

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

PLAINTIFF B, PLAINTIFF J, PLAINTIFF S,)
and PLAINTIFF V, on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs,)
)
v.) Case No. 5:08cv79-RS-AK
)
JOSEPH FRANCIS; MRA HOLDINGS, LLC,)
a California limited liability company,)
MANTRA FILMS, INC., an Oklahoma)
corporation, d/b/a “Girls Gone Wild;” and)
AERO FALCONS, LLC, a Delaware limited)
liability company,)
)
Defendants.)

**FLORIDA FREEDOM NEWSPAPERS INC.’S MOTION TO INTERVENE
AND FOR ENLARGEMENT OF TIME TO FILE RESPONSE TO MOTION
TO PRESERVE ANONYMITY AT TRIAL AND FOR SPECIAL ORDER,
AND INCORPORATED MEMORANDUM OF LAW**

Florida Freedom Newspapers Inc. (“Freedom”), which owns and operates *The News Herald*, in Panama City, Florida, by and through counsel, respectfully moves the Court to intervene in this action pursuant to Rules 24(a) and (b) of the Federal Rules of Civil Procedure, and for an enlargement of time to file a substantive response to Plaintiff’s motion to Preserve Anonymity at Trial and for Special Order under Local Rule 77.3 (“Closure Motion”).

The motion to intervene itself is not opposed by either Plaintiffs or Defendants. The grounds for Freedom’s motion are more fully set forth in the following memorandum of law.

MEMORANDUM OF LAW

Pursuant to Rule 24 of the Federal Rules of Civil Procedure and Local Rule 7.1, Freedom submits this Memorandum in support of its Motion to Intervene and for Enlargement of Time.

A. Introduction

On November 16, 2009, Plaintiffs filed the Closure Motion. The motion seeks, among other things, to (1) prohibit the media or any member of the public from attending the trial testimony of the Plaintiffs, (2) compel the media to refer to Plaintiffs only by their anonymous designations, and (3) ban all recording devices from the courtroom during trial.

Plaintiffs' purported justification for the order is to protect the Plaintiffs' from having information about their sexual histories and health disclosed to the public and to prevent the "re-publication" of plaintiffs as women who appeared in the "Girls Gone Wild" videos. (Closure Motion at ¶¶11-13.) Plaintiffs' contend that republication of their identities would cause "further harm" to their education and employment as well as their personal, family, and social relationships. (*Id.* at ¶¶12-13.)

Given that a trial courtroom is "a public place where the people generally—and representatives of the media—have a right to be present,"¹ Freedom seeks to intervene in this action for the purpose of opposing efforts to restrict access to trial proceedings and documents and to oppose any other restrictions on Freedom's right to speak about the proceeding.

B. Argument

The Eleventh Circuit has routinely recognized that the press has standing to intervene in a case to preserve its access to court proceedings or documents. *See, e.g., In re Alexander Grant & Co. Litigation*, 820 F.2d 352, 354 (11th Cir. 1987) ("appellants have standing to intervene in this

¹ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 558 (1980).

action and challenge the propriety of the district court's protective order"); *Tribune Co. v. United States*, 784 F.2d 1518, 1521 (11th Cir. 1986) ("The press has standing to intervene in actions to which it is otherwise not a party in order to petition for access to court proceedings and records."); *Newman v. Graddick*, 696 F.2d 796, 800 (11th Cir. 1983) ("This Court has upheld the press's standing to seek access in suits to which it is not a party."); *Van Etten v. Bridgestone/Firestone, Inc.*, 117 F. Supp. 2d 1375, 1379 (2000) (holding that there is "no question" that press is entitled to intervene in actions to petition for access to court proceedings and records), *reversed on other grounds, Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001); *cf. Brown v. Advantage Engineering*, 960 F.2d 1013 (11th Cir. 1992) (treating a motion to intervene as a motion to unseal a court file and granting such motion); *Associated Press v. Ladd*, 162 F.2d 503, 507 (7th Cir. 1998) (holding that the "most appropriate procedural mechanism" for allowing non-parties to petition for access to court proceedings and documents is to "permit those who oppose the suppression of the material to intervene for that limited purpose.").

Although the right of the press to intervene to assure access to judicial proceedings is well-established, Freedom further notes that such a right easily satisfies the requirements of Rule 24(a): (1) that the application to intervene is timely; (2) that the application has an interest relating to the property or transaction which is the subject of the action; (3) that the applicant is so situated that the disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) the applicant's interest will not be represented adequately by the existing parties to the suit. Fed. R. Civ. P. 24(a).

First, the nature of intervention right sought here—to oppose efforts to restrict access to court proceedings and documents or to restrict the press' right to speak—is more than timely as it

is filed within the ordinary time allotted for filing a response to the Closure Motion.² Second, because the Eleventh Circuit has held that the press has standing to seek access to trial proceedings or documents, Freedom has a ““direct, substantial, legally protectible””³ interest in the Closure Motion. Third, disposition of the Closure Motion in favor of plaintiffs would foreclose Freedom’s ability to protect its interest to access to the trial proceedings. Finally, Freedom’s interest in assuring access to the trial proceedings and disclosing Plaintiffs’ identities will not be adequately represented by the existing parties to the suit. As a member of the news media, Freedom has a separate interest in accessing the trial proceedings to report news and information regarding a judicial proceeding that has generated significant public interest.

Permissive intervention also is warranted under Rule 24(b) because Freedom’s interest in asserting a right of access raises “common question of law or fact” with the issues presented by the Closure Motion, and intervention will not “unduly prejudice or delay the adjudication of the rights of the original parties.” *See Georgia v. U.S. Army Corps of Engineers*, 302 F.3d 1242, 1250 (11th Cir. 2002). Indeed, allowing intervention will assure that Freedom has an adequate

² Freedom’s motion also is timely under the factors cited by the Eleventh Circuit to judge timeliness: (1) the length of time during which the proposed intervenor knew or reasonably should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor’s failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely. *Van Etten v. Bridgestone/Firestone, Inc.*, 117 F. Supp. 2d 1375, 1379 (2000), *reversed on other grounds, Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304 (11th Cir. 2001). Freedom has prepared and filed its motion just eight days after Plaintiffs filed the Closure Motion, and such short amount of time does not prejudice any existing parties (but denial of the motion to intervene would severely prejudice Freedom).

³ *United States v. S. Fla. Water Mgmt. Dist.*, 922 F.2d 704, 707 (11th Cir. 1991) (citations omitted).

opportunity to argue for a right of access to trial proceedings and to oppose efforts to restrict its speech.

C. Motion for Enlargement of Time

Freedom learned of the Closure Motion on our about November 17, 2009. Its immediate objective is to notify the Court, through this intervention motion, of its interest in opposing the substance of Plaintiff's Closure Motion or any similar motion that seeks to limit access to court proceedings or documents or to restrict Freedom's right to speak. In order to avoid the additional delay in filing this motion that would have ensued if Freedom was required to research, prepare, and file a substantive opposition to the Closure Motion as part of this Motion to Intervene, Freedom respectfully requests that the Court extend the time by which Freedom may file a substantive opposition to the Closure Motion to 7 days after the entry of any order granting Freedom's motion to intervene.

CONCLUSION

For the reasons explained above, Freedom respectfully requests that this Court enter an Order: (1) granting Freedom's Motion to Intervene under Rule 24(a) of the Federal Rules of Civil Procedure, or in the alternative; (2) granting Freedom's Motion to Intervene under Rule 24(b); and (3) affording Freedom 7 days from the entry of an order granting this motion to file a substantive opposition to the Closure Motion.

Respectfully submitted,

/s/ John A. Bussian

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LOCAL RULE 7.1(B) CERTIFICATION

I hereby certify that, pursuant to Local Rule 7.1(B), lead counsel for Freedom has conferred with counsel for Plaintiffs and Defendants, both of whom indicated that they would not oppose the motion to intervene. Counsel for Freedom is continuing to confer with counsel for Plaintiffs regarding the substance of the underlying Closure Motion.

/s/ Charles E. Coble _____
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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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