

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-12-424

JOHN DOE # 1, et al.,)
)
 Appellant,)
)
v.)
)
KATHRYN L. SLATTERY, et al.,)
)
 Appellee.)

**MOTION BY MAINETODAY
MEDIA, INC. FOR EXPEDITED
RECONSIDERATION**

NOW COMES the MaineToday Media, Inc., publisher of the *Portland Press Herald* and the *Maine Sunday Telegram* (the “*Press Herald*”), and moves for expedited reconsideration of the Court’s order in connection with Plaintiffs’ motion for a temporary restraining order.

ARGUMENT

In its Order dated October 15, 2012, this Court denied the motion for a temporary restraining order filed by Plaintiffs John Doe #1 and John Doe #2 with respect to disclosure by the Town of Kennebunk of the names of persons who have been summonsed for the offense of engaging a prostitute. The Court granted the motion, however, “with respect to the disclosure of the address of any person who has been summonsed and who is also an alleged victim of a charge of invasion of privacy brought against Alexis Wright.” (Order at 4). The *Press Herald* respectfully submits that there is no legal basis for the Court’s ruling that the addresses of persons who have been summonsed for the offense of engaging a prostitute are confidential, and requests that the Court reconsider that ruling.

Although the addresses of persons who have been charged with a crime are public information (*see* 16 M.R.S. ¶612(3)(A)), the Court noted that “certain of the persons summonsed for engaging a prostitute are also potential victims of the criminal offense of invasion of

privacy,” as “[m]any of the sexual encounters in question were allegedly filmed” without their consent. (Order at 3). The Court reasoned that “[if] the persons charged with engaging a prostitute are also persons who are alleged victims of the criminal charges of invasion of privacy, then their addresses should be confidential under 17-A M.R.S. §1176(1).” *Id.*

The Court is correct that 17-A M.R.S. §1176(1) provides that “[r]ecords that pertain to a [crime] victim’s current address or location or that contain information from which a victim’s current address or location could be determined must be kept confidential” But the records at issue in this proceeding are not “records that pertain to a [crime] *victim’s* current address or location” – they are records of the addresses of alleged *perpetrators* of crimes. Those are the records the Town intends to release and the *Press Herald* seeks to access, and under Maine law they are not confidential. *See* 16 M.R.S. ¶612(3)(A).

The fact that an individual may appear in records held by the Town of Kennebunk in two different capacities—once as an alleged perpetrator of a crime, a second time as an alleged victim of a crime—does not make his address confidential for all purposes. By the Court’s logic, the Town would be prohibited from disclosing the addresses of such an individual in *any* context: which would mean the Town would have to remove them from public real estate records, electoral records, and any other records it maintains. That cannot be the intent of §1176(1). The better reading of §1176(1) is that the address of an alleged crime victim is confidential to the extent information is sought or disseminated about that individual *as an alleged crime victim*; it does not mean the address of such an individual becomes confidential for all purposes and must be stricken from all other public records the Town holds. Unless ¶1176(1) is read to require that the address of any individual who is an alleged victim of a crime be removed from all public records, nothing prevents the Town from releasing the names of

individuals who have been summonsed for the offense of engaging a prostitute, even if some of those individuals happen also to be alleged victims of criminal invasion of privacy.

It is also significant that the harm §1176(1) is designed to prevent—invasion of the privacy of alleged crime victims—is exacerbated, not mitigated, by the Court’s Order. The Court has authorized the Town to release the names of all individuals who have been charged with engaging a prostitute, but has ordered it to withhold the addresses of individuals who are also alleged victims of criminal invasion of privacy. By a process of logical deduction, the public may infer that individuals whose names are released without addresses are also alleged victims of invasion of privacy—which means (according to the Order) that they were filmed during sexual encounters with Alexis Wright. In other words, the result of the Court’s Order will be to publicly identify those individuals who are alleged to have been filmed while having sex with a prostitute. Although this outcome is technically consistent with §1176(1), it would seem to be at odds with the general goal of protecting the privacy of crime victims.

It bears noting that if certain of the individuals who have been charged with engaging Alexis Wright’s services as a prostitute had their privacy invaded by her in the course of those encounters, the invasion of privacy problem these individuals now have is one of their own making. Accused criminals have rights, to be sure, but the privacy of a criminal in the course of committing his crime is presumably not the essence of what §1176(1) is designed to protect. Having put themselves in a position to have their privacy invaded by committing a criminal act, the individuals in question are not in a great position to argue that their status as alleged crime victims should trump their status as alleged criminals.

The Court should also consider the potential harm its Order may cause to individuals who have no connection whatsoever to Alexis Wright, but who happen to have the same name as an

individual who has been summonsed for engaging her services. This case has been a major story in Maine and even some national media. If names are released without addresses, anyone who lives in or near Southern Maine and happens to have the same name as an individual who has been charged with engaging the services of Alexis Wright will suffer substantial damage to their reputation that would not occur if the addresses were released. It is unclear how such a person could undo this reputational damage if the address of the person whose name they happen to share cannot be made public.¹

A final point to be made is that the Court's order with respect to addresses will not end up achieving much of anything for the alleged crime victims. Since these individuals have also been charged with crimes, it is inevitable that their addresses will be made public in the course of the judicial proceedings in connection with those charges, unless §1176(1) is given so sweeping a reading as to supersede the bedrock principle that judicial proceedings are open to the public. If §1176(1) were to be read that way, it would be open to challenge under the First Amendment and separation of powers principles, as criminal proceedings are subject to constitutional and common law rights of public access. As such, any interest Plaintiffs may have in not having their addresses released at this time is a limited one at best.

¹ An additional ground for reconsideration is that, contrary to the suggestion Plaintiffs offer in their Complaint that their initial motion for a temporary restraining order filed in Biddeford District Court was denied "because a civil complaint was not filed with said motion" (¶12), in fact that motion was denied because the District Court Judge Andre G. Janelle rejected their arguments on the merits. See Exhibit A, attached copy of Order in *John Doe #1 v. Slattery*, Docket No. CV-12-267 (York Ct. Dist. Ct., Oct. 11, 2012). The status of that case on the docket is not immediately known to the *Press Herald*, but principles of comity, if not res judicata, suggest that Plaintiffs' effort to have a second bite at the apple should be at least weighed in the balance, particularly given that Plaintiffs are seeking equitable relief. The *Press Herald* does not know, of course, what information may have been provided to the Court during the telephone conference with the parties. The *Press Herald* requests that further proceedings on this matter take place in open court, unless such proceedings would delay resolution of this motion.

At a minimum, if the Court declines to reconsider its Order enjoining the release of addresses, it should direct the Town to release identifying information other than addresses for individuals charged with engaging a prostitute, such as their date of birth, age, or the town in which the individual resides. Release of this information is not barred by §1176(1), and would provide at least a partial solution to the problems the Court's Order creates.


CONCLUSION

WHEREFORE, MaineToday Media, Inc. respectfully requests that the Court (A) grant its motion for expedited reconsideration; and (B) enter such other and further relief as may be proper.

DATED at Portland, Maine this 16th day of October, 2012.

Respectfully submitted,
MaineToday Media, Inc.

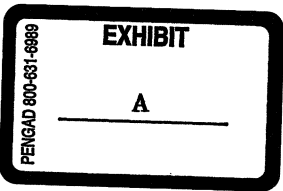
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NOTICE

Any opposition to this motion must be filed no later than twenty-one (21) days after the filing of this motion unless another time is provided by the Maine Rule of Civil Procedure or set by the court. Failure to file timely opposition will be deemed a waiver of all objections to this motion, which may be granted without further notice.



STATE OF MAINE
YORK, ss.

DISTRICT COURT
Location: BIDDEFORD
Docket No: CV-12- 267

JOHN DOE # 1 & JOHN DOE #2,)
)
 Plaintiff)
)
 v.)
)
 KATHRYN SLATTERY, et al.,)
)
 Defendant)

ORDER DENYING
PRELIMINARY INJUNCTION

Plaintiffs filed a motion for a temporary restraining order at the close of the business day today. Plaintiffs anticipate that a number of individuals will be charged tomorrow as “johns” in a prostitution case that has received widespread coverage in the media. John Doe #1 and John Doe #2 are two individuals who expect to be charged as “johns” tomorrow and summoned to appear in district court for initial appearance. Both John Doe #1 and John Doe #2 object to the anticipated issuance and dissemination by police and prosecutors of the “list of johns.”

John Doe # 1 and John Doe #2 have not filed a civil complaint with the Court in connection with their request for injunctive relief. They have simply filed a motion. John Doe #1 alleges in an affidavit attached to the motion that his personal and familial reputation will be irreparably harmed if his identity is included on a list of “johns” to be charged and summoned to court. John Doe #2 has not submitted a signed affidavit in connection with his application for injunctive relief.

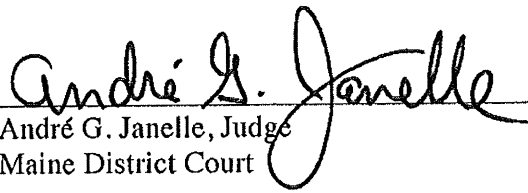
A preliminary injunction is an extraordinary remedy that will not be granted unless the movant clearly carries his burden of persuasion with respect to all of the

requirements. The primary purpose of a temporary restraining order is to preserve the status quo pending resolution of the underlying claims in a case. Ordinarily a Court will conduct a hearing on a request for a temporary restraining order but here the essential facts are not in dispute and there is no need for a hearing.

The Court finds that Plaintiffs have failed to sustain their burden of persuasion. The identity of adult individuals charged with criminal offenses and summoned to appear in Court is public information. Plaintiffs seek to enjoin the anticipated issuance and dissemination of lists of adult defendants who will be appearing in court for criminal arraignment on misdemeanor charges. While it is the role of the judiciary to protect the rights of each individual appearing in court and to take measures to insure that a criminal defendant obtains a fair trial, the judiciary's role in protecting a defendant's rights does not extend to shielding the identity of an adult criminal defendant who has been charged by criminal complaint and summoned to appear in court. The identity of adult criminal defendants charged by criminal complaint and summoned to appear in court for initial appearance is public information. A police department and a prosecutor's office has the right to publish and disseminate the names of individuals who it has charged and summoned to appear in Court for an initial appearance. Accordingly, the Court denies Plaintiffs' request for a temporary restraining order.

The Clerk is directed to make the following entry in the civil docket pursuant to M.R.Civ.P. 79(a): "This Order is incorporated into the docket by reference at the specific direction of the Court."

October 11, 2012


André G. Janelle, Judge
Maine District Court

ENTERED ON DOCKET on: 10-12-12
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