

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
Magistrate Patricia A.
Himelrigh

**Dr. Sam Ghoubrial's Motion to Set
Aside Magistrate's Order**

Now comes Defendant, Dr. Sam Ghoubrial ("Dr. Ghoubrial"), by and through counsel, pursuant to Civ. R. 53(D)(2)(b), and hereby respectfully requests that the Magistrate's Order of April 26, 2019 ("Magistrate's Order") be set aside as it relates to the confidential deposition transcript of non-party Julie Ghoubrial. However well-intentioned, the Magistrate's Order compelling Julie Ghoubrial to produce a hard-copy of the deposition transcript from her divorce case within fifteen days for an in-camera inspection is improper for several reasons. Because the Magistrate's Order violates the statutory spousal privilege of both Dr. Ghoubrial and Julie Ghoubrial, as well as the confidentiality Order of Judge John Quinn, the Magistrate's Order must be set aside. Dr. Ghoubrial further requests the Magistrate's Order be stayed until this Motion to Set Aside is ruled upon.¹

There are no grounds and no need to conduct an in camera inspection of the transcript to determine "whether such testimony results in a waiver of the Ghoubrial's spousal immunity." *See* Magistrate's Order at pg. 3. Regardless of Julie Ghoubrial's testimony, there was no waiver by Dr. Ghoubrial. Under R.C. § 2317.02(D) the privilege belongs to Dr. Ghoubrial and he has not and does not waive his statutory privilege. The Magistrate's Order seems to mistakenly suggest Dr.

¹ A separate Motion to Stay is being filed contemporaneously with this Motion and is incorporated herein by reference.

Ghoubrial's statutory spousal privilege could be waived if he failed to raise the privilege during the divorce. However, because the statutory spousal privilege does not apply and cannot be raised in divorce cases it could not have been waived. In *City of Fairfield v. Profit*, 12th Dist. Butler Case No. CA96-11-240, 1997 Ohio App. LEXIS 3649, (Aug. 11, 1997) at *14, the Twelfth District stated:

The clear import of the foregoing statute [R.C. 2317.02(D)] is to abrogate the marital privilege in divorce and alimony actions. It was under the authority of this statute that the supreme court permitted the husband to testify. No such statute governs the situation in the case at bar. Moreover, the legislature has not chosen to exempt estranged spouses from the rule or marital privilege as set forth in R.C. 2317(D).

Simply by necessity, the spousal privilege cannot operate in divorce proceedings where testimony concerning communications made and acts done during coverture may be necessary to prove grounds for divorce or to provide for an equitable division of marital property. *See* 1 Weissenberger's Ohio Evidence Treatise § 501.17 (2018). Waiver is a "voluntary relinquishment of a known right." *Glidden Co. v. Lumbersmens Mut. Cas. Co.*, 112 Ohio St.2d 470, 2006-Ohio-6553, ¶ 49, 861 N.E.2d 109. Here, Dr. Ghoubrial did not have the right to waive the spousal privilege in the divorce because the spousal privilege does not apply in divorce proceedings.

Judge Quinn, the presiding judge in the Ghoubrial's divorce case agrees the spousal privilege is inapplicable in divorce proceedings. During the March 27, 2019 hearing on Plaintiffs' Motion to Intervene in the divorce for the purpose of obtaining the transcript at issue, Judge Quinn responded to Plaintiffs' counsel's argument the spousal privilege had been waived because it was not raised during Julie Ghoubrial's deposition as follows:²

I've been involved in domestic relations court practice for 40 years as an attorney or magistrate or judge and this is the first time I heard that

² As indicated by Judge Quinn, the attempt intervene in the divorce was improper as Civ. R. 75(B) expressly prohibits intervention under Civ. 24.

the spousal support privilege – pardon me – that the spousal privilege could be raised in a domestic relations case...

See Transcript of March 27, 2019 hearing, attached as Exhibit “A”.

Quite simply, Dr. Ghoumbrial cannot be found to have waived the spousal privilege by not raising it in the divorce action when the privilege was inapplicable in that forum and could not be raised. As such, the stated purpose of the Magistrate’s Order compelling Julie Ghoumbrial to produce the transcript for an in camera inspection to determine if there was a waiver of the spousal privilege is wholly unnecessary. The Magistrate’s Order should be set aside for this reason alone.

Likewise, any discussions Plaintiffs’ counsel may have had with Julie Ghoumbrial after she testified in the divorce action are irrelevant and cannot be considered a waiver of Dr. Ghoumbrial’s statutory spousal privilege. Whether any such conversations occurred or not is irrelevant to a waiver analysis because none of Mrs. Ghoumbrial’s conduct is relevant to the issue. *See* Julie Ghoumbrial’s Motion to Reconsider the Court’s April 18, 2019 Oral Orders, filed April 25, 2019. As the Supreme Court stated in *State v. Savage*, 30 Ohio St. 3d 1, 2, 506 N.E.2d 196 (1987), the spousal privilege belongs to the non-testifying spouse, in this case Dr. Ghoumbrial. In *Savage*, the Ohio Supreme Court stated:

Evid. R. 501 provides for the application of statutorily defined privileges, one of which is the privilege to exclude communications or acts made by a husband or wife in the other’s presence. R.C. 2317.02(D). **The privilege is held by the non-testifying spouse and may be applied to bar testimony of such communications or acts so long as they were not made in the known presence of another.** (Emphasis added).

Even if Julie Ghoumbrial made certain statements to Plaintiffs’ counsel, Dr. Ghoumbrial did not. He was not aware of any such discussions nor did he authorize Julie Ghoumbrial to discuss their private marital communications with Mr. Pattakos or anyone else. As the privilege belongs to Dr. Ghoumbrial as the non-testifying spouse, no alleged waiver on the part of Julie Ghoumbrial would or

could constitute a waiver on the part of Dr. Ghoumbrial or prevent him from raising his statutory privilege to prevent the disclosure of confidential marital communications now.

The law on this issue is clear: Dr. Ghoumbrial has an absolute right to assert his spousal privilege to prevent Julie Ghoumbrial from being compelled to testify regarding confidential marital communications over his objection. The Magistrate's Order, purposefully or not, works to abrogate Dr. Ghoumbrial's statutory privilege for the stated purpose of determining if the privilege was waived despite the fact the privilege could not have been waived in the divorce proceeding as stated above. Dr. Ghoumbrial could not waive a privilege that was inapplicable and could not have been asserted in the divorce proceeding. In short, any in camera inspection of the confidential transcript to determine if the spousal privilege was waived by either party is wholly unnecessary. Neither Julie nor Dr. Ghoumbrial could have waived a privilege that was not available to be asserted in domestic relations court action.

Not only does the Magistrate's Order irreconcilably compel the disclosure of the subject transcript to determine if there was a waiver of the spousal privilege that could not have been raised in that proceeding and therefore never waived, the Magistrate's Order necessarily and inappropriately places Julie Ghoumbrial in the untenable position of having to violate one Court's Order to satisfy another's. As this Court is aware, Judge Quinn issued an Order marking Julie Ghoumbrial's deposition transcript confidential and barring its disclosure to, and/or use by, *any* third party outside of the divorce case for *any* reason. *See* Judge Quinn's January 25, 2019 Order, attached as Exhibit "B". Judge Quinn also denied Plaintiffs' Motion to Intervene for the purpose of obtaining the transcript because, among other things, the transcript was not a "public record" or a

“court document” because it had never been filed and therefore was not part of the record.³ See Judge Quinn’s April 3, 2019 Judgment Entry, attached as Exhibit “C” The Magistrate’s Order mandating that Julie Ghoumbrial violate Judge Quinn’s January 25, 2019 Confidentiality Order is improper on its face as it subjects Julie Ghoumbrial to a finding of contempt whether she complies with that Order or not. See *Chairs v. Burgess*, 143 F.3d 1432 (11th Cir., 1998) (holding we do not interpret “good faith” and “reasonable efforts” to require necessarily that a party violate the order of one court to avoid violating the order of another court. We do not rule out that a party may be acting in “good faith” and with all “reasonable effort” to comply with a court order, but still violate that order, because compliance would cause the violation of other court orders.”).

In addition to requiring Julie Ghoumbrial to violate Judge Quinn’s January 25, 2019 Confidentiality Order, the Magistrate’s Order ignores the principle of comity and fails to give full faith and credit to Judge Quinn’s Confidentiality Order marking the transcript confidential and barring its disclosure to and use by any third party.⁴ The purpose of the full faith and credit provision of the Federal Constitution is to preserve rights acquired or confirmed under public acts and judicial proceedings of one state by requiring recognition of their validity others. *Pink v. A.A.A. Highway Express, Inc.* (1941), 314 US 201, 86 L. Ed. 152, 62 S Ct 241. While the full faith and

³ Judge Quinn properly found Plaintiffs’ attempt to intervene pursuant to Civ. R. 24 invalid as Civ. R. 75(B) expressly prohibits intervention under Civ. R. 24 in domestic relations matters. It appears this Court failed to consider the express prohibits of Civ. R. 75(B) when it suggested Plaintiffs attempt to intervene in the Ghoumbrials’ divorce.

⁴ In denying Plaintiff’s Motion to Compel Portions of Julie Ghoumbrial’s transcript, Judge Brogan acknowledge the principle of comity and Judge Quinn’s authority to issue the January 25, 2019 Confidentiality Order. Now, for whatever reason, the Court appears to have abandoned that position despite Plaintiffs never having briefed the waiver issue by the April 26, 2019 deadline agreed to by the Parties. Rather, that same day, the Magistrate’s Order inexplicably reversed Judge Brogan and *sua sponte* granted the relief sought by Plaintiffs while simultaneously abrogating the Ghoumbrials’ statutory spousal privilege and subjecting Julie Ghoumbrial to contempt in one Court or another.

credit provision of the Federal Constitution was originally meant to ensure one state recognized and gave credit to judgments from sister states, it has since been extended to all courts, federal as well as state, meaning this Court cannot knowingly issue an Order compelling disclosure of a transcript another Court has already marked confidential expressly barring its disclosure. *Davis v. Davis* (1938), 305 US 32, 83 L. ED. 26, 59 S Ct 3, 118, ALR 1518; *Caterpillar Tractor Co. v. International Harvester Co.* (1941, CA3 NJ), 120 F2d 82, 49 USPQ 479, 139 ALR 1. As decisions of the Supreme Court of the United States interpreting Art. IV § 1, of the Constitution are binding all other courts the country, this Court cannot ignore the authority of Judge Quinn's Order while ordering Julie Ghoumbrial to violate that Order at the same time.

For the foregoing reasons, the Magistrate's Order compelling Julie Ghoumbrial to produce the transcript for an in camera inspection must be set aside. However well-intentioned, the Magistrate's Order is unnecessary for its stated purpose of determining if a waiver occurred and it unfairly and improperly mandates that Julie Ghoumbrial choose which Court's Order to violate. Julie Ghoumbrial cannot comply with the Magistrate's Order without violating Judge Quinn's January 25, 2019 Order marking the transcript confidential and barring its disclosure to any third party. Under these circumstances, setting the Magistrate's Order aside is necessary, fair, and equitable.

At a minimum, the Magistrate's Order mandating the production of the transcript should be stayed until this Motion to Set Aside is ruled upon by the Court. Failing to stay the Order to produce the transcript before this Motion is ruled upon would subject Julie Ghoumbrial to the inherent injustice of forcing her to violate Judge Quinn's Order to be in compliance with the Magistrate's Order.

Respectfully Submitted,

/s/Bradley J. Barmen

Bradley J. Barmen (0076515)

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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 29th 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,) CASE NO.
Plaintiff,) 2018-04-1027
-vs-) TRANSCRIPT OF
SAMEH GHOUBRIAL,) PROCEEDINGS
Defendant.) JOHN P. QUINN,
JUDGE

On Behalf of the Plaintiff: Gary Rosen
and Joshua Lemerman, Attorneys at Law
On Behalf of the Defendant: Adam Morris,
Attorney at Law
On Behalf of Corporations: David Best
On Behalf of Plaintiffs in separate case:
Peter Pattakos and Rachel Hazelet,
Attorneys at Law
On Behalf of Defendant in separate case:
Bradley Barmen, Attorney at Law

- - -

BE IT REMEMBERED that this
cause came on to be heard before the
Honorable John P. Quinn, Judge, Domestic
Relations Division, Court Of Common
Pleas, Summit County, Ohio, on the 27th
day of March, 2019, this being a
transcript of said proceedings.
Tami A. Vega,
Official Court Reporter,
Domestic Relations Division

EXHIBIT

A

P R O C E E D I N G S

THE COURT: This is case number 2018-04-1027. The matter was scheduled for hearing on motions filed by the parties as well as the motion to intervene and modify the confidentiality agreement that the parties have signed.

What I think we need to do first is identify all the attorneys who are here and the party that you are representing. Start with the party that wants to intervene.

MR. PATTAKOS: Yes. This is Peter Pattakos. I'm here with my colleague Rachel Hazelet. We represent the plaintiffs in the underlying case against Dr. Ghoubrial.

THE COURT: What's the underlying case?

MR. PATTAKOS: It's Williams v. KNR. It's 2016-09-3928 on the civil docket.

THE COURT: What was your last name again?

MR. PATTAKOS: Pattakos,

1 P-a-t-t-a-k-o-s.

2 THE COURT: And cocounsel's
3 name.

4 MS. HAZELET: Hazelet, Rachel.
5 It's h-a-z-e-l-e-t.

6 THE COURT: Mr. Morris.

7 MR. MORRIS: Adam Morris on
8 behalf of Dr. Sam Ghoubrial, and I do
9 have a preliminary motion that I would
10 like to be heard when the Court is ready.

11 THE COURT: Does it have to do
12 with the motion to intervene?

13 MR. MORRIS: Yes, Your Honor.

14 Attorney Rosen and I are
15 requesting a joint continuance of this
16 hearing. The parties are in extensive
17 settlement negotiations. We have met for
18 about three and a half hours yesterday,
19 and we are very, very close.

20 This motion to intervene is
21 very disruptive to those settlement
22 negotiations. So we would request that
23 this hearing be continued until next
24 week, which is the trial date of April
25 3rd.

1 THE COURT: Attorney Pattakos.

2 MR. PATTAKOS: Well, Your
3 Honor, we are working on a discovery
4 deadline ourselves of April 15th. And we
5 are not here to disrupt anything. We are
6 here to access evidence of fraud that
7 already exists in the form of this
8 transcript.

9 We are here because Judge
10 Brogan who is presiding over the
11 underlying case has instructed us to
12 approach this Court.

13 We understand that Julie was
14 examined at her deposition directly on
15 the allegations in our case and provided
16 testimony that is directly relevant.

17 THE COURT: Let's get the rest
18 of the parties introduced before we get
19 to the merits of the motions.

20 MR. PATTAKOS: Okay.

21 MR. BEST: Judge, I'm David
22 Best. I represent the corporations owned
23 by Julie and Sam Ghoubrial that are named
24 parties in the divorce action.

25 THE COURT: Does Mrs. Ghoubrial

1 have an interest in all the corporate
2 defendants?

3 MR. BEST: Yes, Your Honor.

4 THE COURT: And the folks in
5 the back?

6 MR. ROSEN: Your Honor, Gary
7 Rosen here on behalf of Julie Ghoubrial.

8 THE COURT: Thank you.

9 MR. BARMEN: Your Honor, my
10 name is Brad Barmen. I represent
11 Dr. Ghoubrial in the Williams matter.

12 THE COURT: Okay. All right.
13 Mr. Pattakos.

14 MR. PATTAKOS: Your Honor, as I
15 was starting to say before, we have only
16 approached this Court because we were
17 specifically instructed to by Judge
18 Brogan, and we're only here seeking
19 access to testimony that directly
20 pertains to serious allegations of
21 widespread fraud by a law firm and doctor
22 against thousands of patients.

23 We are not asking to access the
24 entire transcript, but only the portions
25 of it that directly pertain to our case.

1 Based on our investigation, we
2 understand that Attorney Best questioned
3 Julie directly about these allegations
4 which could be confirmed by brief
5 reference to the transcript. Judge
6 Brogan has already ruled that this
7 information, to the extent it is what we
8 believe it is, is highly relevant,
9 probative, and subject to discovery in
10 this case.

11 And additionally, not only has
12 Julie herself taken the position that her
13 deposition does not contain legitimately
14 confidential information, it is well
15 established that confidentiality
16 agreements and orders are not properly
17 used to shield evidence of fraud.

18 Finally, and perhaps most
19 importantly here, we are not asking for
20 this information to be made public. We
21 are only asking for it to be released to
22 Judge Brogan who is presiding in the
23 underlying case for him to determine
24 which parts of the transcript are
25 relevant to the claims at issue, and even

1 those portions that would be released, if
2 any, would be subject to the protective
3 order in the civil case, which would
4 apply to any legitimately confidential
5 information.

6 So there are two levels of
7 protection here over this Court's
8 jurisdiction and the underlying dispute
9 between -- or the dispute that is before
10 this Court.

11 So we are not asking for this
12 to be public, and under these
13 circumstances we believe that there is no
14 reason to prevent Judge Brogan from
15 undertaking this review, and there is
16 every reason, in fact, to allow him to.

17 So we would oppose the motion
18 to continue because we have already been
19 waiting a month. We believe that
20 defendant Ghoubrial has prolonged this
21 hearing, which was initially scheduled
22 for two weeks ago, that was then pushed
23 at the request of Ghoubrial's counsel to
24 this date because that pushes up against
25 our April 15th discovery deadline.

1 We are just asking for the
2 transcript to be immediately released to
3 Judge Brogan so that he can make any
4 decisions necessary there. So this
5 shouldn't impact any negotiations between
6 the two litigants in this Court because
7 we are talking about a transcript that
8 already exists. And there's going to
9 have to be a determination made
10 regardless of any agreement reached by
11 the litigants in your court, Your Honor.

12 Thank you.

13 THE COURT: Thank you.

14 Mr. Morris.

15 MR. MORRIS: Your Honor, would
16 you like me to respond to the motion to
17 intervene or --

18 THE COURT: We're -- we're
19 going to go ahead on the hearing today.

20 MR. MORRIS: Okay.

21 Your Honor, I'm here on behalf
22 of Dr. Ghoubrial, and Attorney Best is
23 here on behalf of the businesses.

24 Your Honor, the intervener in
25 this case is attempting to intervene in

1 this case under Civil Rule 24(b), and
2 24(b) has several different parts and is
3 a very broad rule for intervention in
4 civil cases.

5 However, in domestic relations
6 we have Ohio Civil Rule 75, which
7 specifically states under Ohio Civil Rule
8 75(B) that Civil Rule 14, 19, 19.1, and
9 24 shall not apply to a divorce,
10 annulment, or legal separation action.
11 However, and it gives four ways for
12 somebody to intervene in a divorce
13 matter. And I'm going to hand you what's
14 marked as Defendant's Exhibit A which is
15 Rule 75.

16 Rule 75 is what this Court is
17 bound by. It's not permissive. It is
18 what that Court must follow. And under
19 Rule 75(B) there's four different ways
20 for a party to intervene in a case, like
21 the interveners attempting to do in this
22 case.

23 Under number one, a person or
24 corporation having possession or control
25 of or claiming interest in property

1 whether real, personal, or mixed or for
2 spousal support purposes.

3 THE COURT: Excuse me, Mr.
4 Morris. I'm familiar with Rule 75(B).

5 MR. MORRIS: Okay. Your Honor,
6 under Rule 24(b) they cannot intervene in
7 this case -- I'm sorry. Under Rule 75
8 they cannot intervene in this case under
9 Rule 24(b).

10 The intervener cites to really
11 one case in his reply brief efforts point
12 out to him that he is not able to
13 intervene under Rule 75(B). And he
14 points to Adams v. Metallica,

15 In Adams v. Metallica he claims
16 is a case that supports his position that
17 he should be able to intervene in this
18 divorce case, but interestingly enough,
19 Adams v. Metallica, Metallica, Inc.,
20 involves a case where someone was trying
21 to intervene under Rule 24(b).

22 In looking at Adams v.
23 Metallica and I'm going to hand you this
24 as Defendant's Exhibit number B, letter
25 B, I'm sorry. His case supports the fact

1 that he should not be able to intervene.

2 And if you look on the third
3 page of the case, the Court of Appeals
4 discusses how discovery is neither a
5 public process or typically a matter of
6 public record. Historically, discovery
7 materials were not available to the
8 public or press.

9 Moreover, documents collected
10 during discovery are not judicial
11 records. Discovery, whether civil or
12 criminal, is essentially a private
13 process because the litigants and the
14 courts assume the sole purpose of
15 discovery is to assist the trial
16 preparation. That is why parties
17 regularly agree, and courts often order,
18 that discovery information will remain
19 private.

20 If it were otherwise and
21 discovery information and discovery
22 orders were regularly available to the
23 public or the press, the consequences to
24 smooth functioning of discovery process
25 would be severe. Not only would

1 voluntary discovery be chilled, but
2 whatever discovery and court
3 encouragement that would take place would
4 be oral which is undesirable to the
5 extent that it would create
6 misunderstanding and surprise to the
7 litigants.

8 This is a deposition transcript
9 that was never filed with this Court.
10 It's not a public record. The deposition
11 transcript has not been provided to my
12 office. It's a transcript that these
13 parties entered into in confidentiality
14 agreement and they agreed that as
15 officers of the corporation, they were
16 going to provide testimony regarding the
17 business and that this information was
18 going to be confidential. And they
19 entered into this process freely. They
20 voluntarily went to depositions. We had
21 employees that went to depositions with
22 the understanding that this information
23 would remain confidential.

24 Your Honor, they -- the
25 intervener also points to a case, the

1 other case that he's suggest supposedly
2 supports his position, which is Akron
3 Beacon v. Bond. This is a case involves
4 jurors' names and jurors' addresses and
5 the questionnaires of jurors. It is not
6 a case that involves intervention into a
7 matter. It involved a public records
8 request of public documents, which has
9 nothing to do with this case.

10 As I stated, these parties are
11 involved in active settlement
12 negotiations. We spent three and a half
13 hours together yesterday. We attorneys
14 are working extremely hard on this case
15 to attempt to resolve this matter.

16 Right now, Ms. Ghoubrial is
17 scheduled to be deposed [sic] by
18 attorney -- scheduled to a deposition of
19 Attorney Pattakos in two weeks. He has
20 the ability to ask her whatever question
21 he wants to at that deposition, okay?
22 And she can assert whatever rights and
23 privileges that she has under the law at
24 that deposition.

25 By allowing him to come and

1 interfere in this case and intervene in
2 this case, which is not permitted under
3 the civil rules, would allow him to
4 circumvent her ability to do that.

5 In conclusion, Your Honor, the
6 rules of civil procedure support our
7 position that Attorney Pattakos cannot
8 obtain any relief in this case, and
9 that's clear under Civil Rule 75. The
10 cases that were provided by Mr. Pattakos
11 are misleading at the least for this
12 Court as he tries to suggest that these
13 cases support his position when the cases
14 are in direct opposition of his position.
15 And allowing the civil bar to come in and
16 interfere and intervene in domestic cases
17 would be huge hindrance, especially when
18 we were entering into confidentiality
19 orders in these cases, and these parties
20 are coming to this Court thinking that
21 they are going to provide very sensitive,
22 very confidential information about their
23 lives, about each other, and then
24 allowing an individual to come intervene
25 and obtain that information would be

1 inappropriate. And I will let Attorney
2 Best talk for the businesses.

3 THE COURT: Mr. Morris, how
4 would releasing the deposition to Judge
5 Brogan interfere with settlement
6 negotiations?

7 MR. MORRIS: Well, there was
8 extremely sensitive and confidential
9 business information in that, and there's
10 a chance that that could be released to
11 counsel, and it could have a negative
12 impact. I mean Dr. Ghoubrial's in a very
13 competitive space. He's -- does not
14 only -- he does medical work for
15 patients. He also has a practice where
16 he works with other attorneys that --
17 that he -- a personal injury practice,
18 and this is a -- a -- I would say a two
19 and a half year case that's been pending
20 over in the civil case against Kisling
21 Nestico and Redick, and now they have
22 recently added Dr. Ghoubrial in the past
23 -- I don't know -- six or seven months.

24 So yeah. I think that there's
25 a chance that that sensitive confidential

1 information could get in the hands of
2 somebody that can use it against Dr.
3 Ghoubrial and would have effect on value
4 of the business and would have a effect
5 on our settlement.

6 THE COURT: Thank you.

7 MR. MORRIS: Thank you, Your
8 Honor.

9 THE COURT: Mr. Best.

10 MR. PATTAKOS: Your Honor,
11 before Mr. Best piles on --

12 THE COURT: I want -- no. I
13 want to hear from --

14 MR. PATTAKOS: Okay.

15 THE COURT: I can keep track of
16 it.

17 MR. PATTAKOS: Okay. I don't
18 know if I can, but I will try.

19 MR. BEST: I got involved in
20 this. This is not my normal area and I
21 appreciate your consideration for someone
22 who's probably out of his element in
23 terms of domestic relations. This is my
24 one and only appearance so I will do my
25 best to comply with your requirements.

1 But I got involved because I represent
2 the corporations. There's been some
3 suggestion that I represent Dr. Ghoubrial
4 in some of the pleadings filed. That's
5 not accurate. And I have represented
6 Dr. Ghoubrial's company, and that's how I
7 got involved here.

8 That's -- those companies are
9 owned half by Julie and have by Sam
10 Ghoubrial. So she -- and she is an
11 officer of those companies. So she has
12 fiduciary duties and her obligations to
13 the companies. They have a number of
14 employees. I don't honestly know how
15 many. I am going to say approximately
16 twenty. There's physicians, nurses,
17 medical assistants, secretaries, and they
18 obviously have an obligation to them as
19 well to protect the assets of that
20 company and to protect the ongoing
21 business.

22 The entire effort of this
23 litigation, which has been pending for
24 three years now, has been an effort to
25 prove a fraud that doesn't exist. No

1 evidence has been generated --

2 THE COURT: Well, we are going
3 to leave that issue for the civil case.

4 MR. BEST: I appreciate that,
5 Your Honor, but the reason why
6 Dr. Ghoumbrial was brought into that case
7 and the why Mr. Pattakos is here today is
8 he is using the information he gains
9 bludgeoning these people in the press.

10 He puts it in his websites. He
11 puts it on his web pages. He puts it on
12 Facebook. He puts it in the newspapers.

13 I mean, I've got an example
14 here of where he said that there has
15 already been fraud found, and he
16 published this, and the Judge Brogan has
17 said he's misleading the public. And
18 that's what he will do if he gets any
19 information related to Julie's
20 deposition.

21 This will be Exhibit 3, is it?

22 MR. MORRIS: Should be C.

23 MR. BEST: C?

24 MR. MORRIS: Yeah.

25 MR. BEST: It says right here

1 that based on the proof that

2 Dr. Ghoubrial has committed fraud--

3 THE COURT: Excuse me. Could
4 you show that to counsel.

5 MR. BEST: I'm sorry?

6 THE COURT: Could you show that
7 to counsel.

8 MR. BEST: Yeah. I mean he's
9 got it. He published it.

10 MR. PATTAKOS: Thanks, David.

11 MR. BEST: And so he's -- he's
12 willing to say those things when there's
13 been no -- there is an allegation.
14 There's been no proof so far, Your Honor,
15 but yet he publishes on social media and
16 to the press that fraud has been proven
17 so he has already dramatically reduced
18 the value of the marital assets by
19 undermining this company.

20 And Dr. Ghoubrial's business is
21 drying up because he gets referrals from
22 chiropractors. This is published that
23 there's some fraud. There isn't any
24 witness who has testified that
25 Dr. Ghoubrial has done anything wrong.

1 We have deposed dozens of people,
2 produced tens of thousands of pieces of
3 paper. There is no evidence anywhere
4 except what comes out of his mouth, and
5 he keeps repeating it over and over. And
6 if he gets his hands on a confidential
7 transcript, that's exactly what he will
8 do again.

9 The proof has been repetitive.
10 The thing that was interesting to me is
11 at this deposition, everybody was under
12 the -- both order of the court, the
13 stipulation of the parties, and the
14 presumption that it was confidential.
15 You know how it goes, Judge, where people
16 get upset in your world, and they say
17 things that may or may not be true at
18 various times.

19 THE COURT: I doubt that that's
20 restricted just to my world.

21 MR. BEST: Good point. Good
22 point. It's throughout the world. But
23 what was not done at Julie's deposition
24 was her lawyer didn't feel the need to
25 represent her in terms of her rights and

1 privileges, whether it's spousal
2 privileges or whether it's proprietary
3 because there was no reason.

4 If that transcript gets out,
5 those privileges are waived. So the way
6 to do this appropriately is let him take
7 her deposition. It's scheduled. And
8 when he takes the deposition, her lawyer
9 will have the right to assert privileges
10 or not, as they deem appropriate, but by
11 giving the transcript, that's taking away
12 from them and that spousal privilege is,
13 obviously as you well know, between the
14 two of them, and they are trying to
15 resolve this.

16 So I think that is how it could
17 dramatically influence the outcome of
18 these negotiations, although I'm not
19 qualified to be a part of the
20 negotiations. But I do think it has a
21 potential of very negative impact because
22 they didn't exercise their rights because
23 there was no reason to.

24 And that I think is the key
25 factor here of why he should simply go

1 through the normal discovery process. He
2 doesn't need this transcript.

3 THE COURT: Do the spousal
4 privileges apply when the parties are
5 getting a divorce?

6 MR. BEST: Yes. I actually
7 looked that -- I didn't. I had someone
8 look it up. I am not qualified to do
9 research. It applies even after the
10 divorce. That's what I've been told. I
11 don't pretend to be a research lawyer.
12 I'm too old, but by someone who claims
13 they know how to do good, up-to-date
14 research, it applies during the divorce
15 proceeding and even after the divorce.
16 But I would defer to you on that, Your
17 Honor.

18 So that's my belief and my
19 concern is after repetitive examples of
20 publicly, you know, attempting to destroy
21 this business -- I mean that's really
22 what this is about. He said there's
23 thousands and thousands of people that
24 were referred by Rob Nestico to
25 Dr. Ghoubrial, that's a lie. I don't

1 think there's been five.

2 Dr. Ghoumbrial doesn't get
3 referrals from lawyers. He gets
4 referrals from chiropractors. So a
5 chiropractor's treating a patient or from
6 another patient, or from a hospital, or
7 from a general surgeon that says, hey,
8 you need to see a primary care doctor.
9 He doesn't get referrals from lawyers.

10 So the fact that he's
11 suggesting there's thousands of
12 referrals, there isn't one witness who
13 has said that. There isn't one piece of
14 paper. There isn't one document. It's
15 just him saying it and that's what he
16 does and he goes to the media and repeats
17 that, and that's why his business is
18 dropping. It's hard to measure, but
19 roughly 20 to 30 percent it's dropping
20 already on just the allegation.

21 And when he gets this
22 transcript if there's anything he can
23 twist or just like he did with this case,
24 he takes one phrase out of a nine-page
25 document and blows it up and says this is

1 the reality. That's what he will do with
2 her deposition. He will find one
3 five-word phrase and he will publish it
4 on his Facebook page and he'll call the
5 newspaper reporter, and that will further
6 undermine her ability to live because she
7 needs spousal support. And he's willing
8 to pay it, and they're close to working a
9 deal out. Why would we risk that?

10 Let him take the deposition if
11 he's entitled to information. Mr. Rosen
12 will certainly be able to allow it or
13 disallow it based upon his legal skills.
14 That to me is the only rational way to
15 approach this, and Judge Brogan doesn't
16 understand this world and Judge Brogan
17 has erred on turning over all this
18 material, just unbelievable amount of
19 material to Mr. Pattakos, who then
20 doesn't keep it confidential. He then
21 publishes it. That's what's happening.

22 THE COURT: Thank you.

23 MR. BEST: Yes, Your Honor.

24 Thank you.

25 THE COURT: Yes, sir.

1 Mr. Rosen.

2 MR. ROSEN: Your Honor, just a
3 very few brief comments.

4 First that I would -- while I
5 recognize that the Court is, in fact, now
6 hearing this matter on its substance,
7 would ask to kind of dovetail on what
8 Mr. Morris requested, that any ruling be
9 held in abeyance until next week when we
10 are scheduled to be here for trial
11 purposes to assist us in negotiations on
12 the case.

13 I concur with Mr. Morris'
14 comment that we are becoming much closer
15 in our respective positions, and I do
16 concur with -- with what he said, that --
17 that these issues have been disruptive to
18 us reaching a consensus on how to proceed
19 on the divorce.

20 And I will just note just for
21 procedural purposes, Your Honor, that
22 while Mr. Best is in fact here on behalf
23 of the corporation, he's not here on
24 behalf of Ms. Ghoubrial. Thank you.

25 THE COURT: Well, Mr. Rosen,

1 let me ask you this question.

2 MR. ROSEN: Yes, sir.

3 THE COURT: I've been involved
4 in domestic relations court practice for
5 40 years as an attorney or magistrate or
6 judge and this is the first time I heard
7 that the spousal support privilege --
8 pardon me -- that the spousal privilege
9 could be raised in a domestic relations
10 case. Do you have any thoughts on that?

11 MR. ROSEN: I don't have any
12 thoughts on that, Your Honor. I have not
13 researched what Mr. Best was referencing
14 and I won't try to proffer an opinion on
15 that, Your Honor.

16 THE COURT: Thank you.

17 Dr. Ghoubrial's attorney.

18 MR. BARMEN: I didn't know I
19 would have an opportunity to speak, Your
20 Honor, because I'm not counsel of record
21 in this case, but I -- I would --

22 THE COURT: Neither is --

23 MR. BARMEN: -- I appreciate
24 the opportunity.

25 THE COURT: -- neither is

1 Attorney Pattakos.

2 MR. BARMEN: Pardon me?

3 THE COURT: Neither is Attorney
4 Pattakos.

5 MR. BARMEN: Well, he filed a
6 motion to intervene, Your Honor. I did
7 not file a motion in opposition of that
8 because frankly I didn't think I had
9 standing to do so. But my name is Brad
10 Barmen, B-a-r-m-e-n. I'm with the law
11 firm of Lewis, Brisbois, Brisgaard, and
12 Smith.

13 I do want to follow up on
14 something Mr. Best said since I have the
15 opportunity. Another copy? And I guess
16 we would be on Exhibit D. Right here.
17 Do you have another exhibit sticker?

18 Mr. Best did say when he was
19 talking to the Court or pointing out to
20 the Court when he entered Exhibit C,
21 Mr. Pattakos' firm Facebook post that
22 there was a determination by Judge Brogan
23 that the information they put out was
24 misleading. I would like to point that
25 out to the Court. We will mark it as

1 Exhibit D.

2 This is a decision, Your Honor,
3 from Judge Brogan. I filed a motion
4 after that Facebook post for a Sua Sponte
5 order to strike it and for a gag order
6 because it wasn't the first time that
7 Mr. Pattakos had posted something
8 publicly that was highly intentionally
9 misleading.

10 Now, Judge Brogan in that order
11 did determine that because a gag order is
12 such a tall order that I didn't meet the
13 standard to get it. But he did say on
14 page 8 of this order, and I would very
15 much like you to look at it, in paragraph
16 6. The January 2019-- January 26, 2019,
17 Facebook post is only misleading and the
18 circumstances presented in defendant's
19 motions do not warrant sanctions.

20 It is misleading. That's what
21 he does. That's what our concern is if
22 this information, anything from Julie's
23 transcript comes out, that he would do
24 the same thing with it.

25 I also when I was sitting back

1 listening to the arguments of counsel
2 because, again, I really haven't been
3 involved with anything having to do with
4 the divorce, it struck me as odd. My
5 understanding is that Julie Ghoubrial's
6 deposition was subject to the
7 confidentiality order, and pursuant to
8 agreement of the counsel, was to remain
9 confidential.

10 Mr. Pattakos isn't counsel in
11 this case. Yet he comes in here and he
12 presumes to tell the Court what he thinks
13 Mr. Best questioned Julie on, and what he
14 thinks her answers were. How would he
15 know that if it was confidential?

16 He's -- it's pure speculation.
17 We have a deposition scheduled by
18 agreement for April 15th -- I'm sorry.
19 April 15th. Julie Ghoubrial is appearing
20 for a deposition in the Williams case.
21 He will have the opportunity, as Mr. Best
22 said, to question her as to whatever he
23 wants to then. But to come in here and
24 speculate that she might have said
25 something that somehow was relevant to

1 the case to when he would have no grounds
2 to know that unless someone violated a
3 confidentiality order seems to me to be a
4 little off base.

5 MR. PATTAKOS: Are you
6 denying --

7 THE COURT: Mr. Pattakos, wait
8 your turn, please.

9 MR. PATTAKOS: Okay. Thank
10 you. Sorry.

11 MR. BARMEN: I have nothing
12 else to add, Your Honor, but I would draw
13 your attention to Exhibit D. Thank you.

14 THE COURT: Okay.

15 Mr. Pattakos, it is now your
16 turn.

17 MR. PATTAKOS: Thank you.

18 I mean, if counsel is going to
19 stand in here --

20 THE COURT: Mr. Pattakos, I'd
21 particularly like to hear your response
22 to the Rule 75(B) and Rule 24.

23 MR. PATTAKOS: Yes, Your Honor.
24 It's very easy to find out what's in
25 Julie's transcript. It is a piece of

1 evidence. It is her sworn testimony in
2 the this case.

3 As far as rule 75(B), it refers
4 to joinder of parties. We are not
5 seeking to join this case as a party.
6 The heading of the rule itself says
7 joinder of parties. If you review the
8 briefing which we are content to stand on
9 largely, there are many cases that hold,
10 just as Judge Brogan specifically
11 instructed, that parties may file a
12 motion to intervene for the limited
13 purpose not of joining the case as a
14 party, but simply to obtain access to
15 information that is relevant to other
16 lawsuits.

17 This is a routine thing. It is
18 recognized in a number of decisions. The
19 reason this is being turned into such an
20 issue is apparently because there is
21 quite a bit of evidence to hide here.

22 It is very easy to find out
23 what is in Julie's transcript. The Court
24 need only look, and from our
25 understanding, the Court need only look

1 at the limited set of questioning that
2 Attorney Best engaged in with the
3 witness.

4 So I think it's very
5 questionable for counsel to stand up here
6 in front of this Court and accuse us of
7 misrepresenting something when our
8 investigation has told us exactly what is
9 in this deposition transcript. And if
10 they are not willing to represent that
11 that's not the case, the Court can simply
12 look and see what is the case, that she
13 was questioned precisely on these
14 allegations.

15 So we are not trying to
16 interfere with anything, Your Honor. We
17 are merely trying to do our job and
18 conduct discovery in our case.

19 THE COURT: Why do you need to
20 look at her deposition in this case if
21 you are going to take her deposition in
22 the other case?

23 MR. PATTAKOS: Your Honor, we
24 would like to be able to impeach her if
25 possible, if necessary. This is -- we're

1 trying not to escalate things. If we can
2 obtain this transcript, and it is enough
3 for us to proceed on a class
4 certification motion, we may dispense
5 with the need to proceed with Julie's
6 deposition. We don't know. But for now
7 we know that she was questioned as a
8 witness with firsthand knowledge of the
9 very well documented and very
10 specifically alleged allegations in our
11 case.

12 It's very convenient for
13 Attorney Best and Attorney Barmen to come
14 in here and make misrepresentations about
15 our case that the Court in our case, that
16 Judge Brogan has -- to present arguments
17 here that Judge Brogan has routinely
18 rejected. They've been trying to get
19 this case dismissed for years. They have
20 been trying to stop me from communicating
21 with the public about this case because
22 every time we do communicate with the
23 public, we do so to obtain information
24 from former clients.

25 Judge Brogan specifically

1 instructed us in an order that the
2 traditional way -- we filed a motion to
3 compel because the defendants were
4 refusing to perform a comprehensive
5 search of their files. They said their
6 files were too big. Judge Brogan said
7 the traditional way to obtain information
8 in a putative class action suit is to
9 publish advertisements soliciting
10 potential class members. That is all we
11 have done here.

12 With respect to that motion,
13 you will see eight pages of a ruling
14 where Judge Brogan is repeatedly
15 rejecting Dr. Ghoubrial's arguments about
16 where they accuse us of all manner of
17 misconduct and that our communications
18 with the press are improper. You will
19 see he rejected their arguments for eight
20 pages and --

21 THE COURT: Let me ask a
22 question.

23 MR. PATTAKOS: Yes.

24 THE COURT: Is the document
25 that has not been filed in this Court a

1 public record?

2 MR. PATTAKOS: Pardon?

3 THE COURT: Is the document
4 that has not been filed in this Court a
5 public record?

6 MR. PATTAKOS: Your Honor, I
7 don't believe that it is a public record
8 at this point, but once the Court's
9 rulings become dependent on it, then I do
10 believe it does become a public record.
11 But what we are approaching this as is a
12 piece of discoverable evidence that is a
13 document that is in the possession of a
14 defendant in our case. And what judge
15 Brogan said in his order that is attached
16 to our motion to intervene, he said that
17 he is not inclined to compel the
18 deposition for his in camera inspection
19 without us having exhausted the usual
20 routes to legitimately obtain the
21 deposition transcript, suggesting that he
22 may do so if this Court does not permit
23 that in camera inspection. He said that
24 he did so out of principles of and
25 courtesy between separate divisions of

1 courts. And specifically instructed us
2 to come to this Court.

3 So we are not approaching this
4 as if it were a public record yet,
5 although once it becomes filed and once
6 it becomes subject to orders of this
7 Court, then the public does have a right
8 to understand what this Court's orders
9 are based on. So it would become a
10 public record then.

11 THE COURT: There's some
12 suggestion in cases that matters of
13 discovery are not public records.

14 MR. PATTAKOS: Right. I agree
15 with that. But we are not approaching
16 this at the moment as if it were a public
17 record. We are approaching it as a piece
18 of evidence, a piece of documentary
19 evidence that is relevant to our case
20 alleging widespread fraud.

21 THE COURT: Well, isn't the
22 usual process for impeachment to get a
23 statement from the witness and then have
24 the countervailing statement?

25 MR. PATTAKOS: Well, Your

1 Honor, we don't have the countervailing
2 statement until --

3 THE COURT: I mean, you don't
4 know that you need to impeach her. Maybe
5 she will testify as you hope.

6 MR. PATTAKOS: And we'll never
7 know if we don't see the transcript.

8 THE COURT: Well, you'll never
9 know what she's going to testify to until
10 you take her deposition.

11 MR. PATTAKOS: We have a good
12 idea of what she will testify to based on
13 our investigation.

14 THE COURT: Then why do you
15 need this deposition?

16 MR. PATTAKOS: Because we would
17 like to have it confirmed, Your Honor.
18 It's a piece of evidence that's relevant
19 to our case. It will prevent -- it will
20 help us keep Julie from impeaching
21 herself based on what we understand, and
22 it's simply a very relevant piece, very
23 relevant and probative piece of evidence
24 in our case. What lawyer wouldn't want
25 it?

1 THE COURT: Okay. Thank you.

2 Anybody else want to chime in?

3 MR. PATTAKOS: Your Honor, if I
4 may, there was one other thing that I
5 wanted to respond to. As far as issues
6 of spousal privilege -- oh, I also want
7 to say that we filed a motion for
8 clarification of that order, which has
9 not been ruled upon yet, where the judge
10 does say that -- he does appear to
11 indicate that what we said in our post
12 was misleading. We believe that that was
13 a typo based on the rest of the order and
14 the presence of other typos in the order
15 and that part of the order, so it's not
16 very clear what the Court meant. But for
17 the Court to just come out and say that
18 our posts were misleading after
19 everything else that was said, it's a
20 very convenient thing for them to rely
21 on. It's not very clear.

22 Finally, there are a number of
23 cases that hold as far as the spousal
24 privilege applies that it doesn't apply
25 to discovery, that discovery can take

1 place, and then the issue with the
2 privilege determines whether it is
3 admissible or not.

4 THE COURT: Are you talking
5 about the privilege in domestic relations
6 cases or civil cases?

7 MR. PATTAKOS: I am talking
8 about the privilege as a whole. The
9 spousal privilege in -- I believe it's
10 simply civil cases. And the privilege
11 only applies to private acts and
12 communications between spouses made in
13 reliance on the intimacy of their
14 marriage.

15 We understand that Julie's
16 testimony to the allegations of this case
17 involves acts involving third parties
18 that would never be subject to the
19 privilege in any event, Your Honor.

20 THE COURT: Thank you.

21 MR. MORRIS: Your Honor, I have
22 a brief response.

23 There have been no cases
24 provided -- first, we've got the
25 procedural issue. There have been no

1 cases provided stating that he has any
2 ability to intervene in this case under
3 Ohio Rule 75(B), and Attorney Pattakos
4 says, oh, well, the heading just says
5 joinder of the parties. Well, the rule
6 says that Rule 24 shall not apply to a
7 divorce.

8 In Rymers v. Rymers which is
9 2010 Ohio-4289, the Court of Appeals said
10 75(B) precludes intervention in a divorce
11 action unless a person or corporation
12 having possession of control, and the
13 Court goes on to say, in order to
14 intervene, the intervener applicant must
15 have claimed an interest in property.
16 Interest means a lien or ownership, legal
17 or equitable. And that's in our brief in
18 opposition of the motion to intervene.

19 So procedurally they have no
20 ability to come to this Court and ask for
21 any relief. They have no standing to
22 come to this Court and ask for any
23 relief. So we don't even get past -- we
24 don't even get past the point that he has
25 no ability to intervene in this case.

1 And he's provided zero case law
2 supporting that he has the ability to
3 intervene in a divorce case and that Rule
4 75(B) does not apply. And the case law
5 in this state Rymers v. Rymers is in
6 direct opposition to his position.

7 And this all had been provided
8 to him. I'm shocked that he comes in
9 here and even tries to make this claim.
10 This has all been provided to him. The
11 case law has been provided to him. The
12 rules have been provided to him and he
13 still is taking these positions.

14 We entered into these
15 proceedings with a confidentiality order
16 with the belief that these parties would
17 be testifying and providing discovery in
18 a confidential manner, and we would ask
19 that the Court respect that
20 confidentiality, and that Ms. Ghoubrial,
21 if she decides in her deposition to
22 assert any privileges or assert any
23 rights, she has that ability to do.

24 But we cannot even get past
25 that hurdle that Attorney Pattakos has

1 provided no support in his position that
2 he can intervene in this case under Civil
3 Rule 75(B), and respectfully to the civil
4 Court judge, maybe he didn't have access
5 or have knowledge of that -- of that rule
6 because he doesn't do domestic relations.
7 But that rule prohibits this direct
8 action by Attorney Pattakos.

9 THE COURT: Thank you. Mr.
10 Best.

11 MR. BEST: The only thing I
12 would add, Judge, and I think I have this
13 right, but again, it's not my world. I
14 think as recently as a few days ago
15 Mrs. Ghoubrial asked to seal
16 Dr. Ghoubrial's deposition transcript.
17 So there's still a presumption here of
18 confidentiality, and of course, we don't
19 object to sealing it. It should be
20 sealed. But you know that's kind of
21 defeating the whole purpose here of
22 trying to resolve divorces and protect
23 marital assets if we allow someone like
24 Mr. Pattakos to come in here and start
25 trying his case with allegations in the

1 various social media. So I appreciate
2 your time.

3 THE COURT: Thank you.

4 Anybody else?

5 MR. PATTAKOS: Your Honor, if I
6 may just briefly respond. There --

7 THE COURT: Mr. Pattakos --

8 MR. PATTAKOS: -- as far as the
9 confidentiality --

10 THE COURT: Excuse me,
11 Mr. Pattakos. It's point, counterpoint,
12 counter counterpoint.

13 Okay. I will make a ruling on
14 the motion.

15 I want to say about the other
16 motions that the parties have filed,
17 first of all, the matter is set for trial
18 next Wednesday so my order as far as
19 production of exhibits requires the
20 exhibits to be produced on my desk by
21 tomorrow afternoon.

22 Also with respect to the other
23 motions, particularly the contempt
24 motions, I'm quite serious about
25 enforcing my orders. I would suggest to

1 the parties that they bring themselves
2 into compliance.

3 Thank you. We're adjourned.

4 (WHEREUPON, the proceedings were
5 concluded.)

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C E R T I F I C A T E

STATE OF OHIO,)
) SS:
SUMMIT COUNTY.)

I, Tami A. Vega, Official
Reporter, do hereby certify that I
transcribed, in its entirety and to the
best of my ability, from a digital
recording, the proceedings had and the
testimony taken in the foregoing-entitled
matter, being a Transcript of
Proceedings; and I do further certify
that the foregoing-entitled Transcript of
Proceedings, consisting of forty-five
(45) pages, is a true and accurate
transcription from a digital recording of
said matter and Transcript of
Proceedings.

/s/Tami A. Vega
Tami A. Vega, Reporter

Dated: Akron, Ohio
April 19, 2019

- - -

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

Julie Ghoubrial	*	Case No.: DR 2018-04-1027
Plaintiff	*	Judge Quinn
vs.	*	Magistrate Dennis
Sameh N. Ghoubrial, et al.	*	<u>ORDER TO MARK DEPOSITION</u>
Defendants	*	<u>TRANSCRIPT AS CONFIDENTIAL</u>
		<u>INFORMATION</u>

Based upon written motion and for good cause shown, the following terms shall apply:

1. The deposition transcript of Plaintiff taken on or about October 12, 2018, shall remain under seal of this Court and shall not be distributed, copied, or provided to any third parties.
2. The deposition transcript shall only be used by the parties to the within action.
3. The Court Reporter shall mark each and every one of the pages contained in the deposition as confidential and subject to the Protective Order previously executed by the parties and filed with this Court.



4. This deposition transcript shall only be used by parties and counsel for the limited purposes of the within divorce case and for no other purposes of any kind or nature.

IT IS SO ORDERED.

Judge Quinn

Approved By:

/s/ Adam R. Morris

Adam R. Morris (0086513)

Randal A. Lowry (0001237)

Mora Lowry (0070852)

Attorneys for Defendant

4000 Embassy Parkway, Suite 200

Akron, Ohio 44333

(330) 576-3363

The foregoing document styled 'ORDER TO MARK DEPOSITION TRANSCRIPT AS CONFIDENTIAL INFORMATION' and consisting of 2 pages plus this signature page is hereby approved and made an Order of this Court.

IT IS SO ORDERED



Judge QUINN, JOHN

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
)
)
)
)

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. Metallica, 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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