

JULY 23, 2018

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TO: *Stephen DeSesto, Esq.*

A transcript request in the matter of St. Joseph's Health Services vs. St. Joseph's Health Services of R.I., PC-2017-3856, heard before the Honorable Justice Brian Stern on May 24, 2018.

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SUPERIOR COURT
JUL 24 2018
ADMINISTRATOR

AMOUNT DUE \$24.00

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND)

VS.)

C.A. NO. PC-2017-3856)

ST. JOSEPH'S HEALTH SERVICES OF)
RHODE ISLAND RETIREMENT PLAN)

HEARD BEFORE

THE HONORABLE ASSOCIATE JUSTICE BRIAN P. STERN

ON MAY 24, 2018

APPEARANCES:

STEPHEN DEL SESTO, ESQUIRE.....THE RECEIVER
MAX WISTOW, ESQUIRE.....SPECIAL COUNSEL
STEPHEN MORRIS, ESQUIRE.....DEPT OF HEALTH

GINA GIANFRANCESCO GOMES
COURT REPORTER

C E R T I F I C A T I O N

I, Gina Gianfrancesco Gomes, hereby certify that the succeeding pages 1 through 6, inclusive, are a true and accurate transcript of my stenographic notes.


GINA GIANFRANCESCO GOMES
COURT REPORTER

1 of Health and with roughly the expiration of the return
2 date Mr. Morris contacted us and in writing requested 30
3 days additional for compliance and expressly said that,
4 "We anticipate being complete with our search within 30
5 days." That was April 13th. Having heard nothing from
6 him at the end of the 30 days, we contacted him and asked
7 him, "Where do we stand?" His response on the 16th of
8 May was he asked for an additional 30 days. We wrote
9 back to him and we said, "We can't agree to any further
10 continuance without some idea of what efforts you have
11 been making in these past roughly 45 days." For example,
12 and the exhibits show, we expressly asked when the
13 Department initiated retrieval of the documents from
14 storage, when you received these documents, how many
15 pages have not yet been retrieved, how many pages of
16 potentially responsive -- and so forth and so on. We
17 concluded by saying, "Whatever documents you already
18 have, at least send us those." And his only response
19 was, "We received ten boxes of documents from storage.
20 With limited staff and a lot of agency activity at this
21 time, we will require more time to respond to your
22 subpoena. What compelling reasons prevent you from
23 agreeing to an extension?" Of course our response was
24 with 2,700 pensioners, 2,700 reasons really, and also the
25 fact that he responded not at all to any of the questions

1 about where we are. So we advised him that we would be
2 filing a motion this morning. We will file the motion
3 and here we are this afternoon. I spoke to him a little
4 earlier. We never met before. He seems to be a fine
5 gentleman. I asked him, "Where are we? Can we get
6 anything?" And the answer is, "Really we haven't even
7 begun to go through any of the materials," and I leave it
8 in your Honor's hand.

9 THE COURT: Counsel, I guess as I take from your
10 e-mail, what are the compelling reasons that would
11 prevent this Court from holding the Department of Health
12 in contempt?

13 MR. MORRIS: Your Honor, my purpose in responding to
14 counsel in that fashion was that was there something that
15 would really be in the way of us having a little more
16 time. We have no reason not to go through all the
17 documents and provide them to counsel. We don't even
18 anticipate that there will be an objection once we go
19 through them given the fact that the Attorney General has
20 been asked for all of these documents and beyond. Having
21 been in contact with them, it appears that anything that
22 we have probably has already been given over. That is
23 not absolute. I understand that. That once we get
24 through all the documents we will be able to know whether
25 or not there is something beyond that. But we don't

1 anticipate any objection to any of the documents being
2 provided. It's simply a matter of having the time to
3 take staff and be able to go through. There is actually
4 eleven boxes. By the time we realized that we didn't
5 have all the information and retrieved the documents, the
6 ten boxes that we got from storage, we didn't really have
7 enough time to meet the deadline just based on staff. It
8 doesn't mean that it can't be done and I'm not asking the
9 Court not to hold the Department in contempt. That's not
10 what my purpose is. My purpose is to try to get to a
11 place where the subpoena is satisfied but at the same
12 time not promising something that there isn't anybody to
13 actually go through the documents other than taking
14 somebody off another task and putting them on that task.
15 That's really what it comes down to. It's not that we
16 don't want to do it.

17 THE COURT: Take me through for a minute. You
18 received the subpoena on March 28th. When were the boxes
19 ordered?

20 MR. MORRIS: I'm not exactly sure. I think it was
21 about two or three weeks later that they were requested
22 and then probably another couple of weeks before we got
23 them. That would put us to some time in April.

24 THE COURT: You don't really know because, you know,
25 the Court has dealt with the Iron Mountain Contract and I

1 will take judicial notice the next day delivery was three
2 hours. So it wasn't three weeks for Iron Mountain to
3 deliver the documents. Do you have any personal
4 knowledge of this?

5 MR. MORRIS: I don't.

6 THE COURT: I'm sure you know the procedure if you
7 receive a subpoena in terms of what you need to do.
8 There was no filing with this Court. There was no filing
9 with the request to compel here today. I don't know what
10 to tell you, if you've got to bring the director down
11 here, but this is going to happen. And whoever in the
12 Department of Health just lost their Memorial Day weekend
13 because this Court is requiring by next Thursday the
14 Court wants every document produced to the Receiver and
15 special counsel and if there is a privilege log, get the
16 privilege log to him as well. Next Thursday at 2:00 the
17 Court is going to conduct a hearing, and if all the
18 documents are done at that point, otherwise the Court
19 will have a contempt hearing. This Court has been
20 through, and I'm sure the Attorney General's office may
21 have passed on to you the strict production deadline the
22 Court put them on, put St. Joseph's Hospital on, put the
23 Catholic Diocese on, and for you to come to Court and
24 tell me that you have no personal knowledge of what went
25 on, that there are other things that are more pressing, I

1 can imagine if the board of medical licensing and
2 disciple if they sent out a subpoena and somebody just
3 ignored it as this is being ignored today. I understand
4 there are other priorities. You are under court order at
5 this point. It will be produced by 2:00 next Thursday
6 and I want you back in court. Every document that is
7 not produced, I want the Director of Department of Health
8 here with you and we will take it up at that point.
9 Counsel please submit the appropriate ordered. The Court
10 is in recess.

11 (A D J O U R N E D.)
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