

*Filed by Judge Alie A. Gray
06-20-22 at 3:11 p.m.*

**IN THE CIRCUIT COURT OF PERRY COUNTY, ARKANSAS
CIVIL DIVISION**

**RHEA MIDDLETON AND LARRY MIDDLETON,
as CO-REPRESENTATIVES OF THE ESTATE
OF MARK MIDDLETON, DECEASED,**

PLAINTIFFS

VS.

CASE NO. 53CV-22-45

**SCOTT MONTGOMERY, SHERIFF OF PERRY
COUNTY, in his official capacity; BILL GREENE,
CORONER OF PERRY COUNTY,
in his official capacity, JANE AND
JOHN DOES 1 through 10 in their capacity
as employees of PERRY COUNTY, ARKANSAS;**

DEFENDANTS

ORDER GRANTING PRELIMINARY INJUNCTION

On this day came for consideration the Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") filed by Plaintiffs Rhea Middleton and Larry Middleton (collectively, the "Middletons"). Based on the Motion, the entire record in this matter, and other matters of proof and law, of which the Court is sufficiently and well advised, the Court finds and orders as follows:

1. This Court has jurisdiction over the parties and the subject matter of the case. Venue is proper in this Court.
2. The Court finds that Defendants have been properly notified of the Motion and have been served with the Petition and Summonses.
3. The Court finds that Mark Middleton ("Mr. Middleton") died on May 7, 2022 in Perry County, Arkansas. Following Mr. Middleton's death, Defendants conducted an investigation

of the scene of Mr. Middleton's death and maintained all relevant information regarding the investigation in the investigatory file (the "File"), which includes certain photographs, videos, sketches, and other illustrative content ("Media Content") depicting Mr. Middleton's body and the scene of his death.

4. The Court finds that since Mr. Middleton's death, the Middletons have been harassed by individuals with outlandish, hurtful, unsubstantiated, and offensive conspiracy theories regarding Mr. Middleton, his death, and his family, which have caused the Middletons immense harm and anguish.

5. These same individuals have indicated and communicated that they will attempt to obtain the File, including Media Content depicting Mr. Middleton's body and the scene of his death, by way of an Arkansas Freedom of Information Act ("FOIA") request.

6. The purpose of this Order is to prevent further irreparable injury to the Middletons.

7. The Court notes that Defendants do not object to the issuance of injunctive relief.

8. The Court finds that there is a likelihood of success on the merits.

9. The Court finds that the Middletons have a protected privacy interest in the Media Content contained within the File based on their showing that (1) the Middletons want to keep the Media Content private and confidential; (2) that, except for government action, i.e. disclosure in response to a FOIA request, such Media Content can be kept private and confidential; and (3) that a reasonable person would find the disclosure of the Media Content harmful or embarrassing. *McCambridge v. City of Little Rock*, 298 Ark. 219, 230 (1989).

10. Under Arkansas law, the Middletons' protected privacy interest prevents disclosure of the Media Content, so long as the public's interest in disclosure does not outweigh their privacy interest. *Id.* at 231.

11. The Court finds the public's interest in disclosure of the Media Content does not outweigh the Middletons' protected privacy interest in the Media Content at this time. *See Nat'l Archives and Recs. Admin. v. Favish*, 541 U.S. 157, 171 (2004). Specifically, no citizen of Arkansas has established a public interest that would be advanced by disclosure of the Media Content and, thus, no citizen of Arkansas has shown how disclosure of the Media Content would advance any public interest.

12. Additionally, because unwarranted release of the Media Content would cause the Middletons to suffer embarrassment and harassment, the Court finds they are likely to suffer irreparable injury. As the United States Supreme Court noted in *Favish*, once the Media Content is released to the public, it belongs to the public, and there is no avenue to repair the full harm the Middletons would suffer upon its disclosure. *See Favish*, 541 U.S. at 174.

13. Therefore, the Defendants, and all other persons or entities who act for or on behalf of Defendants, are enjoined from directly or indirectly disclosing the Media Content in response to a FOIA request or by any other manner. This Order is consistent with Ark. Code Ann. § 25-19-105(b)(8).

14. At this stage of the action, the Court, pursuant to Ark. R. Civ. P. 65(c), requires no security because the enjoined parties, the Defendants, will suffer no costs or damages related to this Order.

15. Nothing in this Order prohibits any citizen of Arkansas from petitioning the Court for a modification of this Order.

IT IS SO ORDERED.


HONORABLE ALICE GRAY

6-20-22

DATE

Prepared by:

Byron J. Walker (Ark. Bar No. 2002114)
ROSE LAW FIRM,
a Professional Association
120 East Fourth Street
Little Rock, Arkansas 72201
Telephone: (501) 375-9131
Facsimile: (501) 375-1309