IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

Christa Schultz, et al., *Plaintiffs*, v. Medina Valley Independent School District, *Defendant*.	Civil Action No. SA-11-CA-0422-FB Chief Judge Fred Biery Magistrate Judge Pamela A. Mathy

Motion to Enforce Settlement Agreement

Plaintiffs reluctantly ask the Court to enforce the settlement agreement and redress recent violations by Defendant, Medina Valley Independent School District. To ensure that School District officials promote respect for and compliance with its terms, the settlement agreement contains a non-disparagement provision: "School District Personnel will not disparage the Plaintiffs." [Dkt. # 136-1] ¶ E.3. Yet just hours after the Court approved the settlement agreement, Superintendent James Stansberry gave a televised interview and, among other things, described the Schultz family's lawsuit as a "witch hunt." Then, this past Friday, School District faculty member Keith Riley (one of the directors of the high-school marching band) called Plaintiff Corwyn Schultz a liar—on the Facebook page of a current Medina Valley High School student.

In an effort to avoid involving the Court so soon after the settlement's approval, Plaintiffs' counsel held multiple phone conversations, over nearly a week, with the School District's counsel and the mediator, in an attempt to persuade the School District

to apologize for these comments. But the School District refuses to apologize; offering only to issue a conclusory statement "clarifying" that Mr. Stansberry's plainly disparaging comments were not meant to be disparaging.

The disparagement of Plaintiffs so soon after the agreement was approved, and the School District's refusal to offer an actual apology, sends an unfortunate message to School District personnel that the Agreement is illegitimate and unworthy of respect and compliance. Such a message, moreover, is at odds with the Court's admonition that the parties should "be tolerant of the beliefs of others and abide by the standards they have set for themselves." Accordingly, Plaintiffs respectfully request that the Court grant this motion and enforce the settlement agreement.

Background

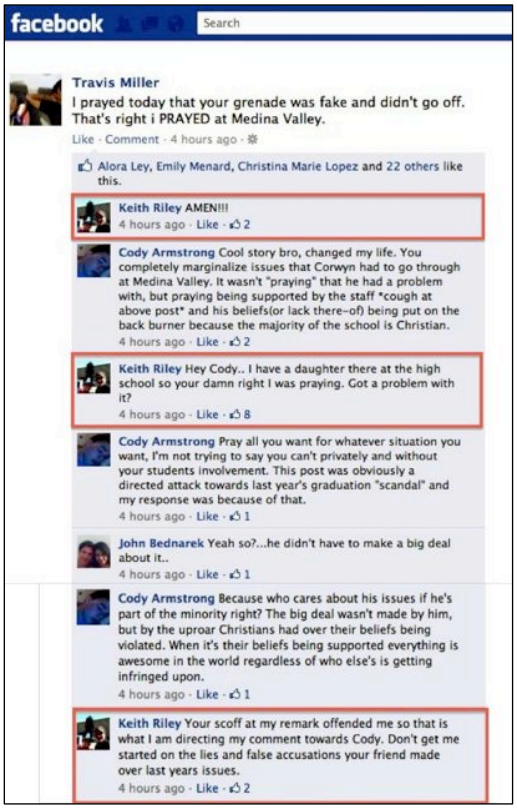
On February 9, the Court approved the parties' settlement agreement. Observing that the Court would retain jurisdiction to enforce it for the next ten years, the Court urged the parties to "be tolerant of the beliefs of others and abide by the standards they have set for themselves." Order on Settlement [Dkt. # 136] at 2.

Just a few hours after the Court approved the settlement and offered this observation, School District Superintendent James Stansberry gave a televised interview with a local news station and stated that the Schultz family's lawsuit was "a witch hunt—that's all this has been." Stephanie Serna, *Medina Valley ISD Settles Prayer Debate*, KSAT.com (Feb. 9, 2012 6:09:54 PM CST), http://www.ksat.com/news/Medina-Valley-ISD-settles-prayer-debate/-/478452/8623396/-/5pyfog/-. Mr. Stansberry also stated—entirely inaccurately—that the Schultz family had "wanted our teachers to stop wearing

crosses or personal apparel." *Id.*

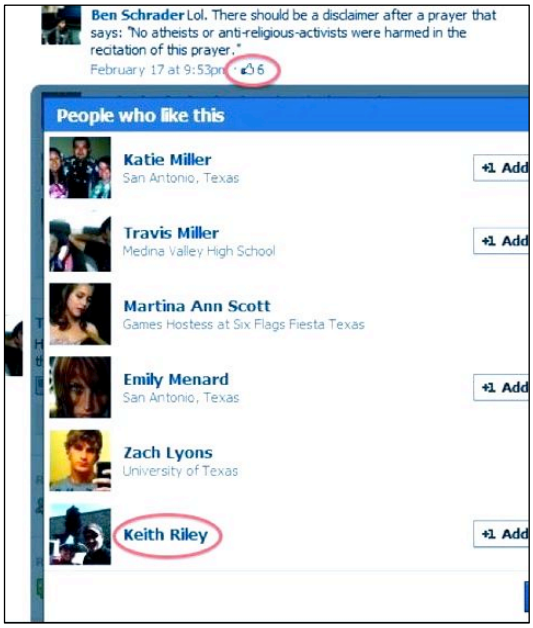
On the morning of Monday, February 13, Plaintiffs' counsel wrote to Defendant's counsel, highlighting the violation and requesting that the School District apologize to the Schultz family. The parties' counsel spoke by phone, along with the mediator, on February 16. During this call, Defendant's counsel asserted that Mr. Stansberry had meant to disparage Plaintiffs' counsel, rather than Plaintiffs themselves, and that Mr. Stansberry would issue a statement to "clarify" his remarks. Although skeptical that such a non-apology apology would suffice, Plaintiffs counsel agreed to review the statement before taking further action.

In the meantime, the tone at the top began to trickle down. On the evening of



Friday, February 17, School District faculty member Keith Riley—one of the directors of the Medina Valley High School marching band—went on Facebook and, while commenting on the wall of a current Medina Valley High School student, gratuitously described Corwyn Schultz's allegations in the lawsuit as "lies and false accusations." In addition to disparaging Corwyn, Mr. Riley "liked" a comment (from a recent graduate) proposing, "There should be a disclaimer after a prayer that says: 'No atheists or anti-religious-activists were harmed in the recitation of this prayer.'" Mr. Riley has since

deleted his comments about Corwyn, but his "like" of the anti-atheist comments remains publicly posted.



The parties' counsel held a series of additional conversations, again with the mediator, on Tuesday, February 21. Although the School District still had not issued any statement addressing either disparaging comment, Plaintiffs' counsel indicated that the Schultz family was willing to accept a written apology posted on the School District's website. The parties' counsel discussed various formulations and agreed to reconvene by phone, again with the mediator, on the morning of February 22.

At the start of the phone conversation on February 22, however, the School District's counsel terminated further discussions. According to counsel, Superintendent Stansberry was "fed up" and unwilling to offer an apology or even discuss the issue further.

The School District has since posted a conclusory "clarification," authored by an Assistant Superintendent. This statement inexplicably claims that Mr. Stansberry's reference to the lawsuit as a "witchhunt" meant something other than what it said: "In a recent television interview, District Superintendent James Stansberry's quote, '. . . this was a witchhunt. . .' was not intended to be interpreted as disparaging to the plaintiff's, Christa, Danny or Corwyn Schultz. Likewise, the comment was not aimed at the results

of the settlement agreement reached between the two parties." *Headline News*, Medina Valley Independent School District, http://www.mvisd.com/index.php?cPath=28 (last visited Feb. 22, 2012 1:14 PM).

Moreover, the School District's "clarification" is nearly impossible to find unless one is already looking for it: the statement does not appear on the School District's main webpage, and is instead buried two levels deep. Nor does it address—for the purpose of "clarification" or otherwise—Mr. Stansberry's misrepresentation of Plaintiffs' settlement position or Mr. Riley's disparagement of Corwyn Schultz on Facebook. The School District's clarification, in sum, is too-little, too-late.

Discussion

The School District's employees, including its Superintendent, are adults and professional educators. The Agreement's non-disparagement provision is unambiguous: "School District Personnel will not disparage the Plaintiffs." [Dkt. # 136-1] ¶ E.3. This provision serves not only to protect Plaintiffs' reputation, but more importantly to ensure that School District officials do not undermine the force and authority of the Agreement's provisions by disparaging the proponents of the lawsuit that produced it. The statements by Superintendent Stansberry and Mr. Riley each violate this provision.

The Superintendent's "Witch Hunt" Remarks. Mr. Stansberry's statements that the Schultz family's lawsuit was a "witch hunt" invoked a term that is universally recognized as an insult. *See, e.g., Dunn v. Hyra*, 676 F. Supp. 2d 1172, 1192 (W.D. Wash. 2009) (admonishing plaintiffs for speculative, unsupported allegation of "an ideological

witch hunt"); *James v. Walls*, No. CIV.A. 07-842 MLC, 2007 WL 1582660, at *3 (D.N.J. May 31, 2007) (dismissing complaint that contained phrases including "witch hunt" on grounds that complaint was composed of "[f]antastic allegations"); *United States v. Dubon-Otero*, 98 F. Supp. 2d 187, 192 (D.P.R. 2000) (granting motion for sanctions against attorney who accused government officials of conducting "witch hunt"). The term "witch hunt"—which refers to an infamous 17th-century crackdown on dissidents by a religious majority—is especially offensive when used to describe the Schultz family's efforts, as a religious minority, to enforce governmental religious neutrality.

The statements, moreover, constituted disparagement even though the Superintendent did not mention the Schultz family by name; describing a lawsuit as a "witch hunt" necessarily implicates the lawsuit's proponents. *See, e.g.*, *Shire LLC v. Mickle*, No. 7:10-CV-00434, 2011 WL 871197, at *4 (W.D. Va. Mar. 10, 2011) (in dispute regarding breach of non-disparagement agreement, an accusation that did not refer by name to a party nonetheless "necessarily called [his] character into question"). And the Superintendent's inaccurate comment about religious jewelry only compounded the disparagement, because the comment was both false and designed to make the Schultz family seem unreasonable.

Perhaps most importantly, the disparagement of Plaintiffs by the Superintendent sends a message to the rest of the School District personnel—whose day-to-day compliance with the agreement is essential—that the settlement is illegitimate and unworthy of respect. In Texas, "[t]he superintendent is the educational leader . . . of the school district." Tex. Educ. Code Ann. § 11.201(a). A government employee in a position

of leadership, such as Superintendent, is "naturally expected to set an example by following the rules himself." *Lightner v. City of Wilmington*, 545 F.3d 260, 265 (4th Cir. 2008) (upholding enhanced discipline of police officer who committed ethics violation while in charge of Professional Standards Division). Perhaps more than any other individual employed by the School District, Mr. Stansberry is responsible for setting a tone that encourages respect for the Agreement and compliance with its provisions.

Mr. Riley's Facebook Comments. Although Mr. Riley has since removed the comments in which he called Corwyn Schultz a liar—on the Facebook page of a current Medina Valley High School student—the School District also refuses to apologize for this violation of the non-disparagement provision. Mr. Riley's comments are no less problematic because they took place on Facebook instead of the classroom—especially since his comments were made on the wall of a current Medina Valley High School student and in the presence of other current students. *See, e.g.*, *Rubino v. City of New York*, 34 Misc. 3d 1220(A), at *3 (N.Y. Sup. Ct. Feb. 1, 2012) (teacher who posted disparaging comments on Facebook, after school hours and from her own home, nonetheless "posted the comments as a teacher"); *see also, e.g.*, *Stengle v. Office of Dispute Resolution*, 631 F. Supp. 2d 564, 571–72 (M.D. Pa. 2009) (upholding termination of government official for writing publicly-accessible blog posts that compromised employer's ability to effectuate its goals). Educators such as Mr. Riley cannot possibly promote a respectful, religiously-inclusive environment at school while at the same time publicly disparaging the Schultz family, in front of students, after school.

* * *

Plaintiffs ask the Court to find the School District in violation of the agreement's non-disparagement provision and order whatever relief the Court deems appropriate. The typical sanction for violation of a court order, including a settlement agreement, is contempt: "A party commits contempt when he violates a definite and specific order of the court requiring him to perform or refrain from performing a particular act or acts with knowledge of the court's order." *Travelhost, Inc. v. Blandford,* 68 F.3d 958, 961 (5th Cir. 1995) (quotations omitted). A finding of contempt, backed by an appropriate sanction, serves to encourage the offending party to comply with the order's terms. *See, e.g.*, *Quilling v. Funding Resource Grp.*, 227 F.3d 231, 234 (5th Cir. 2000). Given its prompt violation of the settlement and persistent refusal to apologize, the School District would certainly benefit from this type of encouragement.

Conclusion

For the preceding reasons, the motion should be granted.

Respectfully submitted,

/s/ Gregory M. Lipper

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February 22, 2012

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[Proposed] Order Granting Plaintiffs' Motion to Enforce Settlement Agreement

The Court has considered Plaintiffs' motion to enforce the settlement agreement, and concludes the School District violated paragraph E.3 of the Court's February 9, 2012 order [Dkt. # 136-1] as a result of Mr. Stansberry's February 9, 2012 videotaped statements to the television station KSAT, and Mr. Riley's February 17, 2012 comments on the Facebook page of a current Medina Valley High School student.

The Court finds the School District in contempt, and orders the following:

(1) The School District will issue a statement that specifically apologizes for both sets of comments and will post that statement on the main page of the School District's website, for a period of one week, in a manner easily visible to those visiting the website;

(2) The Court also orders the following, additional relief: _____.

_____
Fred Biery
Chief United States District Judge

Date:

Certificate of Service

On February 22, 2012, I served Plaintiff's Motion to Enforce the Settlement Agreement on all counsel of record through the Court's ECF system.

/s/ Gregory M. Lipper

Gregory M. Lipper