

**IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO**

MEMBER WILLIAMS)	
)	CASE NO. CV-2016-09-3928
Plaintiff,)	
)	JUDGE ALISON BREAUX
vs.)	
)	
KISLING, NESTICO & REDICK, LLC, <i>et al.</i>)	<u>REPLY IN SUPPORT OF MOTION TO</u>
)	<u>SHOW CAUSE FOR PLAINTIFF'S</u>
Defendants.)	<u>FAILURE TO COMPLY WITH GAG ORDER</u>

Defendant Kisling, Nestico & Redick, LLC ("KNR") respectfully files this Reply in Support of its Motion for Show Cause for Plaintiff's Failure to Comply with Gag Order:

I. The Gag Order Requires Plaintiff's Counsel to Refrain from Displaying Internet Posts About this Lawsuit.

Plaintiff argues that continuing to display, promote, and showcase statements on social media does *not* constitute "dissemination." According to Plaintiff, the posting date is all that matters. Plaintiff actually states that the Gag Order prevents Plaintiff's counsel from only making *new* posts. (Plaintiffs' Opposition to Defendants' Motion to Show Cause, p. 1). Plaintiff's counsel contends that as long as the Facebook, Twitter, LinkedIn, and website posts pre-date the Gag Order, they can remain on the internet in perpetuity. Using their own words, "Plaintiffs' counsel has not deleted its posts about this lawsuit...because the Court's order did not instruct Plaintiffs' counsel to do so."

Plaintiff's position is unreasonable. This Court's intention for issuing the Gag Order was clear: this case will not be tried in the court of public opinion. The Court admonished Plaintiff's counsel, "I do not appreciate that you put those [documents] into the record when I have not yet ruled on whether they are protected". (Gag Order, p. 3). The Court enjoined all parties from "dissemination of any court documents, exhibits, and filings to the press or the public by any means." (*Id.* at pp. 5-6).

Plaintiff's counsel argue that "dissemination" of internet content occurs only the moment

the content is posted. In other words, if you “beat the clock” and post something on the internet, it can remain forever even when the Court issues a Gag Order not to “disseminate” any information about the lawsuit. Counsel is wrong.

“Disseminate” means (1) “to spread abroad as though sowing seed”; (2) “to disperse throughout”; and/or (3) “to spread or give out news, information, ideas, etc. to many people”. (See Merriam-Webster Dictionary; Cambridge Dictionary). Counsel’s Facebook account, Twitter page, and website continues to “disperse throughout” the internet “court documents, exhibits, and filings to the press.” Plaintiff’s counsel continues “to spread abroad as though sowing seed” information that is subject of the hearing on April 5, 2017. Based purely on the English language and dictionary definitions, Plaintiff’s counsel—by refusing to remove internet posts—is “disseminating” or spreading information in violation of this Court’s Gag Order.

This Court’s Gag Order would have no reasonable effect if it did not apply to public posts available on the internet. If Plaintiff’s counsel cannot make internet posts *after* the Gag Order, then obviously Plaintiff’s counsel cannot continue to display internet statement posted *before* the Gag Order. There is no practical difference. It is no defense that Plaintiff’s counsel took matters in their own hands by waging social media warfare *before* this Court could even consider pending motions. It is no defense that Plaintiff’s counsel rushed to the internet *before* KNR was able to obtain a Gag Order. Internet statements that pre-date the Gag Order do not get a perpetual “free pass.” Plaintiff’s counsel violates the Gag Order each second counsel continues to digitally display statements, articles, and posts about this lawsuit.

If all of Plaintiff’s internet posts are permitted to remain in the public eye, the Gag Order is feckless. Plaintiff’s counsel know this. Thus, the posts remain.

II. Digital Posts Should Be Treated No Differently than Physical Posts.

Websites are, essentially, digital yard signs. There is absolutely no difference between displaying a physical message in public and displaying a digital message on the internet. The effect is the same: public visibility. But physical messages are only seen by people in the

vicinity. Internet messages are viewable by the entire world with a click of a button.

In *In re K.Z.-P.*, 6th Dist. Nos. WD-15-014, WD-15-015, WD-15-016, 2016 Ohio App. LEXIS 2945, *1 (April 8, 2016), the trial court entered a gag order enjoining parties “from discussing or disseminating information about the pending cause.” *In re K.Z.-P.*, 6th Dist. Nos. WD-15-014, WD-15-015, WD-15-016, 2016 Ohio App. LEXIS 2945, *1 (April 8, 2016). Before the gag order was issued, the appellant posted “a large sign” that referenced that parties and participants in this case and “advertised a website.” *Id.* at *2. The sign remained on the premises “after the gag order was issued.” *Id.* at *3 (emphasis added). The Court found appellant’s failure to remove the sign violated the gag order. *Id.*

The order was upheld on appeal. “The trial court...had a reasonable and substantial basis to believe that extra-judicial statements, including material on the internet, signs posted in yards, and fliers distributed in the community, would be reasonably likely to prejudice the parties.” *Id.* at *4 (emphasis added). The appellant admitted that he did not remove the sign until six days after the court issued the order. *Id.*

The gag order also meant that appellant needed to take down a website. *In re K.Z.-P.*, 6th Dist. No. WD-15-022, 2016-Ohio-3091, ¶ 10. Just like the physical sign, the website disseminated information about the lawsuit. “[S]ome of the material contained on the website criticized individuals who had previously been called a witness in this action and were likely to be called witnesses at a later time.” *Id.* at ¶ 13. It was no defense that the website was created *before* the gag order. *See id.*

Here, Plaintiff’s counsel is guilty of the same contempt. This Court “enjoined” all dissemination of information. The fact that Plaintiff’s social media posts pre-dated the Gag Order is irrelevant. They are still visible to the public, which was the basis for issuing the Gag Order in the first place.

Plaintiff and her counsel should be held in contempt, fined and ordered to pay KNR’s attorney’s fees for preparing this Motion and Reply, which was necessary to bring these blatant

and intentional violations to the Court's attention.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Court and the parties were served via electronic mail on this 31st day of March, 2017.

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