UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

LMG Rhode Island Holdings, Inc.,
Plaintiff

v. R.I. Case No. 18-cv-297-SJM-AKJ

Rhode Island Superior Court,
Providence County; and
Hon. Netti C. Vogel, and
Eugene J. McCaffrey, III,
in their Official Capacities,
Defendants

O R D E R

LMG Rhode Island Holdings, Inc. is the publisher of The Providence Journal (the "Journal"), a daily newspaper distributed in and around Providence, Rhode Island. This dispute arises out of the Journal's efforts to determine the names and addresses of jurors who sat on a high-profile criminal murder trial - the "DePina case" - that was tried in the Rhode Island Superior Court, Providence County, in March of 2018. The Journal seeks a judicial declaration that the First Amendment to the United States Constitution, and Rhode Island common law, guarantee the public and the media access to certain court documents containing identifying information about citizens selected for jury service (the "petit jury pool list" and the so-called "juror cards"). It also seeks a declaration that, in

the future, absent unique and compelling circumstances, the trial judge who presided over the DePina case may not prohibit the public (including the media) from contacting jurors after they have been discharged.

Defendants move to dismiss the Journal's complaint, asserting that it fails to state any viable claims. For the reasons discussed, that motion is granted.

Background

The Journal concedes that much of the relief it seeks has been mooted. It has already been given access to the documents it seeks. The petit jury pool list is (and apparently always has been) available for public inspection during normal business hours of the Superior Court Jury Commissioner. By letter dated December 10, 2018, the Journal's counsel notified the court that the parties had agreed that public access would likewise be provided to the so-called "juror cards." See Letter of Counsel (document no. 26) at 1 ("Rhode Island Superior Court has agreed going forward to grant expedited press and public access to juror forms (i.e., juror cards) in all cases in which such records have been generated. Thus, public access to juror forms/cards is no longer at issue in the Journal's declaratory judgment action.").

What remains, then, is the Journal's request that the court enter a judicial declaration related to rulings made by the state court judge who presided over the DePina trial. Accepting the factual allegations set forth in the Journal's complaint as true - as the court must at this juncture - the relevant background is as follows. In 2013, Jorge DePina was charged with murdering his 10 year-old daughter. A jury of five men and seven women was selected and seated. Although the Journal describes the DePina case as "a high profile and controversial case," the trial judge did not seat an anonymous jury; jury selection was done in public and the jurors' names were read aloud in the courtroom. Following the presentation of evidence, the jury deliberated for approximately eight hours before returning a verdict finding DePina guilty of second degree murder.

After the verdict was read aloud and the jurors were discharged, the presiding judge issued the following oral "no contact" order from the bench:

> No one, no spectator, no one in the spectator section of the courtroom, is permitted to contact my jurors. If the jurors choose to contact anyone, that's upon them. This is for their protection. The jurors have completed their job, and when they leave here, and they will be escorted to the door or to the area where they catch their bus, unless they show great interest

> in speaking to the lawyers, and I mean these four lawyers, do not approach them.
>
> That is how it is. I want to protect their privacy. They have done their jobs, they've been here three weeks, and the attorneys on the case, if they want to speak to the jurors and the jurors showed interest in speaking to you, whole different story. But beyond that, if they don't show any interest, they have to be left alone. If you see them at Walmart, do not acknowledge that you know them. In other words, I don't allow people to contact jurors. They must be left alone to go on with their lives.

Complaint, Exhibit B (transcript of jury trial, April 6, 2018) (document no. 1-2). Shortly thereafter, the Journal sent a letter to the trial judge, asking that she vacate her order and permit the media to contact the jurors who deliberated in the DePina criminal trial. Complaint, Exhibit D (document no. 1-4). Upon reflection, the judge did just that. In an order dated May 7, 2018, she vacated her "no contact" order and stated that "Members of the media are not precluded from contacting the jurors." Motion to Dismiss, Exhibit D (document no. 6-5). Then, on May 16, 2018, the judge again spoke from the bench and pledged that, in future cases, she would not issue any orders restricting the public's access to jurors after they had completed their service (unless, presumably, she first makes the requisite factual findings to support empaneling an anonymous jury). See Complaint, Exhibit C (document no. 1-3).

Despite those assurances from the judge, the Journal seeks a federal judicial "declaration" (in the nature of an injunction) that, "post-verdict, in the absence of a compelling government interest demonstrated by specific, on-the-record factual findings, [the DePina trial judge] may not prohibit the media from contacting jurors or otherwise impede the jury interview process." Complaint (document no. 1) at 17. For several reasons, the court is disinclined to order such extraordinary declaratory relief.[1]

Discussion

It has long been understood that the Declaratory Judgment Act "confer[s] on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." Wilton v. Seven Falls Co., 515 U.S. 277, 286 (1995). The Journal has failed to persuade the court that the exercise of such discretion is warranted in this case.

[1] The DePina trial judge has been sued in her official capacity. Accordingly, citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989), defendants assert that the Journal's requested "declaration" would operate against the entire Rhode Island Superior Court. But, the Will court noted that a defendant sued for injunctive relief in her official capacity "would be a person under § 1983 because official capacity actions for prospective relief are not treated as actions against the State." Will, 491 U.S. at 71 n. 10. At this juncture, because the court declines to grant the Journal's request for "declaratory relief," it need not resolve the precise scope of such relief, had it been granted.

The judge who presided over the DePina case quickly realized that, absent factual findings supporting a decision to empanel an anonymous jury, her "no contact" order with respect to the jurors was likely untenable. Accordingly, she properly vacated that order. Additionally, she made it clear that she would not impose any such orders in the future. She is an experienced jurist (having served on the bench for more than 20 years) and is plainly aware of the nuanced First Amendment issues implicated in this case. While her well-intentioned "no contact" order swept too broadly, she acknowledged the issue, promptly corrected it, and is unlikely to repeat it. At this juncture, federal court intervention is not only unnecessary, but is likely inappropriate, given obvious federalism and comity principles.

In light of the circumstances presented, the Journal has failed to persuade the court that issuance of a "declaratory judgment" (in the nature of injunctive relief) against a sitting Rhode Island state court judge would constitute either a necessary or appropriate exercise of this court's discretion. Being aware of the federal Constitution's requirements with respect to public trials and public access to jurors' names, the state trial judge can be counted on to enforce them going forward.

Parenthetically, the court notes that the Rhode Island Superior Court has assured the Journal that, going forward, the public will have access to the juror cards. That assurance has apparently satisfied the Journal and, in its view, mooted its request for declaratory relief on that topic. The assurance of a sitting state court judge should be equally satisfactory, and it is fully adequate to obviate the need for this court to intervene in the matter now.

Conclusion

The Journal's request for declaratory relief is denied. There is no suggestion that the extraordinary relief sought is warranted, necessary, or appropriate. The state trial judge is plainly aware of the requirements imposed by the federal Constitution as they relate to public jury trials and public access to juror identities. There is simply no need for declaratory or other affirmative relief in this case. See generally Tvelia v. Dep't of Corr., No. CIV. 03-537-M, 2004 WL 298100, at *2 (D.N.H. Feb. 13, 2004) ("[I]t is now certain that defendants are fully informed as to . . . their obligations to [plaintiff] under the Constitution. Once informed of the law's requirements, state officials can be presumed to act in a lawful manner."); Rideout v. Gardner, 123 F. Supp. 3d 218, 236 (D.N.H. 2015) (denying injunctive relief against the New Hampshire

Secretary of State, concluding that "I have no reason to believe that the Secretary will fail to respect this Court's ruling"); See also In re Justices of Supreme Court of Puerto Rico, 695 F.2d 17, 23 (1st Cir. 1982) (noting that it is generally presumed that state judges will comply with federal court decisions "without further compulsion"); Gonzalez-Oyarzun v. Caribbean City Builders, Inc., 798 F.3d 26, 28 (1st Cir. 2015) ("[D]eclaratory judgments concerning the constitutionality of government conduct will almost always be inappropriate when the underlying grievance can be remedied for the time being without gratuitous exploration of constitutional terrain.") (citations and internal punctuation omitted).

For the foregoing reasons, defendants' motion to dismiss (document no. 6) is granted. The Clerk of Court shall enter judgment in accordance with this order and close the case.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

December 21, 2018

cc: Michael J. Grygiel, Esq.
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