

**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 BRIEF IN OPPOSITION TO
PLAINTIFFS' MOTION TO STAY
RULING ON CERTAIN DISCOVERY
ISSUES RELATING TO JULIE
GHoubrial**

Now comes Defendant, Sam Ghoubril, M.D. ("Dr. Ghoubril"), by and through undersigned counsel, and respectfully requests this Court deny Plaintiffs' Motion to Stay Ruling on Certain Discovery Issues Relating to Julie Ghoubril ("Plaintiffs' Motion to Stay"). There is no legitimate reason for this Court to stay ruling on the pending motions regarding the testimony of Julie Ghoubril in this case, or the production of the deposition transcript from her divorce case. This is especially true considering *Plaintiffs now admit* Julie Ghoubril's testimony "is not necessary for Plaintiffs to meet requirements for class certification under Civ. R. 23". *See* Plaintiffs' Motion to Stay, pg. 2. Plaintiffs' admission that Julie Ghoubril's testimony is unnecessary not only warrants the denial of their Motion to Stay, it demonstrates Plaintiffs' requests regarding Mrs. Ghoubril's testimony and the production her depositions transcript from her divorce have been nothing more than frivolous attempts to inject irrelevant and embarrassing personal matters into this case for improper purposes.

Like Defendants, Plaintiffs indicate they wish to avoid any interlocutory appeals that could further delay this matter. At the same time however, they request this Court uphold the Magistrate's Order of April 26, 2019 compelling the production of Julie Ghoubril's deposition transcript from the divorce for an in camera inspection, thereby abrogating the Ghoubrils' statutory spousal privilege. Plaintiffs then further request this Court "should apply its analysis of the transcript to both

its ruling on class certification...”. See Plaintiffs’ Motion to Stay, pg. 3. Plaintiffs’ request is wholly improper. In essence, Plaintiffs want this Court to mandate that Julie Ghoumbrial violate Judge Quinn’s Order marking the transcript confidential and expressly barring its disclosure and/or use by *any* third party, and for this Court to then use that confidential transcript when ruling on class certification. If granted, Plaintiffs’ request would lead to this Court using a confidential transcript Defendants do not possess and have never seen, that is not part of the record in this case, without Defendants being able to respond in any meaningful way. There is simply no support for this in the law.

As this Court knows, decisions impacting this case cannot be made based on information not contained in the record. Doing so would be akin to a juror doing his own investigation of the facts of a case he or she was sitting on in violation of OJI CV 205.03(5). Likewise, Plaintiffs’ request, knowingly or not, necessarily seeks to have this Court violate Rule 2.9(A)(2) of the Code of Judicial Conduct by “receiving factual information that is not part of the record.” *See* Code of Judicial Conduct, Rule 2.9(A)(2). Plaintiffs’ request for this Court to conduct an in camera inspection of the confidential deposition transcript is wholly inappropriate and must be rejected.

Plaintiffs’ Motion to Stay is a thinly veiled attempt to salvage whatever alleged benefit they think they may gain from Julie Ghoumbrial’s confidential deposition transcript despite their admission her testimony is not relevant for class certification purposes. Plaintiffs’ request is supported by nothing more than Plaintiffs’ counsel’s baseless assertions that are directly contradicted by Julie Ghoumbrial herself. Clearly Plaintiffs were taken aback by Julie Ghoumbrial’s April 25, 2019 Motion to Reconsider the Court’s April 18, 2019 Oral Orders wherein Mrs. Ghoumbrial affirmatively stated she “does not have any information with regard to her former husband’s business practices and she will not be able to provide any direct testimony with regards to the issues which appear to be

relevant in this matter.” *See* Julie Ghoubrial’s April 25, 2019 Motion to Reconsider, pg. 1. Now, not wanting that testimony in the record since it destroys their false narrative, Plaintiffs seek to convince this Court to improperly obtain a confidential transcript to use for an improper purpose. Plaintiff’s Motion must be denied.

For the foregoing reasons, Plaintiffs’ Motion to Stay rulings relative to Julie Ghoubrial’s testimony and the production of her deposition transcript should be denied. As Plaintiffs admit they do not need Julie Ghoubrial’s testimony for purposes of class certification, this Court should immediately grant both Dr. Ghoubrial and Julie Ghoubrial’s Motions precluding Julie Ghoubrial from being forced to testify in this case against her will and from being forced to violate Judge Quinn’s confidentiality Order. Moreover, denying Plaintiffs’ Motion to Stay and granting the Ghoubrials’ Motions to protect both the confidential transcript and the Ghoubrials’ statutory spousal privilege also protects this Court from Plaintiffs’ requested violation of Rule 2.9(A)(2) of the Code of Judicial Conduct.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

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CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoumbrial, M.D.'s Brief in Opposition to Plaintiffs' Motion to Stay Ruling on Certain Discovery Issues Relating to Julie Ghoumbrial has 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. Ghoumbrial, M.D.