial subpoenas for the release of the complete and unredacted file, including unredacted copies of all reports, statements taken, recordings, and all notes, testimony and accounts of the investigating officers in the possession of the Orleans County Probation Department along with all records related to the criminal investigation, prosecution and sentencing of Houseman filed and/or stored with the Erie County Clerk's Office.

17. The discovery requested is material and relevant to this litigation, and directly relates to plaintiff's claims against defendants ([NYSCEF Doc. No. 2](#)).

18. For the forgoing reasons, plaintiff respectfully requests that the Court sign the attached judicial subpoenas for the complete files of the Orleans County Probation Department and the Orleans County Clerk's Office regarding the investigation and prosecution of Terry Houseman in approximately 1990 to 1991, as the documents are not able to be obtained through any other means. See [CPLR §2307](#).

CONCLUSION

19. Based on the foregoing, plaintiff respectfully requests that the Court grant plaintiff's motion in its entirety and issue judicial subpoenas for the complete files of the Orleans County Probation Department and the Orleans County Clerk's Office regarding the investigation and prosecution of Terry Houseman in approximately 1990 to 1991, along with such other and further relief as this Court deems just and proper.

Dated: May 25, 2023

/s/ Leah Costanzo, Esq.
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