

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

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p><b>Plaintiffs' Motion to Stay Ruling on Certain Discovery Issues relating to Julie Ghoubrial</b></p>
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The Defendants have gone to extreme lengths to keep Defendant Ghoubrial's ex-wife, Julie, from providing testimony about the allegations at issue in this case. Recently, in his Motion for Reconsideration filed on April 23, 2019, and supplemented on April 26, Defendant Ghoubrial asked the Court to rule that Julie should be excused from testifying at all in this case. According to Defendant Ghoubrial, all of Julie's testimony, no matter what it may be, is somehow subject to the spousal privilege, despite that under Ohio law the privilege does not apply to "communication[s] ... made, or act[s] done, in the known presence" of a third party, and must be "strictly construed" and applied "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." R.C. 2317.02; *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).<sup>1</sup> Additionally, Defendant Ghoubrial just yesterday moved to stay and set aside the Magistrate's April 26 order that Julie

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<sup>1</sup> In *Mowery* (1 OhioSt.3d 192, 199), the Supreme Court of Ohio further explained, in weighing the "public good" to be served by the exclusion of [allegedly privileged spousal] testimony, "that where 'the wrongdoer not only injures his spouse but he also injures the public,' the spouse 'must testify to protect the public.'" This holding is particularly relevant here given the substantial evidence that Ghoubrial has engaged in a calculated and widespread conspiracy to defraud socioeconomically disadvantaged victims of auto accidents. *See* Plaintiffs' 05/01/2019 Motion to Compel Discovery on Defendants' Assets and Net Worth at 2-3.

produce her deposition transcript from the divorce proceedings to the Court for *in camera* review and a determination of which portions of the transcript, if any, are to be provided to the Plaintiffs in discovery in this case.

At this point of the proceedings, Plaintiffs are confident that Julie's testimony—while highly relevant to, and highly probative and supportive of Plaintiffs' claims—is not necessary for Plaintiffs to meet the requirements for class certification under Civ.R. 23. Thus, in order to avoid any interlocutory appeal as to whether and to what extent the spousal privilege applies to Julie's testimony, which might delay this Court's decision on class-certification, Plaintiffs hereby request that the Court stay a ruling on the pending issues of (1) whether to compel that Julie provide deposition testimony in this case, and (2) whether to turn over to Plaintiffs portions of Julie's deposition transcript from the recent divorce proceedings.

Importantly, Plaintiffs are not requesting a stay of this Court's approval of the Magistrate's April 26, 2019 order compelling Julie to produce her deposition transcript from the divorce proceedings to the Court in this case for its *in camera* review.<sup>2</sup> This order, if and when approved by the Court, is not immediately appealable under Ohio law, and would not delay the class-certification issue. *Covington v. Metrohealth Sys.*, 150 Ohio App.3d 558, 2002-Ohio-6629, 782 N.E.2d 624, ¶ 21 (10th Dist.) (“To the extent the trial court's decision directs plaintiff to submit requested materials to an *in camera* review so the court can determine whether the documents are protected from disclosure on some alternative basis, including other bases of privilege or confidentiality, the order is not a final appealable order pursuant to R.C. 2505.02), citing *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63,

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<sup>2</sup> Consistent with the relief requested in this Motion, Plaintiffs (1) have, simultaneously with the filing of this motion, filed their opposition to Defendant Ghoubrial's motions to stay and set aside the 04/26/2019 Magistrate's order, and (2) presently intend—unless otherwise instructed by the Court—to file a brief fully addressing Defendant Ghoubrial's arguments on the spousal privilege in advance of the May 15 deadline for their class-certification motion.

616 N.E.2d 181 (1993) (“[I]t would only be after this in camera review and a trial court order compelling disclosure that the substantial rights of appellants would be implicated.”).

Thus, the Court should not delay its review and consideration of Julie’s deposition transcript in the D.R. proceedings,<sup>3</sup> and should apply its analysis of the transcript to both its ruling on class-certification (as it deems appropriate), and its ruling as to whether and to what extent Julie should be excused from testifying in this case, with both rulings issued simultaneously so as to avoid piecemeal appeals.

Respectfully submitted,

/s/ Peter Pattakos

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<sup>3</sup> Today, May 1, 2019, Julie filed her own motion to set aside the Magistrate’s order, joining Defendant Ghoubrial’s motion to set aside, in which Julie primarily claims (at 1) that she “has never received a copy of the transcript and clearly does not have nor has she ever possessed a copy of the transcript to produce to the Court.” This is, if not an outright misrepresentation, extremely misleading, as Julie’s attorney, Mr. Rosen, has confirmed that he himself has a copy of the transcript. Indeed, Plaintiffs’ counsel specifically requested that Mr. Rosen bring a copy of the transcript to the March 27 hearing convened by the Domestic Relations Court on Plaintiffs’ motion to intervene in those proceedings. *See Exhibit 1*, 03/27/2019 email from Mr. Pattakos to Mr. Rosen. Mr. Rosen confirmed by phone that he would do so, and further confirmed in a conversation with the undersigned at the March 27 hearing that he had the transcript with him and would be able to produce it immediately if ordered to. Moreover, the court reporter who recorded the proceedings would also be able to produce an additional copy if necessary.

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*Attorneys for Plaintiffs*

### **Certificate of Service**

The foregoing document was filed on May 1, 2019, using the Court's electronic-filing system, which will serve copies on all necessary parties.

*/s/ Peter Pattakos*

*Attorney for Plaintiffs*



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**Ghoubrial hearing today re: Julie's transcript**

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**Peter Pattakos** <peter@pattakoslaw.com>

Wed, Mar 27, 2019 at 11:03 AM

To: "Rosen, Gary M." &lt;groesen@dayketterer.com&gt;, jlemerman@dayketterer.com

Good morning Gary and Josh,

I'm writing to request that you bring a copy of Julie's deposition transcript to the hearing this afternoon so that Judge Quinn may refer to it as necessary. I hope to avoid any delays in the event he asks to review it.

Obviously, I'd bring a copy myself if I could access one, but then we wouldn't be having the hearing in the first place.

Thank you for your consideration.

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