

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC, et al.,

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**DEFENDANT SAM GHOUBRIAL,
M.D.'S REPLY IN SUPPORT OF
MOTIONS TO STAY AND SET ASIDE
MAGISTRATES' ORDER OF APRIL
26, 2019**

In arguing Julie Ghoubrial's deposition transcript from her divorce should be produced for an in camera inspection consistent with the Magistrate's Order of April 26, 2019, Plaintiffs completely ignore Judge Quinn's Order marking the transcript confidential and barring its disclosure to, or use by, *any* third party outside of the divorce case. The fact the divorce case has now resolved does not abrogate Judge Quinn's Confidentiality Order and Plaintiffs cite no law supporting their request because none exists. Rather, Plaintiffs' counsel once again relies upon his own self-serving and unsupported assertions as if they somehow amount to evidence or legal authority. Because Julie Ghoubrial cannot produce the subject transcript without violating Judge Quinn's Confidentiality Order, and because *Plaintiffs have now admitted they do not need her testimony or her confidential transcript for purposes of class certification*, the Ghoubrials' Motions to Set Aside the Magistrate's Order should be granted. *See* Plaintiffs' Motion to Stay Rulings, pg. 3.

Not only do Plaintiffs' arguments miss the mark, they once again resort to relying upon case law this Court has already found unpersuasive. Plaintiffs again cite *Grantz v. Discovery for Youth*, 12th Dist. Butler Nos. CA2004-09-261, CA2004-09-217, 2005-Ohio-680, of the proposition courts may order disclosure of confidential juvenile records when pertinent to pending civil and criminal actions. *See* Plaintiffs' Opposition, pg. 2. However, in so doing, Plaintiffs ignore this Court's February 2, 2019 Order wherein this Court previously rejected Plaintiffs' misleading representation

of the holding in *Grantz*. See February 2, 2019 Order, attached as Exhibit "A". Plaintiffs also ignore this Court's appropriate prior recognition of and respect for the principles of comity and courtesy between separate divisions of the court. Exhibit "A". Plaintiffs' arguments seem all the more frivolous now that they have actually admitted the testimony and transcript they seek are wholly irrelevant to issues of class certification. See Plaintiffs' Motion to Stay Rulings, pg. 2.

Plaintiffs gloss over Dr. Ghoumbrial's arguments regarding the Full Faith and Credit Clause and the fact that Magistrate's Order necessarily mandates that Julie Ghoumbrial violate the Order of one Court by complying with another because they have no response. It is axiomatic if this Court orders Julie Ghoumbrial to produce the confidential transcript it is failing to lend Full Faith and Credit to Judge Quinn's Domestic Relations Court and his Confidentiality Order. Plaintiffs' counsel attempts to explain away this paradox with his groundless assertion the Domestic Relations Court (Judge Quinn) would not sanction Julie Ghoumbrial for violating the Confidentiality Order, and if it did, the sanctions would not be upheld on appeal. See Plaintiffs' Opposition, pg. 3. Again, because Plaintiffs' counsel said something does not make it true. His self-serving statements are not binding legal authority and his unsupported belief Julie Ghoumbrial would not be sanctioned for violating Judge Quinn's Confidentiality Order does not protect Julie Ghoumbrial's rights or Dr. Ghoumbrial's statutory spousal privilege.

For the foregoing reasons, Dr. Ghoumbrial's Motion to Set Aside the April 26, 2019 Magistrate's Order should be granted. This Court should continue to respect Judge Quinn's Confidentiality Order.¹ There is simply no reason to force Julie Ghoumbrial to violate Judge Quinn's

¹ Recall Judge Quinn rejected Plaintiffs' attempt to intervene in the Ghoumbrials' divorce for the purpose of seeking modification of the Confidentiality Order to obtain the transcript because, among other reasons, the transcript was never filed and was not a "court document" or a "public record".

Confidentiality Order, this is especially true now that Plaintiffs have admitted the transcript is irrelevant for purposes of class certification. Since all Parties agree the transcript is irrelevant, the Magistrate's Order should be set aside so the Parties and the Court can focus on issues that actually matter to the case at bar.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

Bradley J. Barmen (0076515)
LEWIS BRISBOIS BISGAARD & SMITH LLP
1375 E. 9th Street, Suite 2250
Cleveland, Ohio 44114
Tel. 216.344.9422
Fax 216.344.9421
brad.barmen@lewisbrisbois.com
Counsel for Defendant Sam N. Ghoubrial, M.D.

CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s Reply in Support of Motions to Stay and Set Aside Magistrate's Order of April 26, 2019 have been filed this 7th day of May, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Bradley J. Barmen
Bradley J. Barmen (0076515)

*Counsel for Defendant
Sam N. Ghoubrial, M.D.*

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 Ghoubrial, 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 Ghoubrial, M.D.

Plaintiffs’ Motion to Compel Discovery from Defendant Sam Ghoubrial, 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 Ghoubrial to provide complete answers to Plaintiffs’ discovery requests, subject to the following Court rulings on the objections posed by Defendant Ghoubrial 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 Ghoubrial's deposition taken in Domestic Relations Court Case No. DR2018-04-1027, wherein Julie Ghoubrial 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 Ghoubrial about the allegations in the instant lawsuit.

Defendant Ghoubrial 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. Ghoubrial 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 Ghoubrial'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 Ghoubrial's deposition testimony from these proceedings particularly as related to the veracity of Plaintiffs' allegations against Dr. Ghoubrial in this lawsuit.

Defendant Ghoubrial 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 Ghoubrial 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:

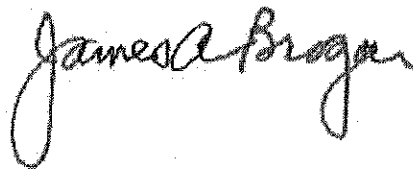
Objections in RFA 1- 4 are overruled

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