

Fifth Circuit Court of Appeal State of Louisiana

No. 26-C-510

JANA PODRET WIFE OF/AND ROGER WILLIAMS,
INDIVIDUALLY AND BEHALF OF THEIR MINOR CHILD, C.W.

versus

KEHOE-FRANCE, INC., BRAD MIGLIORE AND MEGAN
MIGLIORE

IN RE EMILY POCHE

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT
COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE
STEPHEN D. ENRIGHT, JR., DIVISION "N", No. 857-470

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TRUE COPY

October 22, 2026



LINDA TRAN
DEPUTY CLERK

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED

Relator, Emily Poché, seeks review of the trial court's October 20, 2026 judgment that granted the motion to compel her deposition and for sanctions filed by Plaintiffs, Jana Podret wife of/and Roger Williams, individually and on behalf of their minor children. In their motion, Plaintiffs argued that Ms. Poché failed to appear at a video deposition scheduled for October 15, 2026 that had been coordinated by the parties' attorneys. Plaintiffs sought an order compelling Ms. Poché's deposition, along with reasonable fees and costs incurred as a result of the cancelled October 15th deposition setting. In opposition, Ms. Poché argued that she, as a non-party to the lawsuit, was never served with a subpoena for the deposition;

and as a result, the trial court had no authority to compel her attendance at a deposition or impose any sanctions for her non-appearance at the October 15th deposition setting. She cited *Shelley v. Zurich American Ins. Co.*, 24-443 (La. App. 5 Cir. 6/4/25), 418 So.3d 367, in support of her position.¹

A hearing on Plaintiffs' motion to compel was conducted on October 20, 2026. Following the hearing, the trial court ordered Ms. Poché to appear for deposition no later than noon on Thursday, October 22, 2026. In its written reasons for judgment, the trial court found the instant matter distinguishable from *Shelley* because there was an agreement between the counsels to have the deposition on a particular date, at a particular time, and at a specific location. The court further noted that Ms. Poché had previously filed pleadings in the proceeding, and she should not be allowed to invoke the court's jurisdiction at her convenience. For the following reasons, we reverse the trial court's ruling.²

In *Shelley, supra*, this Court considered the sufficiency of service concerning the deposition by written questions of a non-party witness and the granting of a motion to compel. There was no subpoena compelling the non-party witness to appear at the deposition. In concluding that the failure to properly serve the non-party witness with a subpoena obligating her to appear and submit to the deposition was fatal to the granting of the motion to compel, we considered the holding in *Sternberg v. Sternberg*, 91-101 (La. App. 5 Cir. 5/28/97), 695 So.2d 1068, by stating:

¹ Relator represents in her writ application, and the transcript of a prior hearing on October 14, 2026, indicates, that an off-the-record status conference was conducted by the trial court in advance of the October 14, 2026 hearing and that in the status conference, Plaintiffs' counsel informed the Relator and the court that the FBI had opened an investigation into matters connected with the case, specifically involving Relator. Plaintiffs' counsel indicated that Plaintiffs were cooperating with the FBI's investigation. Thereafter, in open court, Relator's counsel admitted that she had actual notice of the time and place appointed for the deposition. Further, her counsel represented that Relator had intended to voluntarily submit to the deposition even though she had not been subpoenaed but that in light of Plaintiffs' revelations relative to the alleged FBI investigation of Relator, she was no longer willing to voluntarily appear and instead would require Plaintiffs to comply with the subpoena requirement to compel her attendance at the deposition. When Relator, in fact, failed to appear for a deposition on October 15, 2026, Plaintiffs filed a motion to compel, contending that by cooperating in the selection of a date, time, and location for the deposition, and by moving for a protective order, Relator had waived the subpoena requirement. However, Plaintiffs still did not serve Relator with a deposition subpoena.

² While the concerns of the trial court judge are understandable, we cannot uphold the ruling.

In *Sternberg*, we pointed out that under La. C.C.P. art. 1437, the attendance of witnesses at depositions “may be compelled by the use of subpoena as for witnesses in trials.” We further opined that, La. C.C.P. art. 1355 mandates that a subpoena “be served and a return thereon made in the same manner and with the same effect as a service of and return on a citation,” provided however, that where the person to be deposed is a *party* “service of the subpoena may be made by personal service on the witness’ attorney of record.” Further article 1356(B) states that “[s]ubpoenas...compelling the appearance of a witness who is *not a party* shall be served within a reasonable period of time before the time specified for the deposition.” We found in the *Sternberg* case that, while article 1357 authorizes a court to hold a recalcitrant witness in contempt, it may only do so where the witness has been compelled by subpoena. We opined that there is “no provision in the law which would subject a non-party witness to contempt power of a court for failing to attend a deposition for which his attendance was not mandated by subpoena.”

(Internal citations omitted). (Emphasis in original).

After review, we find that the trial court erred in granting Plaintiffs’ motion to compel Ms. Poché’s deposition. The record before us does not contain evidence of a subpoena for Ms. Poché’s presence at any deposition setting, despite her counsel’s coordination of the October 15th setting. Pursuant to *Shelley* and *Sternberg*, because Ms. Poché, as a non-party witness, had not been properly subpoenaed for the deposition, the trial court had no authority to compel her presence or sanction her for the failure to appear at the October 15th setting.

Accordingly, we grant the writ application and reverse trial court’s order compelling Ms. Poché to participate in a deposition by noon on October 22, 2026 and sanctioning her.

Gretna, Louisiana, this 22nd day of October, 2026.

MEJ
FHW
JJM

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
STEPHEN J. WINDHORST
JOHN J. MOLAISSON, JR.
SCOTT U. SCHLEGEL
TIMOTHY S. MARCEL

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETN, LOUISIANA 70054
www.fifthcircuit.org

CURTIS B. PURSELL
CLERK OF COURT

SUSAN S. BUCHHOLZ
CHIEF DEPUTY CLERK

LINDA M. TRAN
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **10/22/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

26-C-510

E-NOTIFIED

24th Judicial District Court (Clerk)
Honorable Stephen D. Enright, Jr. (DISTRICT JUDGE)
Michael F. Nolan, Jr. (Respondent)
Jack E. Truitt (Respondent)
Kelly Gayle Juneau Rookard (Respondent)
Michelle M. Davis (Respondent)

Renee G. Culotta (Relator)
Lou Anne Milliman (Respondent)
Thomas M. Flanagan (Respondent)
Anders F. Holmgren (Respondent)
Richard C. Trahan (Respondent)

MAILED

Lervette J. Blair (Respondent)
Attorney at Law
1075 Peachtree Street
Suite 1500
Atlanta, GA 30309

Victoria E Terranova (Respondent)
Mary Claire O. Kramer (Respondent)
Attorney at Law
400 Poydras Street
Suite 2700
New Orleans, LA 70130

Jennifer Cortes-Johnson (Respondent)
Michael M. St. Romain (Respondent)
Kaylin K. Storey (Respondent)
Attorneys at Law
1321 Ochsner Boulevard
Suite 200
Covington, LA 70433

Abby Roberts Lukov (Relator)
Attorney at Law
3436 Magazine Street
New Orleans, LA 70115