

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>Motion to Compel the Deposition of Julie Ghoubrial and Opposition to Defendants' Motions to Quash and for a Protective Order</p>
--	---

Yesterday, on the eve of Julie Ghoubrial's deposition—for which a subpoena was issued in October of 2018, and a date confirmed by all parties and the witness weeks ago after numerous agreed-upon postponements—the KNR Defendants and Defendant Ghoubrial purported to “postpone” the deposition, and filed respective motions late in the afternoon seeking to bar it from going forward. Despite the parties' and the witness's longstanding agreement to proceed with this deposition today, and despite the Court's ruling on February 5 that Julie's testimony “is highly relevant, probative, and subject to discovery in this case” (order attached as **Exhibit 1**) the Defendants now claim, for the very first time as of yesterday, that “no basis exists for [Julie's] deposition to go forward.” Ghoubrial Mot. at 3.

Defendants argue that their last-minute obstruction is justified by the fact that Plaintiffs have resisted their efforts to (1) depose non-party Brittany Holsey, a relative of Plaintiff Norris, pursuant to a subpoena that Defendants served only last Friday, and (2) reopen the depositions of Plaintiffs Norris and Reid when both witnesses have already testified for a full day and no legitimate need exists for them to return to provide more testimony. The Court should decisively reject this nonsensical tit-for-tat gamesmanship. Plaintiffs and Ms. Holsey have every right to resist Defendants' abusive discovery tactics against them, and have done so and will continue to do so in a

timely manner, in accord with the Civil Rules.¹ The issues regarding Julie's deposition are entirely separate, this Court has already decided upon the relevance and discoverability of Julie's testimony, and Defendants have had five months to lodge objections to the subpoena that Plaintiffs served on her.

Moreover, Plaintiffs agreed to postpone Julie's deposition until April 18, three days past the discovery deadline, at Defendants' request to accommodate the travel schedule of one of Defendant Ghoumbrial's attorneys. Now, with the class-certification deadline impending, Plaintiffs should not be required to endure any further delays regarding this, the final deposition that Plaintiffs have requested prior to class certification. Julie's attorney has advised Plaintiffs' counsel that he and the witness can and will be at Plaintiffs' office for the deposition today (April 18) within 30 minutes of a Court order requiring the same. As explained more fully below, the Court should enter such an order immediately so that this "highly relevant," "probative" and duly requested testimony can be obtained in a timely manner and without any further obstruction.

1. Plaintiffs issued a valid subpoena to Julie last October, and all parties and the witness agreed that this deposition would take place on April 18, 2019.

Plaintiffs served their subpoena on Julie on October 3, 2018, with service accepted by Julie's attorney, Mr. Rosen. *See* 10/03/2019 Notice of Service. At Julie's request, which Plaintiffs understood to be intended to avoid complicating her then-pending divorce proceedings against Defendant Ghoumbrial, Plaintiffs agreed to postpone Julie's deposition indefinitely, on the understanding that she would agree to appear prior to the expiration of the discovery deadline in this case. In mid-March of 2019, with the trial date in the divorce proceedings set for early-April, the

¹ Plaintiffs' and Ms. Holey's joint motion to quash and motion for a protective order was filed yesterday, only six days after Defendants' subpoena was belatedly issued. Similarly, Defendants just filed their motions to compel Plaintiff Reid's and Plaintiff Norris's continued depositions three days ago, on Monday April 15, Plaintiffs had every right to object to Defendants' efforts to reopen these depositions, and will file their opposition briefs to Defendants' motions within the deadlines established by the Civil Rules, Local Rules, and Court orders.

parties and Ms. Ghoubrial agreed that her deposition in this case would take place in mid-April, just prior to the expiration of the April 15 discovery deadline. *See Exhibit 2*, counsel's 03/29/2019–04/05/2019 correspondence. Thankfully, Julie and Defendant Ghoubrial were able to reach a settlement in the divorce proceedings on or around April 3, 2019. Julie and the parties to this case then shortly agreed that her deposition in this case would take place on April 18, 2019, and Plaintiffs accordingly issued an amended notice of deposition. *Id. See also* 04/95/2019 Amended Notice of Video Depositions.

2. The discoverability of Julie's testimony is beyond legitimate dispute, and the opportunity for Defendants to object to her deposition has passed.

Until yesterday, neither the Defendants nor Julie had lodged any objection to Plaintiffs' October 2018 subpoena or their efforts to obtain Julie's deposition testimony. In fact, Defendant Ghoubrial has repeatedly admitted the relevance and discoverability of Julie's testimony, consistent with the Court's finding, in its February 5, 2019 order, that it is "highly relevant, probative, and subject to discovery in this case."

For example, on March 28, 2019, in a hearing convened by the Domestic Relations Court on Plaintiffs' motion to intervene to obtain Julie's deposition in those proceedings,² and again in a reply brief filed in this case just last week, Defendant Ghoubrial argued that Plaintiffs should be denied access to the D.R. transcript because "Julie is being deposed in [the civil case] by agreement on April 18" and "Plaintiffs will be free to question her then about ... the issues in this case." *See Exhibit 3*, 04/08/2019 Ghoubrial opp. brief at p. 3. *See also Id.* at fn1 ("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.").

²The day after the March 28, 2019 D.R. hearing, Plaintiffs issued a praecipe for and ordered the transcript of the proceedings. To date, that transcript has not yet been delivered to Plaintiffs.

Further, this Court just noted last week—in denying Plaintiffs’ motion to compel Defendant Nestico to testify about what he knows about Julie’s deposition testimony regarding the allegations in this case—that “Plaintiffs need only depose Julie Ghoubrial” to obtain this information. *See Exhibit 4*, 04/10/2019 Court order at p. 3.

Defendants’ last-minute efforts to thwart Julie’s deposition are contrary to these repeated statements by the Court, as well as Defendants’ own on-record statements to two different courts, including this one, purporting to justify relief based on the prospect that Plaintiffs “will be free to question [Julie] about the issues in this case.” *See Ex. 3*, 04/18/2019 Ghoubrial opp. brief at p. 3;

Defendants have had every opportunity to lodge any legitimate objections to the subpoena Plaintiffs issued to Julie last October. That opportunity has passed, and, as explained further below, Defendants’ efforts to pretend to the contrary are not only baseless but sanctionable.

3. Defendants’ last-minute efforts to thwart Julie’s deposition are patently baseless and should be sanctioned by this Court.

Defendants claim that their last-minute obstruction is justified by the fact that Plaintiffs have resisted their efforts to (1) depose non-party Brittany Holsey, a relative of Plaintiff Norris, pursuant to a subpoena that Defendants served only last Friday, and (2) reopen the depositions of Plaintiffs Norris and Reid when both witnesses have already testified for a full day and no legitimate need exists for them to return to provide more testimony. *See Ghoubrial Mot.* at 1, fn 1, 2–4; *KNR Mot.* at 1–3; More specifically, Defendants have conflated and misrepresented the parties’ disputes over these separate issues by claiming that, “since discovery is only to be directed towards class certification at this point, there is no reason to produce Mrs. Ghoubrial unless and until the classes are certified.” *See Exhibit 5*, 04/17/2019 Barmen email; *See also Ghoubrial Mot.* at 1–3; *KNR Mot.* at 1–3. According to Defendants, their late opposition on these grounds is justified because it is, “the same basis asserted by Attorney Pattakos in his objection to Brittany Holsey’s deposition.” *Ghoubrial Mot.* at 1. *See also Id.* at 2 (“Attorney Pattakos and witness Brittany Holsey recently relied

on these precise grounds when objecting to and failing to appear at a properly-subpoenaed deposition yesterday.”); KNR Mot. at 3 (“Importantly for this motion, when Defendants’ counsel objected to these very same grounds on Ms. Ghoubrial’s deposition, Attorney Pattakos claimed these are not valid objections (despite the fact he used these very objections the night before.”).

Defendants’ argument here is rife with misrepresentations and, even if it weren’t, would in no event justify the tit-for-tat gamesmanship in which they are engaged. First, in resisting Defendants’ belated efforts to obtain Ms. Holsey’s deposition, and to reopen the depositions of Plaintiffs Norris and Reid, Plaintiffs and Ms. Holsey are not relying on any claimed boundaries between issues that go to class-certification and issues that go to the merits. Ohio law is clear that class and merits discovery are largely overlapping, and the Court has already rejected Defendants’ efforts to limit deposition discovery by imposing contrived boundaries between the two. *See Exhibit 6*, 10/01/2018 Court order at p. 1 (“Defendants’ Motion for Protective Order to limit the scope of depositions to class certification issue only is OVERRULED”); *Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 34 (“[A class-action plaintiff] ha[s] to demonstrate, and the trial court ha[s] to find, that questions common to the class in fact predominate over individual ones, and proof of predominance necessarily overlaps with proof of the merits in this case.”). Rather, Plaintiffs’ and Holsey’s opposition to Defendants’ claimed entitlement to additional discovery from them is based on the facts that Defendants’ requests were issued belatedly, were not reasonably limited, and do not justify the burden on these parties and witnesses given the lack of relevance of any such discovery to issues that legitimately impact class certification. *See* 04/17/2019 Motion to quash the subpoena on Holsey.

More to the point, however, Ms. Holsey and the Plaintiffs have every right to object to the subpoena that Defendants just issued on Ms. Holsey last Thursday, and they did so in a timely manner both by immediately communicating their objections to Defendants, and filing a motion to

quash and motion for a protective order only six days after the subpoena was belatedly issued. *See Id.* Similarly, Defendants just filed their motions to compel Plaintiff Reid's and Plaintiff Norris's continued depositions three days ago, on Monday April 15, Plaintiffs had every right to object to Defendants' efforts to reopen these depositions, and will file their opposition briefs to Defendants' motions within the deadlines established by the Civil Rules, Local Rules, and Court orders.

By contrast, as explained above, Defendants' opportunity to lodge objections to Julie's deposition, for which a subpoena was issued nearly six months ago, has long passed, particularly given the Court's and Defendant's statements regarding the discoverability of this testimony.³ There

³ As an additional aspect of their "Hail Mary" to keep Julie from testifying, Defendants claim for the first time, as their third argument, that "issues of spousal privilege preclude the deposition from going forward." Ghoubrial Mot. at 3–4. Not only should this argument have been raised long ago, if at all, Defendants do not cite a single case in support of it, no doubt because it is in fact not warranted by law.

Indeed, the plain language of statute cited by Defendant Ghoubrial, R.C. 2317.02, makes clear that testimony about "communication[s] made or act[s] done in the known presence or hearing of a third person competent to be a witness" is not protected by the privilege. Thus, testimony about such acts or communications is undoubtedly subject to deposition discovery. Furthermore, "the word 'testify' in R.C. 2945.42 clearly precludes the spouse's *testimony*." *State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 120 (emphasis added). Thus, the testimonial privilege may not be used to "prospectively" limit another party's ability to access or obtain evidence through a deposition, because the reviewing court must "look at the nature and subject matter of the communication at issue before determining whether the spousal privilege applied" for purposes of admissibility. *Carroll v. Student Transp., Inc.*, E.D.Pa. No. 10:1439, 2011 U.S. Dist. LEXIS 11470, at *10 (Feb. 4, 2011). *See also State v. VanHoy*, 3d Dist. Henry Case No. 7-2000-01, 2000-Ohio-1893, at *8-9, citing *State v. Mowery*, 1 Ohio St.3d 192, 199, 438 N.E.2d 897 (1982) (Courts must strictly construe the marital communications privilege "only to the very limited extent that" "excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth."). The privilege does not apply to every communication made during the marriage, but is instead limited to "confidential communications." *State v. Rahman*, 23 Ohio St.3d 146, 149, 492 N.E.2d 401 (1986). *See also Finnegan v. Metro. Life Ins. Co.*, 162 N.E.2d 216, 1958 Ohio App. LEXIS 894, at *13 (7th Dist. 1958) ("the true intent of the legislature in passing R.C. 2317.02 ... was not necessarily intended to exclude all types of conversation between married parties."). Accordingly, the marital communications privilege does not apply to "statements of a routine or business nature." *Muebrcke v. Housel*, 8th Dist. Cuyahoga Nos. 85643, 85644, 2005-Ohio-5440, ¶ 26, quoting *Harrison v. Harrison*, 10th Dist. Franklin No. 91AP-888, 1992 Ohio App. LEXIS 831, at *4-5.

is simply no comparison between Plaintiffs' separate and lawful efforts to obtain Julie's "highly relevant, probative, and discoverable" testimony, and to protect Named Plaintiffs, their family members, and class members from abusive discovery, and Defendants' representations to the contrary are so thoroughly baseless and so improperly lodged as to be sanctionable under R.C. 2323.51.

Conclusion

Julie's attorney has advised Plaintiffs' counsel that he and the witness can and will be at Plaintiffs' office for the deposition today (April 18) within 30 minutes of a Court order requiring the same. For the reasons stated above, the Court should enter such an order immediately so that Julie's "highly relevant, probative, discoverable" and duly requested testimony can be obtained in a timely manner and without any further impact on pending deadlines.

Finally, even assuming that the marital communications privilege could apply to shield Julie's testimony concerning Defendant Ghoubril's business practices, Defendant Ghoubril and Julie have waived any privilege that would have so applied by having failed to assert it with regard to her testimony about this case in the Domestic Relations proceedings. The marital communications privilege is waived when, at a deposition or trial, one spouse is permitted to testify concerning conversations or communications of the marriage "which would have been privileged had [the other spouse] chosen to assert the privilege." *United States v. 281 Syosset Woodbury Rd.*, 862 F.Supp. 847, 855 (E.D.N.Y.1994). *See also Thompson v. Thompson*, 84 S.W.2d 990, 992 (Mo.App.1935) (finding, in a divorce action, that it was not error to admit evidence of marital conversations when one spouse "testified to numerous conversations between himself and his wife."); *C.M.D. v. J.R.D.*, 710 S.W.2d 474, 478 (Mo.App.1986) ("[A] waiver" of privileged spousal communications "can occur at a deposition, if testimony of the communication at the deposition is voluntarily elicited."). Moreover, when otherwise "privileged" testimony is elicited in a separate proceeding, the waiver is effective in subsequent and unrelated proceedings because "voluntary disclosure of privileged communications by deposition testimony in one case operates as an implied waiver as to all such communications concerning the particular matters addressed in the disclosed communications." *Bowne, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 485 (S.D.N.Y.1993); *see also Burlington N. R. Co. v. Hood*, 802 P.2d 458, 466 (Colo.1990) ("To sanction the invocation of the marital privilege under these circumstances would permit" a party "to elicit testimony from his wife in support of his claim ... while simultaneously prohibiting" an opponent from challenging or building on that same evidence); and *Pecile v. Titan Capital Group, LLC*, 2016 N.y. Misc. LEXIS 1397, ¶ 7 (April 14, 2016) (the privilege "was not intended to allow a party to gain an advantage in litigation by selectively choosing to reveal certain marital communications while shielding other conversations.").

Respectfully submitted,

/s/ Peter Pattakos

Peter Pattakos (0082884)
Rachel Hazelet (00097855)
THE PATTAKOS LAW FIRM LLC
101 Ghent Road
Fairlawn, Ohio 44333
Phone: 330.836.8533
Fax: 330.836.8536
peter@pattakoslaw.com
rhazelet@pattakoslaw.com

Joshua R. Cohen (0032368)
Ellen Kramer (0055552)
COHEN ROSENTHAL & KRAMER LLP
The Hoyt Block Building, Suite 400
Cleveland, Ohio 44113
Phone: 216.781.7956
Fax: 216.781.8061
jcohen@crklaw.com

Attorneys for Plaintiffs

Certificate of Service

The foregoing document was filed on April 18, 2019, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs

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

MEMBER WILLIAMS, et al.	)	CASE NO.: CV-2016-09-3928
)	
Plaintiffs	)	JUDGE JAMES A. BROGAN
-vs-)	
)	
KISLING NESTICO & REDICK	)	<u>ORDER</u>
LLC, et al.)	
)	
Defendants)	

- - -

This matter comes before the Court upon (1) Plaintiffs’ Motion to Compel discovery from Defendant Minas Floros and (2) Plaintiffs’ Motion to Compel discovery from Defendant Sam Ghoumbrial, M.D.

(1) Plaintiffs’ Motion to Compel Discovery from Defendant Minas Floros

Plaintiffs’ Motion to Compel Discovery from Defendant Minas Floros is OVERRULED because Plaintiffs failed to comply with Civ.R. 37(A)’s requirement to make a good faith attempt to confer with opposing counsel prior to asking for Court action. The purpose of this requirement is to endorse and enforce the view that, in general discovery is self-regulating and should require court intervention only as a last resort. See Staff Note, Civ.R. 37.

(2) Plaintiffs’ Motion to Compel Discovery from Defendant Sam Ghoumbrial, M.D.

Plaintiffs’ Motion to Compel Discovery from Defendant Sam Ghoumbrial, M.D. is GRANTED as Plaintiffs have demonstrated compliance with Civ.R. 37 in bringing the motion to the Court’s attention after attempting to confer with opposing counsel over the issues raised. Further, the motion is granted to the extent that the Court order and requires Defendant Ghoumbrial to provide complete answers to Plaintiffs’ discovery requests, subject to the following Court rulings on the objections posed by Defendant Ghoumbrial in response to each discovery request:

Rulings on Objections to Plaintiff Norris's First Set of Requests for Admission:
Objections in RFA 4, 9, 17 and 18 are overruled.

Rulings on Objections to Plaintiff Norris's First Set of Interrogatories:

Interrogatory 1 – objection overruled
Interrogatory 2 – objection overruled
Interrogatory 3 – objection overruled
Interrogatory 4 – objection overruled
Interrogatory 5 – objection overruled
Interrogatory 6 – objection overruled
Interrogatory 7 – objection overruled
Interrogatory 8 – objection overruled (the information sought is not covered by the attorney-client privilege because the KNR attorneys do not represent Dr. Ghoubrial)
Interrogatory 9 – objection overruled
Interrogatory 10 – objection sustained
Interrogatory 11 – objection sustained
Interrogatory 12 – objection sustained
Interrogatory 13 – objection overruled
Interrogatory 14 – objection overruled
Interrogatory 15 – objection sustained
Interrogatory 16 – objection overruled (you need not identify the patient name)
Interrogatory 17 – objection overruled (you need not identify the patient name)
Interrogatory 18 – objection overruled
Interrogatory 19 – objection overruled
Interrogatory 20 – objection overruled
Interrogatory 21 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing any patient names)
Interrogatory 22 – objection sustained in part (you need to provide information only for the years 2015 and 2016 without revealing patient names)
Interrogatory 23 – objection overruled
Interrogatory 24 – objection sustained in part (limit the answer to injections to KNR clients in 2015 and 2016 without reference to patient names)
Interrogatory 25 – objection sustained in part (limit the answer to injections between 2015 and 2016 without reference to patient names)
Interrogatory 26 – objection overruled
Interrogatory 27 – objection overruled
Interrogatory 28 – objection overruled
Interrogatory 29 – objection overruled
Interrogatory 30 – objection sustained
Interrogatory 31 – objection overruled
Interrogatory 32 – objection overruled
Interrogatory 33 – objection overruled (do not identify patient names)
Interrogatory 34 – objection overruled
Interrogatory 35 – objection overruled
Interrogatory 36 – objection overruled
Interrogatory 37 – objection overruled
Interrogatory 38 – objection overruled

Interrogatory 39 – objection overruled

Interrogatory 40 – objection sustained

Interrogatory 41 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 42 – objection overruled (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 43 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 44 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 45 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 46 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Interrogatory 47 – objection sustained (with leave of Court granted for seeking the additional information outside of Civ.R. 33(A) limit of forty (40) interrogatories)

Rulings on Objections to Plaintiff Norris's First Set of Requests for Production of Documents:

RFP 1 – objection sustained

RFP 2 – objection overruled

RFP 3 – objection overruled

RFP 4 – objection sustained

RFP 5 – objection overruled

RFP 6 – objection overruled

RFP 7 – objection overruled

RFP 8 – objection overruled

RFP 9 – objection overruled

RFP 10 – objection sustained

RFP 11 – objection overruled

RFP 12 – objection overruled

RFP 13 – objection overruled

RFP 14 – objection overruled

RFP 15 – objection overruled

RFP 16 – objection sustained

RFP 17 – objection overruled

RFP 18 – objection overruled

RFP 19 – objection overruled

RFP 20 – objection sustained

RFP 21 – objection sustained

RFP 22 – objection overruled

RFP 23 – objection sustained

RFP 24 – objection overruled

RFP 25 – objection overruled

RFP 26 – objection overruled

RFP 27 – objection overruled

RFP 28 – objection overruled

Rulings on Objections to Plaintiffs' Second Set of Requests for Production of Documents:

Plaintiffs seek a portion of the transcript of Julie Ghoumbrial's deposition taken in Domestic Relations Court Case No. DR2018-04-1027, wherein Julie Ghoumbrial was questioned about the allegations relating to this lawsuit. Plaintiffs seek only a portion of the transcript, indicating they have reliable information that Attorney David Best posed questions to Julie Ghoumbrial about the allegations in the instant lawsuit.

Defendant Ghoumbrial objected to production of the transcript because there is a Confidentiality Order in place by Judge Quinn in Domestic Relations Court.

Upon review of the exhibits filed by Plaintiffs' it appears Mr. Ghoumbrial moved the Domestic Relations Court to deem the entire deposition transcript confidential because the testimony contained "confidential business information." That order was granted over Julie Ghoumbrial's objections. The Order states the transcript "shall only be used for the limited purposes of the within divorce case and for no other purpose of any kind or nature."

Plaintiffs cite *Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005 Ohio 680, for the proposition that a court may order disclosure of information (covered by another court's confidentiality order) when pertinent to pending civil and criminal actions. Plaintiffs ask this Court to compel a copy of the transcript for *in camera* review pursuant to the *Grantz* case. Plaintiffs argue there is no legitimate argument for shielding Julie Ghoumbrial's deposition testimony from these proceedings particularly as related to the veracity of Plaintiffs' allegations against Dr. Ghoumbrial in this lawsuit.

Defendant Ghoumbrial objects to production of the deposition transcript because it is protected by a confidentiality designation by the Domestic Relations Court. Defendant further distinguishes the *Grantz* case as it dealt exclusively with the release of a juvenile's records only after the juvenile and his parents executed waivers authorizing the release pursuant to R.C. 1347.08. Defendant Ghoumbrial also argues the three-part test *Grantz* utilized for *in camera* inspection of such records is only applicable to confidential juvenile records and *Grantz* is wholly inapplicable to getting confidential records from a Domestic Relations court.

The Court agrees that *Grantz* is distinguishable and inapposite to the issues raised herein. There are principles of comity and courtesy between separate divisions of courts and courts respect the separate jurisdiction of each separate division of court. The proper method to obtain discovery under such circumstances is intervention in the proceedings. For example, a third-party (such as Plaintiffs' counsel) may intervene in the Domestic Relations Court

proceedings for the limited purpose of either challenging the Confidentiality Order already in place or compelling only a portion of the transcript for *in camera* inspection.

Under the circumstances, and upon Plaintiffs' representation that Julie Ghoubrial was in fact questioned about allegations in this lawsuit, the Court finds the information inquired into during Julie Ghoubrial's deposition testimony is highly relevant, probative, and subject to discovery in this case. However, it is well-settled that different divisions of the Common Pleas Court maintain separate and distinct jurisdiction over their own statutorily assigned matters and this Court is not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausting the usual routes to legitimately obtain the deposition transcript (via intervention in the Domestic Relations Court). Accordingly, the objection is sustained regarding Request for Production of Documents 1.

Rulings on Objections to Plaintiffs' Second set of Interrogatories:
Interrogatory 1 – objection overruled

Rulings on Objections to Plaintiffs Second Set of Requests for Admission:
Objections in RFA 1- 4 are overruled

Finally, Defendant Ghoubrial's sur-reply brief sought sanctions against Plaintiffs' counsel under Civ.R. 11 and R.C. 2323.51. This separate request for sanctions is OVERRULED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Minas Floros is OVERRULED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion to Compel Discovery from Defendant Ghoubrial is GRANTED subject to the separate rulings on the objections in the body of the Decision.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: ALL COUNSEL/PARTIES OF RECORD



Peter Pattakos <peter@pattakoslaw.com>

Willaims v. KNR

Peter Pattakos <peter@pattakoslaw.com>
To: "Rosen, Gary M." <grosen@dayketterer.com>

Fri, Apr 5, 2019 at 8:35 AM

9:30 is fine.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Fri, Apr 5, 2019 at 8:14 AM Rosen, Gary M. <grosen@dayketterer.com> wrote:

9:00 or 9:30 on 4/18?

From: Peter Pattakos <peter@pattakoslaw.com>
Sent: Thursday, April 4, 2019 4:59 PM
To: Barmen, Brad <Brad.Barmen@lewisbrisbois.com>
Cc: Mannion, Tom <Tom.Mannion@lewisbrisbois.com>; James M. Popson <jpopson@sutter-law.com>; David Best <dmb@dmbestlaw.com>; Shaun Kedir <shaunkedir@kedirlaw.com>; Szucs, Helen <Helen.Szucs@lewisbrisbois.com>; Joshua Cohen <jcohen@crklaw.com>; Rachel Hazelet <rhazelet@pattakoslaw.com>; Rosen, Gary M. <grosen@dayketterer.com>; John Myers <johnmyerscolpa@gmail.com>
Subject: Re: [EXT] Re: Willaims v. KNR

Thanks, all. Please see the attached amended notice of depositions confirming the recently agreed-upon schedule changes re: Julie and Drs. Ghoubrial and Gunning.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Thu, Apr 4, 2019 at 4:49 PM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Works

Sent from my iPhone

On Apr 4, 2019, at 4:13 PM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Are we good for 4/18? Please confirm.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Wed, Apr 3, 2019 at 11:41 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Looks like 4/18 will work. I should be able to confirm later today

Sent from my iPhone

On Apr 3, 2019, at 10:52 AM, Peter Pattakos <peter@pattakoslaw.com> wrote:

Counsel:

Please confirm a date for Julie's deposition ASAP. Mr. Rosen needs to firm up his schedule and so do Julie and I. At this point, we have made every reasonable effort to accommodate you and will proceed with the deposition without you if necessary.

Thank you.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Mon, Apr 1, 2019 at 11:05 AM Peter Pattakos <peter@pattakoslaw.com> wrote:

No April Fools' joke here, though if you're looking for one, the Cleveland MLB team's lineup might suffice. Thanks for confirming re: Drs. Gunning and Ghoubrial. Mr. Rosen confirmed that Julie is available on 4/17, 4/18, or 4/19. Let us know which of these days is best for you and note that 4/19 is Passover so we'd like to stay away from that day if possible.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Mon, Apr 1, 2019 at 9:03 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Peter:

I greatly appreciate your willingness to be accommodating (assuming it's not an April Fool's Joke). I will check with Best on 4/17-4/19 and get back to you as soon as I can.

We will proceed with Dr. Gunning at 8am on 4/9 and then start Sam at 10am on 4/9.

Thanks

Brad

From: Peter Pattakos [mailto:peter@pattakoslaw.com]

Sent: Monday, April 01, 2019 8:54 AM

To: Barmen, Brad

Cc: Mannion, Tom; James M. Popson; David Best; Shaun Kedir; Szucs, Helen; Joshua Cohen; Rachel Hazelet

Subject: Re: [EXT] Re: Willaims v. KNR

Brad,

Yes, we can start Dr. Gunning's deposition at 8AM on 4/9, and we can proceed with Dr. Ghoubrial's deposition immediately afterwards on that date to accommodate Mr. Best's travel schedule, per your request below. Plan on a 10AM start for Ghoubrial, and plan to stay until 7PM, if necessary, to complete the deposition on that date.

If Julie's deposition can be completed later in the week of 4/15, we would be OK with that, but not with any extensions of the discovery deadline and not with pushing this any further out than that week. If Mr. Best gets back on 4/16, I assume we can proceed on either 4/17, 4/18, or 4/19.

Please confirm. Thanks.

Peter Pattakos
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, OH 44333
330.836.8533 office; 330.285.2998 mobile
peter@pattakoslaw.com
www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Sat, Mar 30, 2019 at 11:01 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Peter:

I am not imposing demands, I am informing you two of the defense lawyers in this matter are not available on 4/11 and 4/15. As for David Best being available and present for Dr. Ghoubrial's deposition, it is not about my ability to defend the depo as you suggest below. It is simply about the fact that attorney Best represents Dr. Ghoubrial's corporate interests, your allegations impact the corporations and Dr. Ghoubrial wants his corporate attorney there. It's reasonable and proper and you know this although you'd never admit it.

I'm not going to argue about it with you now. Are you available to start Dr. Gunning's deposition on 4/9 at 8am? An earlier start works better for Dr. Gunning so he doesn't have to cancel his patients in the afternoon. Again this is a reasonable request to accommodate a non-party witness.

Please advise.

Thanks

Brad

From: Peter Pattakos [<mailto:peter@pattakoslaw.com>]
Sent: Saturday, March 30, 2019 10:00 AM
To: Barmen, Brad
Cc: Mannion, Tom; James M. Popson; David Best; Shaun Kedir; Szucs, Helen; Joshua Cohen; Rachel Hazelet
Subject: [EXT] Re: Willaims v. KNR

External Email

Brad,

I'm sorry, but nothing you are proposing below will work, and it's not legitimate for you to impose such demands on us under the circumstances. We had been asking you for dates for these depositions since last fall, again in January, and again in early February. It was only a couple of weeks ago, on March 12, that you bothered to engage us at all to provide dates, and you did so in a manner that slotted these depositions immediately prior to the expiration of the discovery deadline. We wanted to do them earlier, but you

insisted they had to be done on these, the latest possible dates, because both you and Tom were otherwise in trial for weeks at a time. We agreed to accommodate you despite our rights and reasonable preferences to do otherwise, because we wanted to avoid taking yet another dispute to the Court, and we want to get our class-certification motion before the Court by the established May 1 deadline.

Now, two weeks before these depositions and the expiration of the discovery deadline, you are trying to change the extremely tight schedule that you yourselves are solely responsible for having jammed us into, and you are doing so on grounds that (A) one of the dozen-plus attorneys who represents the KNR Defendants can't be there, and (B) that you, Mr. Barmen, are somehow incapable of representing Ghoubrial at these depositions without Mr. Best being there with you?

We simply can't keep bending over backwards for you guys like this, and there's no reason for it.

Additionally, you still, for 53 days now and counting, have not provided the voluminous discovery responses that Ghoubrial owes under the Court's February 5 order (not to mention that such responses never should have been withheld in the first place), which at this point will leave us less than two weeks to process all of this information in advance of Ghoubrial's April 11 deposition (an extreme accommodation that we've already made for you). And you are in no position to tell us we have to limit Gunning's continued deposition to "4 specific issues" and "90 minutes" when our motion that the Court granted requires Gunning "to reappear to answer the questions that defense counsel instructed him not to answer, *and any follow-up questions that Plaintiffs deem necessary*" (not to mention that we'd have been done with this deposition last fall had you not unlawfully obstructed the first time around).

Finally, I have a jury trial that is definitely going to go on May 6, and a long overdue family vacation set for the week after that, so it wouldn't do to extend deadlines by a week in any event.

We do not believe it is necessary or warranted to change any deadlines, or to move any of the currently scheduled dates. You are more than capable of representing Ghoubrial's interests at these depositions without having Mr. Best there with you, and any of the KNR Defendants' many attorneys are capable of doing the same for them. We would oppose any efforts to change the schedule at this point, and in the event the Court does determine it is necessary to extend the May 1 deadline (which seems extremely doubtful), we would ask, in the alternative, for it to be extended by a full month, to June 1.

Peter Pattakos

The Pattakos Law Firm LLC

101 Ghent Road

Fairlawn, OH 44333

330.836.8533 office; 330.285.2998 mobile

peter@pattakoslaw.com

www.pattakoslaw.com

This email might contain confidential or privileged information. If you are not the intended recipient, please delete it and alert us.

On Fri, Mar 29, 2019 at 8:50 AM Barmen, Brad <Brad.Barmen@lewisbrisbois.com> wrote:

Peter:

As discussed yesterday, please confirm Mrs. Lantz's availability to complete her deposition in Springfield, Ohio on Wednesday April 3, 2019. As you and all other counsel have indicated availability to complete the depo on 4/3, we are just waiting on Mrs. Lantz to confirm her availability. As indicated, we can do this after hours if need be.

If Mrs. Lantz is not available on 4/3, please advise of available dates before 4/15 to complete the deposition as agreed yesterday.

Also, let me know when you have a few minutes to talk today. There is a scheduling issues as it relates to Julie and Sam Ghoubrial's discovery depositions. David and Tom are not available on 4/11 or 4/15. As David represents Sam's and Julie's

corporate interests he must be present at both of their depositions.

As for Sam, I propose completing his deposition on 4/9, after you complete Gunning's deposition. Considering you're limited to 4 specific issues with Gunning I cannot imagine completing his deposition would take more than an hour to 90 minutes tops. You would then have the balance of the day to complete Sam. If you wanted to start the day at 8 to make sure there was sufficient time we could do that.

As for Julie we can talk about what makes sense. We would need to loop in Gary Rosen. If necessary, we would consider extending the 4/15 discovery deadline (and the class certification briefing deadline) by 1 week by agreement. Hopefully that will not be necessary but if it is we can work that out.

I have a couple of TCs this morning and a meeting at 10 but I can be free to talk after 12.

Thanks

Brad

Brad J. Barmen
Partner
Brad.Barmen@lewisbrisbois.com
T: 216.586.8810 F: 216.344.9421

1375 E. 9th Street, Suite 2250, Cleveland, OH 44114 | LewisBrisbois.com

Representing clients from coast to coast. View our locations nationwide.

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

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 Ghoubril in this case on April 18, 2019 as agreed. That they will have to depose Julie Ghoubril 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

Bradley J. Barmen (0076515)

LEWIS BRISBOIS BISGAARD & SMITH LLP

1375 East 9th Street, Suite 2250

Cleveland, Ohio 44114

Phone: 216-344-9422

Fax: 216-344-9421

Brad.Barmen@lewisbrisbois.com

Counsel for Defendant Dr. Sam Ghoubril

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:

Peter Pattakos, Esq.
The Pattakos Law Firm, LLC
101 Ghent Road
Fairlawn, OH 44333
peter@pattakoslaw.com
Counsel for Plaintiff

Joshua R. Cohen, Esq.
Cohen Rosenthal & Kramer, LLP
The Hoyt Block Building, Suite 400
Cleveland, OH 44113
jcohen@crklaw.com
Counsel for Plaintiff

Thomas P. Mannion, Esq.
Lewis Brisbois Bisgaard and Smith
1375 E. 9th Street, Suite 2250
Cleveland, OH 44114
tom.mannion@lewisbisobois.com

James M. Popson, Esq.
Sutter O'Connell
1301 E. 9th Street
3600 Erieview Tower
Cleveland, OH 44114
jpopson@sutter-law.com

George D. Jonson, Esq.
Montgomery, Rennie & Jonson
36 East Seventh Street, Suite 2100
Cincinnati, OH 45252
gjonson@mrjlaw.com
*Counsel for Defendants Kisling, Nestico
& Redick, LLC, Alberto R. Nestico and Robert Redick*

/s/ Bradley J. Barmen

Bradley J. Barmen
*Counsel for Defendant
Sam N. Ghoubrial, M.D.*

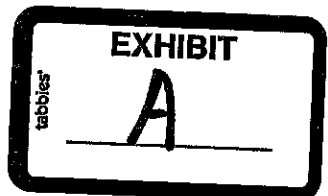
IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL	)	CASE NO. DR-2018-04-1027
)	
Plaintiff)	
	)	JUDGE JOHN QUINN
-VS-	)	MAGISTRATE SHARON DENNIS
)	
SAMEH GHOUBRIAL	)	<u>JUDGMENT ENTRY</u>
)	
Defendant)	
)	

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,

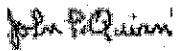
2012-Ohio-3328, (2012) (holding that “sealed bills of particulars are not exempt from disclosure under state law as either discovery materials or work product”). The unfiled deposition transcript is not a court record for purposes of the Rules of Superintendence.

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

CC:

PETER PATTAKOS, Attorney for Movants
GARY ROSEN, Attorney for Plaintiff-Wife
JOSHUA LEMERMAN, Attorney for Plaintiff-Wife
RANDAL LOWRY, Attorney for Defendant-Husband
ADAM MORRIS, Attorney for Defendant-Husband
DAVID BEST, Attorney for Third Party Corporate Defendants
BRAD J. BARMEN, Attorney for Sameh N. Ghoubril, M.D.
1375 E. 9th, Suite 2250
Cleveland, OH 44114

IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al.) CASE NO.: CV-2016-09-3928
)
Plaintiffs) JUDGE JAMES A. BROGAN
-vs-)
)
KISLING NESTICO & REDICK) DECISION
LLC, et al.)
)
Defendants)

- - -

This matter comes before the Court upon Plaintiffs’ Motion to Compel the Continued Deposition of Alberto R. Nestico. The KNR Defendants filed a Brief in Opposition.

Plaintiffs state Mr. Nestico declined to answer, or objected to providing answers or information, concerning certain topics at his deposition:

- 1. KNR’s advertising to and solicitation of potential clients, the extent of the resources expended by Defendants to draw clients into their high-volume business model, and the firm’s support for its claim in advertising material that “it remains on the cutting edge of the field.” [Nestico Tr. 76:2-77:17; 124:24-128:7; 146:13-25]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. This information is not relevant nor is it likely to lead to discovery of relevant information.

- 2. The reasons why KNR closely tracks referrals to and from medical providers. [Nestico Tr. 209:3-210:10 and 58:1-3]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico may answer the inquiry either through interrogatory or subsequent deposition.

- 3. Mr. Nestico’s factual knowledge about the testimony Julie Ghoubrial provided, in her divorce case with Defendant Sam Ghoubrial, M.D, about the allegations in this lawsuit. [Nestico Tr. 471:10-475:13]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. Requiring Mr. Nestico to testify about what he heard about the divorce proceeding or Julie Ghoubrial’s deposition testimony in that case would compromise the confidentiality of the proceedings as ordered by the Domestic Relations Court. Plaintiffs need only depose Julie Ghoubrial.

4. KNR's decision to file this lawsuit, including tortious inference claims, against chiropractor James Fonner, with whom the firm had a referral relationship, and who countersued KNR based on allegations that the firm "has a scheme in place whereby it sends clients who were allegedly injured in motor vehicle accidents to its 'preferred chiropractors,'" who were required to "follow [KNR's] demands and requests as it relates to treatment, billing, and reducing bills." [Nestico Tr. 644:24-645:9; 666:21-667:6]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. The reasons for the lawsuit against Dr. Fonner can be found in the Complaint in Franklin County.

5. KNR's respective termination of and separation with former attorneys and key witnesses Robert Horton and Paul Steele, including litigation filed by KNR against Horton pertaining to Horton's communications with Plaintiff's counsel about the lawsuit, and threats of litigation against Steele relating to the firm's relationship with chiropractors, related allegations that Horton and Steele had violated confidentiality agreements with KNR, and the settlement agreements between the firm and these former employees. [Nestico Tr. 645:10-649:11]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico must provide answers to this line of inquiry either by written interrogatory or deposition.

6. Mr. Nestico's awareness of the well-known racist stereotype regarding black people and fried chicken, which pertains both to (1) his acknowledgment that "the majority" of KNR's clientele comes from "lower socioeconomic backgrounds," and (2) his email to all KNR attorneys stating, "Next time get Popeye's Chicken," in response to an email about how one of the firm's clients had tried to sell, at a Youngstown-area pawn shop, a \$25 Macaroni Grill gift card distributed by the firm along with the client's settlement proceeds. [Nestico Tr. 477:11-19; 572:11-583:10]

OBJECTION SUSTAINED. Plaintiffs request for this information is not well-taken. Defendants argue the line of questioning is irrelevant, offensive, objectionable and improper. The Court finds that the probative value of the highly inflammatory area of this inquiry is outweighed by the prejudicial effect. It is not disputed that the majority of KNR clients come from the lower end of the socioeconomic population, white and black.

7. The KNR Defendants' counterclaims against Named Plaintiffs, which Defendants voluntarily dismissed without prejudice a few days before Nestico's deposition, and which were apparently intended to intimidate the Plaintiffs and chill other former clients and witnesses from participating in the lawsuit, as well as to manipulate venue. [Nestico Tr. 658:1-659:16; 662:8-663:15]

OBJECTION OVERRULED. Plaintiffs request for this information is well-taken. Mr. Nestico can provide answers to this line of inquiry either by interrogatory or deposition.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion to Compel the Continued Deposition of Alberto R. Nestico is GRANTED IN PART AND OVERRULED IN PART as set forth in the body of this Entry & Order.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

THE CLERK SHALL SERVE ALL COUNSEL AND PARTIES OF RECORD.



Peter Pattakos <peter@pattakoslaw.com>

Julie Ghoubrial Deposition

Barmen, Brad <Brad.Barmen@lewisbrisbois.com>

Wed, Apr 17, 2019 at 11:40 AM

To: "peter@pattakoslaw.com" <peter@pattakoslaw.com>

Cc: "Mannion, Tom" <Tom.Mannion@lewisbrisbois.com>, "dmb@dmbestlaw.com" <dmb@dmbestlaw.com>, "James M. Popson" <jpopson@sutter-law.com>, "grosen@dayketterer.com" <grosen@dayketterer.com>

Peter:

Be advised that Julie Ghoubrial's deposition, set for tomorrow, is being postponed. She will be made available for deposition if and when the classes relative to Dr. Ghoubrial are certified.

This is based, in part, on your position relative to the deposition of non-party witness Ms. Holsey. Since discovery is only to be directed towards class certification at this point, there is no reason to produce Mrs. Ghoubrial unless and until the classes are certified.

I have spoken to Gary Rosen about this and he agrees. He will produce Mrs. Ghoubrial for a deposition on a date and time agreed to by the parties if the classes relative to Dr. Ghoubrial are certified.

Based on the above we will not be appearing tomorrow.

Your attention to this matter is appreciated.

Regards

Brad

Sent from my iPhone

Brad J. Barmen

Partner

Brad.Barmen@lewisbrisbois.com

Lewis Brisbois Bisgaard & Smith LLP

1375 E. 9th Street, Suite 2250

Cleveland, OH 44114

T:216.586.8810 F: 216.344.9421

www.LewisBrisbois.com

This e-mail may contain or attach privileged, confidential or protected information intended only for the use of the intended recipient. If you are not the intended recipient, any review or use of it is strictly prohibited. If you have received this e-mail in error, you are required to notify the sender, then delete this email and any attachment from your computer and any of your electronic devices where the message is stored.

SANDRA KURT
IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
2018 OCT -1 PM 3:41


MEMBER WILLIAMS, et al.,	)	CASE NO.: CV2016-09-3928
)	
Plaintiffs,	)	JUDGE JAMES A. BROGAN
	)	(Sitting by Assignment #18JA1214)
vs.)	
)	
KISLING, NESTICO & REDICK, LLC, et al.,	)	<u>ENTRY & ORDER</u>
)	
Defendants.)	

On September 27, 2018, this Court conducted a telephone status conference with counsel to resolve several pending issues.

Upon due consideration of the issues raised, the Court makes the following rulings:

- Plaintiffs’ Motion to Extend Class Discovery Deadline is GRANTED. The deadline to complete discovery concerning the class-certification issue is extended until February 1, 2019.
- Dr. Ghoubrial’s Motion to Intervene for the limited purpose of opposing Plaintiffs’ Motion to File a Fourth Amended Complaint is GRANTED. The Court will study the motion and the briefs filed in opposition to the Proposed Fourth-Amended Complaint and make a ruling on that issue at a later date.
- Defendants’ (Kisling, Nestico & Redick, LLC, Alberto Nestico and Robert Redick) Motion for Protective Order to limit the scope of deposition to class-certification issue only is OVERRULED.

IT IS SO ORDERED.


 JUDGE JAMES A. BROGAN
 Sitting by Assignment #18JA1214
 Pursuant to Art. IV, Sec. 6
 Ohio Constitution

cc: The clerk of court shall serve all parties of record.