

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al

Plaintiffs,

v.

Kisling, Nestico & Redick, LLC, et al

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**Dr. Sam Ghoubrial's Memorandum in
Opposition to Plaintiffs' Supplemental
Motion to Compel Production of Relevant
Portions of Julie Ghoubrial's Deposition
Transcript**

Once again Plaintiffs resort to blatant misrepresentations and half-truths in an effort to obtain information two separate courts have already told them they are not entitled to obtain. Once again Plaintiffs' counsel seeks to elevate his opinions and judgment over that of two experienced sitting judges in an effort to obtain information he simply is not entitled to obtain. Plaintiffs' fist pounding notwithstanding, they are not permitted to obtain any portion of a confidential deposition transcript of a party in a domestic relations action that was never filed in the domestic relations court and therefore was never a public record. As such, Plaintiffs' Supplemental Motion to Compel Production of Relevant Portions of Julie Ghoubrial's Deposition Transcript (Plaintiffs' Motion) must be denied.¹

Plaintiffs seem to believe that because this Court instructed them to intervene in the Ghoubrials' divorce action they are now entitled to their requested relief because their attempt to intervene in the divorce pursuant to Civ. R. 24 was unsuccessful. Plaintiffs are wrong. Although this Court did instruct Plaintiffs to attempt to intervene in the divorce in its February 5, 2019 Order, the Court apparently overlooked the fact that Civ. R. 75 expressly prohibits intervention under Civ.

¹ It bears noting that Plaintiffs will be deposing Julie Ghoubrial in this matter in April 18, 2019 by agreement. Plaintiffs' arguments that they need her transcript from her divorce action rings hollow considering they will have the opportunity to question her under oath in a matter of weeks.

R. 24 in divorce cases. Civ. R. 75(B) states Civ. R. 14, 19, 19.1, and 24 **shall not apply in divorce, annulment, or legal separation actions...** (Civ. R. 24, emphasis added).² Because intervention simply is not permitted in divorce actions, granting Plaintiffs' Motion would essentially re-write the Civil Rules while simultaneously turning established domestic relations jurisprudence on its head. Plaintiffs attempt at an end-run around the Civil Rules and established precedent must be denied.

In an effort to obtain the deposition transcript they so desperately seek, Plaintiffs resort to misrepresenting the April 3, 2019 Judgment Entry of Judge John Quinn denying their motion to intervene in an effort to mislead this Court. Plaintiffs' Motion focuses solely on Judge Quinn's reliance upon Civ. R. 75 in denying their motion to intervene in the divorce. However, a plain reading of Judge Quinn's April 3, 2019 Judgment Entry demonstrates that Civ. R. 75 was only one of three separate reasons for Judge Quinn's denial of Plaintiffs' motion to intervene. *See* Judge Quinn's April 3, 2019 Judgment Entry, Attached as Exhibit "A". Each of these three distinct reasons demonstrates why Plaintiffs' Motion must be denied.

Separate and apart from Civ. R. 75, Judge Quinn denied Plaintiffs' motion to intervene because, contrary to Plaintiffs' representations, there is no First Amendment Right of public access to the deposition transcript Plaintiffs seek. *See* Exhibit "A"; *see also, State Ex Rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533. Because discovery has not historically been open to the public, no First Amendment Rights of access attach and Plaintiffs therefore have no right to obtain a deposition transcript that was never filed in the divorce action. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). Both Civ. R. 75 and established

² Plaintiffs' argument that they can somehow circumvent Civ. R. 75 because they are not seeking to join in the divorce action is ridiculous. Civ. R. 75(B) expressly prohibits intervention under Civ. R. 24. Civ. Rule 75 also expressly prohibits joinder under Civ. R. 19.

Supreme Court precedent fly in the face of Plaintiffs' argument demonstrating why Judge Quinn denied their motion to intervene. However, Judge Quinn did not stop there.

Although Plaintiffs relied solely upon Civ. R. 24 in seeking intervention and amendment of Judge Quinn's confidentiality order while completely ignoring Civ. R. 75, Judge Quinn also articulated why Plaintiffs' motion failed under Sup. R. 44-47. *See* Exhibit "A". Again, the transcript Plaintiffs seek was never filed in the divorce action and therefore never became a "court record" or a "case document" Exhibit "A". Moreover, Sup. R. 44(C)(2) expressly states that a document exempt from disclosure under federal, state or common law is not a "case document." Exhibit "A". Because pre-trial depositions are not open to the public at common law, Plaintiffs cannot obtain a pre-trial deposition that was never filed under any circumstances. Exhibit "A"; *see also, Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984); *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481. This would be true even if there was not also a confidentiality order in place, which there is, prohibiting the disclose of transcript to and use of the transcript by any third parties.

Plaintiffs maintain because they have exhausted the usual routes to obtain the deposition transcript of Julie Ghoumbrial they are now entitled to an order from this Court mandating its production. What Plaintiffs ignore is the fact that there are no routes, usual or otherwise, for them to obtain Julie Ghoumbrial's deposition transcript. They are not permitted to intervene in the divorce action and the transcript is not a court document or public record. Plaintiffs also ignore the fact that Julie Ghoumbrial is being deposed in this case by agreement on April 18, 2019. Plaintiffs will be free to question her then about any matter, including the issues in this case, not otherwise privileged or protected.³

³ Plaintiffs' counsel has represented that Julie Ghoumbrial was questioned during her deposition in the divorce action by attorney David Best about issues relevant to this case. How (footnote continued)

Plaintiffs request that this Court override the confidentiality order and April 3, 2019 Judgment Entry of Judge Quinn while also ignoring Supreme Court precedent and the Rule of Superintendence. Plaintiffs make this request based on nothing more than Plaintiffs' counsel myopic belief that he is entitled and right while Judge Quinn, this Court, the Civil Rules, the Rules of Superintendence, the Ohio Supreme Court, and the United States Supreme Court are all wrong. Plaintiffs are simply not entitled or permitted to obtain the transcript they seek.

Plaintiffs can and will depose Julie Ghoubrial in this case on April 18, 2019 as agreed. That they will have to depose Julie Ghoubrial without the transcript from her divorce action should be of no consequence to this Court. Judge Quinn denied their motion to intervene after the matter was fully briefed and after holding an oral hearing. Judge Quinn entertained Plaintiffs' arguments and denied their motion for the reasons stated in his April 3, 2019 Judgment Entry. (Exhibit "A"). This Court should deny Plaintiffs' Motion for the same reasons.

Respectfully Submitted,

/s/ Bradley J. Barmen

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would Plaintiffs' counsel know that considering there is a confidentiality order in place in the divorce action? Either Plaintiffs' counsel violated Judge Quinn's confidentiality Order or he is grasping at straws to get what he wants. Either way Plaintiffs are no entitled to the relief they seek.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was filed electronically with the Court and sent via email to the below parties on this 8th day of April, 2019. The parties, through counsel, may also access this document through the Court's electronic docket system:

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**IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO**

JULIE GHOUBRIAL

Plaintiff

-VS-

SAMEH GHOUBRIAL

Defendant

) CASE NO. DR-2018-04-1027

)

)

)

) JUDGE JOHN QUINN

) MAGISTRATE SHARON DENNIS

)

) **JUDGMENT ENTRY**

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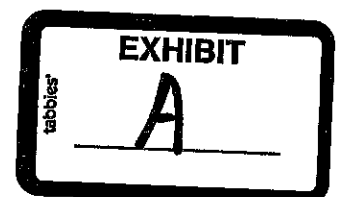
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1. This matter is before the Court on the motion filed February 12, 2019 by Member Williams, Thera Reid, Monique Norris, and Richard Harbour ("Movants") to intervene in this pending divorce case and to amend the confidentiality order approved by this Court on January 25, 2019, which ordered that the deposition of Plaintiff ("Wife") be marked confidential.

2. As a basis for intervention, Movants cite to Civ.R. 24(B). Civ.R. 24(B) has been held as a proper procedural mechanism for parties to intervene in civil actions in order to modify protective orders. *See Adams v. Metalicca, Inc.*, 143 Ohio App.3d 482, 491 (1st Dist.2001). However, Civ.R. 75(B) provides that Civ.R. 24 is inapplicable in divorce cases. *See also Davis v. Cincinnati Enquirer*, 164 Ohio App.3d 36, 2005-Ohio-5719, ¶ 14 (1st Dist.) (noting, where a newspaper had requested access to sealed records in a divorce case, the newspaper should not have been permitted to file motions or memoranda in that case pursuant Civ.R. 75(B)), and *Rymers v. Rymers*, 11th Dist. Lake Nos. 2009-L-109, 2009-L-156, 2010-Ohio-4289, ¶ 25-29.

3. Accordingly, Civ.R. 24(B) cannot serve as a basis for Movants to intervene in this action.



4. Nonetheless, assuming that intervention were proper in this case, Movants argue that the confidentiality order should be modified based upon the First Amendment right of public access to judicial proceedings. However, depositions are not the type of proceedings to which the First Amendment right of public access attaches. *See State Ex. Rel. Toledo Blade Co. v. Henry Cty. Court of Common Pleas*, 125 Ohio St.3d 149, 2010-Ohio-1533, ¶ 22, *State ex rel. Nat. Broadcasting Co., Inc. v. Court of Common Pleas of Lake Cty.*, 52 Ohio St.3d 104, 107 (1990), quoting *Press-Ent. Co. v. Superior Court of California for Riverside Cty.*, 478 U.S. 1, 8 (1986) (First Amendment right of access to judicial proceedings attaches to proceedings that have “historically been open to the press and general public” and in which “public access plays a significant positive role in the functioning of the particular process in question”), and *Adams* at 487, quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) (discovery has not historically been open to the public).

5. Further, although Movants do not rely upon Sup.R. 44-47 in their motion as a basis for amending the confidentiality order, the Court notes that at issue here is a transcript of a deposition that has not been filed with the Court. *See State ex rel. Richfield v. Laria*, 138 Ohio St.3d 168, 2014-Ohio-243, ¶ 8 (the procedures in Sup.R. 44-47 “are the sole vehicle for obtaining” court records in actions commenced after July 1, 2009), Sup.R. 44(B) (a “court record” includes a “case document”), Sup.R. 44(C)(1) (a “case document[s]” include, subject to exclusions, certain documents that are *submitted* to a court or *filed* with a clerk of court), Sup.R. 44(C)(2) (excluding from the term “case document” a document exempt from disclosure under federal, state or common law), *State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St.3d 350, 354, 1997-Ohio-271 (1997), and *Seattle Times Co.* at 32-34 (pretrial depositions were not open to the public at common law). *See also State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481,

2012-Ohio-3328, (2012) (holding that “sealed bills of particulars are not exempt from disclosure under state law as either discovery materials or work product”). The unfiled deposition transcript is not a court record for purposes of the Rules of Superintendence.

6. Movants’ motion is DENIED.

It is so ORDERED.

TO THE CLERK:

PURSUANT TO CIVIL RULE 58(B), THE CLERK IS DIRECTED TO SERVE UPON ALL PARTIES NOT IN DEFAULT FOR FAILURE TO APPEAR NOTICE OF THE FILING OF THIS JUDGMENT ENTRY AND OF THE DATE OF ENTRY UPON THE JOURNAL.



Judge JOHN QUINN

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