

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

LAURA LYNN HAMMETT,

Plaintiff,

-v-

PORTFOLIO RECOVERY ASSOCIATES,
LLC.

Defendants.

Civil Action No.: 4:21-cv-00189-LPR

**DEFENDANT PORTFOLIO RECOVERY ASSOCIATES, LLC'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S MOTION TO REVIVE THE SUBPOENA TO
COURT REPORTER JANA PERRY**

Defendant, Portfolio Recovery Associates, LLC (“PRA” or “Defendant”), by counsel, submits this response in opposition to Plaintiff’s Motion to Revive the Subpoena to Court Reporter Jana Perry due to PRA Reviving the Relevancy (hereinafter “Motion”). (Dkt. No. 277.) PRA states as follows as opposition to the Motion.

1. Plaintiff requests that she be permitted to “revive” a subpoena to a court reporter in a separate case for an audio recording of a hearing which occurred in that unrelated, separate case¹ to, in her mind, “give credibility to [her] claim that dialogue was left out of the December 1, 2021 transcript in this case also.” (Dkt. No. 277 at 4.) This request should be denied for the following three reasons.

¹ Ms. Hammett has unsuccessfully attempted to secure this recording previously, *see generally* Dkt No. 134, and is attempting to circumvent that result through the belated use of this Court’s subpoena power.

2. ***First***, the Court has already ruled on Plaintiff's Motion to Settle Record. (Dkt. No. 279.) The Court listened to the audio recording of the December 1, 2021 hearing and found "that there was nothing missing from the transcript." (*Id.* at. 2.) Put plainly, and as stated by the Court, "Ms. Hammett's assertion – that something was said but not recorded on or around Pages 6, 7, or 8 of the transcript – is wrong." (*Id.*) Given she is definitively factually incorrect, any theoretical relevance the subpoena would have to enhancing Ms. Hammett's credibility of her memory on this issue is extinguished. The Motion should, therefore, be denied.

3. ***Second***, Plaintiff's appeal divests this Court of jurisdiction and any obligation to continue entertaining (at cost of the Court's and parties' resources) Ms. Hammett's post-appeal motions practice. *See Gundacker v. Unisys Corp.*, 151 F.3d 842, 848 (8th Cir. 1998) ("Generally, a notice of appeal divests the district court of jurisdiction."). Ms. Hammett appealed the "final judgment entered on June 15, 2023 and all other orders in this case including but not limited to post judgment orders." (Dkt. No. 249 at 1) (emphasis added). "[A]ll other orders" includes the ruling on the motion to quash, involving the subpoena at issue. (Dkt. No. 232.) "A notice of appeal divests the district court of 'those aspects of the case involved in the appeal.'" *Harmon v. U.S. Through Farmers Home Admin.*, 101 F.3d 574, 587 (8th Cir, 1996) (quoting *Liddell v. Bd. of Educ.*, 73 F.3d 819, 822 (8th Cir. 1996)). "So complete is the transfer of jurisdiction that any orders of the district court touching upon the substance of the matter on appeal are considered null and void if entered subsequently to the filing of the notice of appeal." *Knutson v. AG Processing, Inc.*, 302 F. Supp. 2d 1023, 1030 (N.D. Iowa 2004) (quoting 16A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3949.1 (3d ed. 1999)). As Plaintiff has already appealed this Court's decision on the motion to quash, the Eighth Circuit

Court of Appeals now has exclusive jurisdiction,² and this Court is not obligated to entertain this Motion, or any further motion filed by Ms. Hammett on appealed issues.

4. ***Third***, discovery closed in this matter more than a year and a half ago. *See* Dkt. No. 125 ¶ 2 (“Discovery should be completed no later than **March 2, 2022**.”) (emphasis in original). Plaintiff provides this Court with no rationale for why it should extend this deadline to permit the requested discovery in a case where a final order has been entered, that final order (and all other orders) has been appealed, and the subpoena requests material entirely unrelated to the case at bar regardless. No such rationale exists, further necessitating denial of the instant motion.

CONCLUSION

For the foregoing reasons, PRA respectfully requests that: (1) Plaintiff’s Motion be denied; and (2) for such other and further relief as this Court deems appropriate and just.

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² “For efficacious reasons a ‘federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously.’” *Twin Cities Galleries, LLC v. Media Arts Group, Inc.*, 431 F. Supp. 2d 980, 982 (D. Minn. 2006) (quoting *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004)).

By:/s/ David S. Mitchell, Jr.

David S. Mitchell, Jr.
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*Attorney for Defendant Portfolio Recovery
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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2023, a true and exact copy of the foregoing was filed with the Court's CM/ECF system and sent via email and first class mail, postage prepaid, a copy of the same to the following individual:

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/s/ David S. Mitchell, Jr.