

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 And Julie Ghoubrial's
Motion to Clarify This Court's Decision of
May 31, 2019**

Now come Defendant Dr. Sam Ghoubrial ("Dr. Ghoubrial") and non-party Julie Ghoubrial, jointly, by and through their respective counsel, and hereby move this Court for clarification of its May 31, 2019 Decision ("Decision") regarding the production of Julie Ghoubrial's deposition transcript taken in her Domestic Relations matter. Clarification of this Court's Decision is necessary both to understand this Court's jurisdiction over non-party Julie Ghoubrial in this matter, and to insure that Julie Ghoubrial is not forced to violate the January 29, 2019 Confidentiality Order of Judge Quinn in the Domestic Relations matter. Further, Dr. Ghoubrial requests clarification of this Court's Decision relative to his statutory spousal privilege in the light this Court's recently stated intent to unseal and make public all depositions filed in this case. Without the requested clarification, both Dr. Ghoubrial and non-party Julie Ghoubrial will be left in the tenuous position of being forced to waive a statutory privilege and to violate the Order of the Domestic Relations Court which has exclusive jurisdiction over the Domestic Relations case.

As this Court is well aware, Judge Quinn issued a Confidentiality Order in the Domestic Relations matter barring the disclosure, production, or use of Julie Ghoubrial's deposition transcript by or to any third party outside of the Domestic Relations matter for any reason. Judge Quinn had the authority to issue the Confidentiality Order and he has the exclusive jurisdiction to enforce,

modify, or rescind that Confidentiality Order. Pursuant to Ohio Revised Code Section 2301.03(I)(1), judges of the Domestic Relations Division of a Summit County Court of Common Pleas “shall have assigned to them and hear all divorce, dissolution of marriage, legal separation, and annulment cases that come before the court.” Moreover, as Your Honor previously determined, “[a] statutory assignment to one division of a court confers on that division exclusive jurisdiction to determine the matter assigned, and deprives the court’s other divisions, including its general division, of jurisdiction to determine those same matters.” *Keen v. Keen*, 157 Ohio App.3d 379, 2004-Ohio-2961, 811 N.E.2d 565, ¶ 12 (2nd Dist.).¹ Exclusive jurisdiction over the subject matter of a suit extends to discovery conducted in that suit, as well as the issuance, interpretation and enforcement of orders relating to that discovery including protective orders as to prevent other courts, like the general division in this case, from emasculating those orders. *See, e.g., CSI Inv. Partners II, L.P. v. Cendant Corp.*, 2006 U.S. Dist. LEXIS 11014, **5, 6 (S.D.N.Y. Mar. 17, 2006).

The Ohio Supreme Court has held that a collateral attack on a judgment issued by a different court in a civil case will succeed **only** when the first ruling was issued without jurisdiction or was the product of fraudulent conduct. *Ohio Pyro, Inc. v. Ohio Dep’t of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550. Orders issued by a court with exclusive jurisdiction over a particular matter are not subject to collateral attack in another court or division, but rather, must be attacked directly and through proper steps to have the order rescinded or modified. *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594 (1927). Here, Judge Quinn unquestionably had jurisdiction to enter his Confidentiality Order in the Domestic Relations case and there are no allegations that Order was secured through fraudulent conduct. As such, any collateral attack on Judge Quinn’s Confidentiality Order is improper. Moreover, where a court patently and unambiguously lacks jurisdiction to

¹ Judge Brogan concurred with the Opinion in *Keen v. Keen*, a Second District Case.

proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. *State ex rel. Columbia Gas of Ohio v. Henson*, 102 Ohio St.3d 394, 2004-Ohio- 3208, 810 N.E.2d 953.

Here, it is undisputed Plaintiffs never directly attacked Judge Quinn's Confidentiality Order through proper steps. Plaintiffs' attempt to intervene in the Domestic Relations matter pursuant to Civ. R. 24 for the stated purpose of having Judge Quinn modify his Confidentiality Order was improper on its face because intervention under Civ. R. 24 is never permitted in domestic relations cases. *See* Civ. R. 75(B). Moreover, Plaintiffs never appealed Judge Quinn's Order denying their motion to intervene which relied upon more than just Civ. R. 75(B)'s blanket prohibition against intervention in divorces. Rather, Plaintiffs purposefully attempted to circumvent both Judge Quinn's Confidentiality Order and his denial of their motion to intervene by serving an improper subpoena upon Julie Ghoubril.

Not only does Judge Quinn have exclusive jurisdiction over the Ghoubril's Domestic Relations matter, including the Confidentiality Order at issue, he has jurisdictional priority because the divorce case was filed before Plaintiffs filed their Fourth Amended Complaint bringing Dr. Ghoubril into this case. Ohio follows the jurisdictional-priority rule providing that, where courts have concurrent jurisdiction over the same matter, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties. *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 984 N.E.2d 450, ¶ 9. When the jurisdictional-priority rule applies, the judge in the second case patently and unambiguously lacks jurisdiction by operation of rule and therefore, prohibition is an available remedy. *See State ex rel. Lee v. Trumbull Cty. Probate Ct.*, 83 Ohio St.3d 369, 374, 1998-Ohio-51, 700 N.E.2d 4.

Here, Julie Ghoubril filed the Domestic Relations case against Dr. Ghoubril seeking a divorce on April 20, 2018, four months before Plaintiffs' motion for leave to file their Fourth Amended Complaint adding Dr. Ghoubril to this case. Thus, even if this Court had concurrent jurisdiction with Judge Quinn and the Domestic Relations Court, the jurisdictional-priority rule would still bestow exclusive jurisdiction upon Judge Quinn and the Domestic Relations Court meaning neither this Court nor Plaintiffs can collaterally attack his Confidentiality Order.

Based on this, Julie Ghoubril requests clarification from this Court regarding its jurisdiction and authority to order her to produce her transcript from the Domestic Relations case in violation of Judge Quinn's Confidentiality Order. This is especially true considering Julie Ghoubril is a non-party to this action and the Ohio Supreme Court has repeatedly held there are significant limitations on the ability of a judgment to bind a non-party. *Ohio Pyro, Inc.*, supra; citing *Coe v. Erb* (1898), 59 Ohio St. 259, 52 N.E. 640, at 268-270. In addition, considering Plaintiffs herein have informed the Court they do not need Julie Ghoubril's deposition transcript for purposes of class certification, and because this Court stated in its Decision it will not review the transcript until after it has ruled on class certification, Julie Ghoubril also requests clarification regarding the timing of the production of the transcript. At a minimum, any order to produce the transcript for in camera inspection should be held in abeyance until after the Court decides the issue of class certification to ensure non-party Julie Ghoubril's rights are protected.

Finally, Dr. Ghoubril and Julie Ghoubril request clarification of the Court's Decision to the extent their respective statutory spousal privileges are implicated. Understanding it is the Court's position an in camera inspection, in and of itself, does not waive the statutory spousal privilege, the Court's recently stated intent to unseal and make all deposition transcripts filed in the case public does implicate their statutory spousal privilege. As such, both Dr. and Julie Ghoubril request

clarification on this issue regarding the Court's intent if Julie Ghoubrial's deposition transcript is submitted to the Court. As neither Dr. nor Julie Ghoubrial are willing to voluntarily waive their statutory spousal privilege, making Julie Ghoubrial's confidential deposition transcript publically available would be an impermissible violation of both of their rights.² Again, as all Parties and the Court agree Julie Ghoubrial's deposition transcript is wholly irrelevant to issues of class certification, the best course of action is to hold any production Order in abeyance until the Court has ruled on class certification.

Based on the above, Julie Ghoubrial requests clarification of this Court's Decision regarding its jurisdiction and authority to order her, a non-party, to produce her confidential deposition transcript in violation of Judge Quinn's Confidentiality Order. The requested clarification is necessary to ensure compliance with this Court's Decision and order to produce will not subject her to sanctions for violating Judge Quinn's Confidentiality Order. In addition, Dr. and Julie Ghoubrial request clarification of this Court's Decision regarding the timing of the production and the handling of the transcript if and when it is produced. This clarification is necessary to ensure their respective statutory spousal privileges will be protected in light of the Court's stated intent to unseal all depositions in the case and make them publically available.

² The past behavior of Plaintiffs' counsel of sharing case information with the media and posting case information on social media also cannot be ignored. Even if Julie Ghoubrial's deposition transcript is kept under seal by the Court if and when the other depositions are unsealed, what guarantees to Dr. and Julie Ghoubrial have Plaintiffs' counsel will not release her testimony publically or include it in some filing?

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

/s/ Gary M. Rosen

Gary M. Rosen (0009414)
Day Ketterer, Ltd.
11 South Forge Street
Akron, OH 44304
Phone: 330-376-8336
Fax: 330-376-2522
grose@dayketterer.com
Counsel for Julie Ghoubril

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was filed electronically with the Court and sent to all parties via the Court's Electronic Filing System on this 5th day of June, 2019. The parties, through counsel, may also access this document through the Court's electronic docket system.

/s/ Bradley J. Barmen

Bradley J. Barmen

Counsel for Defendant

Sam N. Ghoubrial, M.D.