

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 08-CA-24573

ZENAIDA GONZALEZ,

Plaintiff,

vs.

CASEY ANTHONY,

Defendant.

PLAINTIFF'S NEW MOTION TO COMPEL
DOMINIC CASEY'S APPEARANCE AT DEPOSITION
AND MOTION FOR SANCTIONS

Plaintiff, ZENAIDA GONZALEZ, by and through the undersigned counsel, files this her New Motion to Compel Dominic Casey's Appearance at Deposition and Motion for Sanctions and would state as follows:

1. A hearing was held before the Court on September 9, 2009 concerning Plaintiff's Motion to Compel arising out of Dominic Casey's refusal to appear. At the hearing Dominic Casey was represented by counsel, Diana Tennis, and asserted both through Ms. Tennis and sworn testimony that all matters sought by Plaintiff were privileged. It appears that this Court has been misinformed as to the existence of privilege.

2. Dominic Casey was interviewed by law enforcement on January 7, 2009. This meeting took place at the law office of Bradley A. Conway with Mr. Conway in attendance. The 80 page transcript of this interview is attached hereto as Exhibit "A". It is abundantly clear that Mr. Casey attended this interview voluntarily and with one of the lawyers engaged in the joint

defense present, according to Ms. Tennis. Additionally on February 18, 2009 Judge Stan Strickland reviewed the transcript of the interview with Dominic Casey in-camera, and concluded “the statement contains no matter which this Court views as privileged.” See Order regarding State’s Request for In-Camera Inspection of Statements by Dominic Casey, attached hereto as Exhibit “B”. Thereafter, the extensive interview was released to the public.

3. Particularly troubling are Mr. Casey’s counsel’s representations to the Court both in writing and at the hearing asserting matters contrary to prior rulings by Judge Strickland as well as the waiver of any potential privilege. Specifically, in her motion Ms. Tennis stated the following on behalf of her client:

“Undersigned counsel has informed counsel for the Plaintiff that Mr. Casey has no information whatsoever about any of these issues that is not firmly covered by work product privilege as is discussed in this pleading.”

Attached hereto as Exhibit “C” is Dominic Casey’s Motion to Strike Plaintiff’s Motion for Contempt, Motion for Protective Order, Motion for Attorney’s Fees.

4. Compounding these assertions, which are inaccurate, Dominic Casey testified at the hearing as follows:

“Q: Have you considered yourself at all times an investigator for that joint defense team?

A: Yes.

Q: Has anybody, Joe Baez, any of the Anthonys, Cindy, George, Casey or Mr. Conway ever indicated to you that they wanted to waive your privilege in any way?

A: No.

Q: Have they ever authorized you to speak out about the case, give information, interviews, those kind of things?

A: No.”

Hearing Transcript of September 9, 2009 – Page 40, Lines 17 – 25 and Page 41, Lines 1 – 4

5. Remember, Dominic Casey and his attorney, Diana Tennis went out of their way to make the point there was a joint defense which included Bradley A. Conway. They even cited to law saying one of the joint defense members would have to waive it. [See pg. 21, L1-17; pg. 24, L5; pg. 25, L4; pg. 36, L9-16; pg. 40, L14 – pg. 41, L4; pg. 49, L-17 - pg. 50, L5; plus see the above quote.]

6. These false representations as to never having been authorized to speak about matters were made to the Court in an effort to avoid being deposed. It is now clear that Dominic Casey had extensive conversations about the very matters in question with Bradley A. Conway present.

7. To make matters worse, Dominic Casey and his counsel convinced the Court that he was working for Jose Baez and Casey Anthony at all times (in addition to George and Cindy Anthony). To the contrary, the interview included discussions of a December 9th email from Dominic Casey, which was read to him by Deputy Allen:

“JA: I have an e-mail, uh, it, it I . . . uh, it appears to be from you. Okay, it’s dated December the 9th. And it says uh, it says here, we’ll I’ll let you read it okay? It, it says that you, you’re working for George and Cindy.

DC: That is correct.

JA: Okay. It also says that uh...

DC: That’s correct.

JA: (Sighs.) Okay, uh, for the sole purpose of finding Caylee Marie. John, D & A Investigations do uh, do work (inaudible) disclosed of, of, and, and, and uh, and are not connected uh, nor does D & A Investigations find any uh, kind of services uh, to the defense team.

DC: That is correct.

JA: Okay, so it, it's somewhat confusing. You say that you're working for George and Cindy, but you're also working for Casey. And Casey's charged and....

DC: Let me clarify that John.

JA: Okay, that would be good.

DC: Alright. I have not spoken to, I have not seen Casey since that would be Sunday, October the 12th.

JA: Did you send me this e-mail?

DC: Yes, I did.

JA: Okay. So nobody else got into your e-mail account and sent this? You sent this e-mail as it, as it reads here, correct?

DC: I sent that e-mail?

JA: I am asking you, did you...

DC: Read it and make sure.

JA: Read that e-mail and tell me if you sent that e-mail.

DC: I did send you this e-mail.

JA: Alright, thank you. Alright.

DC: As of effective October the 12th is the last conversation, or whatever, that I've ever had with Casey Anthony. I've not provided any services from that day forward.

JA: Okay.

DC: And exclusively from that date of only being providing services to George and Cindy Anthony.

JA: Alright."
[pg. 37, L3 – pg. 38, L12 of the interview]

Also in the interview, he stated that he terminated his contractual relationship with Jose Baez October 1, 2008. [pg. 23, L7 – 16; pg. 35, L10 – 21]

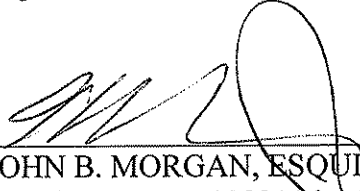
Based on these representations made by Dominic Casey, with counsel present, the investigators were free to ask questions about conversations Dominic Casey had with George and Cindy Anthony. There was no privilege asserted for those parties. The investigators steered clear of conversations with Casey Anthony. (See pg. 34, L10 – 14). Then, Judge Strickland reviewed the interview in-camera and ruled there was nothing in it which was privilege. Under the circumstances, for Dominic Casey to refuse to appear for deposition claiming everything he could testify about was privileged is dishonest. The offense was made worse when he appeared before the Court and represented that there had been no waiver. There is an obligation for candor to the tribunal which was violated.

8. Counsel for the Plaintiff called opposing counsel immediately upon learning of this 80 page statement, asking that Dominic Casey be produced for deposition without the need for further Court intervention. Any remaining legitimate privilege could be asserted, if the need arose, in the deposition. Diana Tennis will not agree to produce Dominic Casey for deposition, forcing Plaintiff to file her new Motion to Compel. Under the circumstance, counsel seeks attorney's fees and costs and any other sanctions the Court deems appropriate.

WHEREFORE, Plaintiff moves for an Order compelling the attendance of Dominic Casey at deposition and granting such other relief deemed appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail this 11th day of September, 2009 to Jonathan Kasen, Esq., 633 S.E. 3rd Avenue, Suite #203, Ft. Lauderdale, FL 33301 and to Diana Tennis, Esq., 636 W. Yale Street, Orlando, FL 32804.



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