

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

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiff,</p> <p>vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. CV-2016-09-3928</p> <p>Judge James A. Brogan</p> <p>Plaintiffs' Response to the Ghoubrials' Motion to Clarify the Court's May 31, 2019 Order</p>
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Dr. Sam and Julie Ghoubrial's latest "Motion to Clarify" is now the eighth brief that they and the KNR Defendants have filed seeking to undo the April 26 Order requiring the production, for *in camera* review, of Julie's deposition transcript from the Ghoubrials' divorce proceedings, which, quite apparently, confirms the truth of Plaintiffs' allegations in this lawsuit.¹ Like the many related papers that preceded it,² it is full of misrepresentations, some of which Plaintiffs are compelled to address below.

¹ As Plaintiffs have previously advised the Court, their investigation has revealed that Attorney David Best, who represents the KNR Defendants in this case, appeared on Defendant Ghoubrial's behalf at Julie's deposition in the D.R. proceedings, which occurred on Friday October 12. This was eight days after Plaintiffs first sought leave to file the new allegations against Defendant Ghoubrial pertaining to the trigger-point injections that are now contained in the Fifth Amended Complaint. *See* 10/04/2018 Supplement to Plaintiffs' Motion for Leave to file Fourth Amended Complaint. Attorney Best, apparently in a panic to figure out where Plaintiffs learned the basis for the new and highly specific allegations, questioned Julie for approximately an hour on them, during which she confirmed their truth. At this time, Defendants had not yet learned that Defendant Ghoubrial's employee, Richard Gunning, M.D., had, like Julie, also recently contacted Plaintiffs' counsel to provide information about the fraudulent scheme at issue. *See, e.g.*, Plaintiffs' 12/20/2018 Motion to Compel the Continued Deposition of Richard Gunning, M.D. at 1–6, and Plaintiffs' 05/15/2018 Motion for Class-Action Certification at 18–19 (citing and quoting Dr. Gunning's deposition testimony).

² Since Plaintiffs first moved to compel production of Julie's deposition transcript on December 21, 2018, the Defendants and Julie have filed a total of twenty briefs seeking to keep Julie's testimony from coming to light in this case, including to bar both Plaintiffs' and this Court's review of her deposition transcript from the D.R. proceedings, as well as to prevent her from providing new deposition testimony in this case. *See* fn 2, below.

1. **There is no jurisdictional issue here.**

The Ghoubrials' latest brief contains a brand new effort to convince the Court that it lacks jurisdiction to order that the transcript be produced. For the first time, the Ghoubrials now claim that Plaintiffs' basic discovery request for this highly relevant document is an impermissible "collateral attack" on the domestic relations Court's "judgment." Motion to Clarify at 2.

This argument—like the numerous baseless and ever-shifting arguments that came before it³—is yet another "Hail Mary" to distract from the fundamental reality that "courts routinely

³ When Plaintiffs first sought to obtain Julie's D.R. deposition transcript in discovery in this case, Ghoubrial's first response was to argue that the transcript didn't have to be produced because the testimony had not yet been transcribed by the court reporter, and, while Ghoubrial refused Plaintiffs' request to identify the court reporter, he nevertheless suggested that if and when the transcript came into existence, "Plaintiffs would be able to purchase a copy directly from the court-reporter." 01/07/2019 Ghoubrial Opp. at 5. Almost immediately after making this representation, Ghoubrial then filed, on January 24, a motion in the D.R. case asking the court—over Julie's objection—to mark Julie's deposition transcript as confidential on the sole and unexplained grounds that the transcript contained "confidential business information regarding [Defendant Ghoubrial's] business." 01/24/2019 Motion in DR-2018-04-1027. On January 25, the D.R. court rubber-stamped Ghoubrial's requested confidentiality order, and Ghoubrial immediately advised this Court that the transcript could not be produced in this case due to this order. 01/25/2019 Ghoubrial Supp. Memo in Opp. Then, in a reply brief filed on Jan. 31, Ghoubrial argued that Julie's testimony "is in no way relevant" to Plaintiffs' "claims in this case." 01/31/2019 Ghoubrial Mot. for Leave to File Sur-Reply. On February 5, this Court then ruled that Julie's transcript, as described by Plaintiffs, "is highly relevant, probative, and subject to discovery in this case," but in consideration of the "principles of comity and courtesy between separate divisions of courts" and "respect [for] the separate jurisdiction of" the D.R. court, held that it is "not inclined to compel the deposition for an *in camera* inspection without Plaintiffs having exhausted the usual routes to legitimately obtain the deposition transcript (via intervention in the [D.R. court])." 02/05/2019 Order. Thus, on February 12, Plaintiffs moved to intervene in the D.R. court for the limited purpose of gaining access to the transcript. In opposition, Defendant Ghoubrial filed two separate briefs, one by his divorce attorney Adam Morris, and one by attorney David Best (who, again, represents the KNR Defendants in this case). In these opposition briefs (which, for no apparent reason, are not accessible on the D.R. court's public docket and are thus attached here as **Exhibit 1** and **Exhibit 2**), Ghoubrial claimed that Civ.R.75(B) bars intervention in D.R. cases for any purpose, including to obtain discovery material, again argued that Julie's deposition testimony has nothing to do with this case, and also argued that granting Plaintiffs access to the transcript would "potentially serve to deplete the marital estate." Plaintiffs' Motion to Intervene in the D.R. case was fully briefed by February 20, and the Court set a hearing on the issue for March 27, 2019, where the Court considered arguments by counsel. Three separate attorneys argued on Defendant Ghoubrial's behalf at this hearing, and they all stated on the record that the transcript should not be produced for in camera review, in part, because "Ms. Ghoubrial is scheduled

to be deposed [sic] by ... Attorney Pattakos in two weeks” and “he has the ability to ask her whatever question she wants at that deposition.” **Exhibit 3**, 03/27/2019 Hearing Transcript at 13:16–21, quoting attorney Adam Morris; *See also Id.* at 29:17–23, quoting attorney Brad Barmen (“We have a deposition scheduled by agreement for April 15th ... Julie Ghoumbrial is appearing for a deposition in the *Williams* case. He will have the opportunity, as Mr. Best said, to question her as to whatever he wants to then.”). Also at this hearing, Ghoumbrial, for the first time, argued that the deposition transcript was subject to the spousal privilege. *Id.* at 20:21–22:17. On April 1, Ghoumbrial then filed another brief in the D.R. Court regarding his new claim of privilege, which cited two cases—*Sessions v. Trevitt*, 39 Ohio St. 259 (1883) and *Pereira v. United States*, 347 U.S. 1, 74 S.Ct. 358, 98 L.Ed. 435 (1954)—and misrepresented, contrary to clear controlling precedent, that “Ohio law protects **all communications** made by a husband to his wife.” (Emphasis added); *Contra, 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) (courts must strictly construe the marital communications privilege “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.”); *State v. Rahman*, 23 Ohio St.3d 146, 149, 492 N.E.2d 401 (1986) (the privilege does not apply to every communication made during the marriage, but is instead limited to “confidential communications”). (Ghoumbrial’s first spousal privilege brief is also, for no apparent reason, inaccessible on the D.R. court’s public docket and is thus attached as **Exhibit 4**). Before Plaintiffs could respond to this brief, on April 3, the D.R. court denied Plaintiffs’ request for the transcript on grounds that Civ.R. 75(B) bars intervention, and that the transcript was not a public record. *See* 04/03/2019 D.R. Order, attached as **Exhibit 5**. Also on April 3, the Ghoumbrials reached a settlement of the divorce proceedings, and a decree of divorce was entered by the D.R. court. Thus, the Plaintiffs renewed their motion to compel production of the transcript in this Court on April 3, advising the Court that their efforts to obtain the transcript from the D.R. court had failed. In opposing this renewed motion, on April 8, Ghoumbrial argued, in a circular and conclusory fashion that aped the D.R. court’s order, that the D.R. order barred Plaintiffs from obtaining the transcript by an order from this Court, simply because Plaintiffs “[were] not permitted to intervene in the divorce action and the transcript is not a court document or public record.” 04/08/2019 Ghoumbrial Opp. at 3. In this same brief, Ghoumbrial again represented that “Julie Ghoumbrial is being deposed in this case by agreement on April 18, 2019” and “Plaintiffs will be free to question her then about any matter, including the issues in this case, not otherwise privileged or protected.” *Id.* Despite these repeated representations about Julie’s deposition, on April 17, the day before the deposition was scheduled to go forward “by agreement,” the KNR Defendants and Defendant Ghoumbrial purported to cancel it, and filed respective motions to quash the October 2018 subpoena by which the deposition was noticed. In these motions, Defendants argued for the first time that “no basis exists for [Julie’s] deposition to go forward,” and that her testimony “does not impact class-certification issues,” and again made a broad reference to spousal privilege this time without citation to a single case. 04/17/2019 Ghoumbrial Mot. to Quash at 3; KNR Mot. to Quash at 4. On April 18, the Court ordered, in a telephonic hearing, that Julie’s deposition was to go forward within fifteen days. *See* 04/18/2019 Hearing Tr., filed by Defendant Ghoumbrial on April 23, 2019, at 20:5–22:20. On April 23, Ghoumbrial moved for reconsideration of that order, and on the same day the Court vacated the order and requested that the parties submit briefs on whether the spousal privilege would bar Julie from providing further deposition testimony in this case. On April 25, Julie joined in Defendant Ghoumbrial’s motion for reconsideration, and on April 26, Ghoumbrial filed a supplemental brief on the spousal privilege. Also on April 26, the Court, via the Magistrate, ordered that Julie’s D.R. deposition transcript be produced for *in camera* review, noting that “[c]ourts routinely compel information

compel” the production of “information deemed ‘confidential’” by other courts. 04/26/2019 Order at 3. *See also Franklin United Methodist Home, Inc. v. Lancaster Pollard & Co.*, 909 F.Supp.2d 1037, 1044-1045 (S.D.Ind.2012) (“[C]ourts asked to issue discovery orders in litigation pending before them have not shied away from” compelling “confidential” information, even if it would modify or circumvent a discovery order by another court, if ... such a result was considered justified.”) (citing cases); *Grantz v.*

deemed ‘confidential’ for various reasons for *in camera* review when circumstances warrant” and that “[t]his case, and the arguments and issues in the briefs on this issue, present such legitimate and necessary circumstances for this Court to compel” such review. 04/26/2019 Order. In response, on April 29, Ghoumbrial filed a motion to set aside this Magistrate’s order—which Julie and the KNR Defendants joined on April 30 and May 6, respectively—as well as a motion to stay the order. In these briefs, Ghoumbrial argued—again, contrary to clear controlling precedent—that the Court’s *in camera* review of the transcript would violate the spousal privilege. 04/29/2019 Ghoumbrial Mot. to Set Aside at 1; *Contra, Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993) (holding that *in camera* review “is precisely the mechanism available to determine whether a claim of privilege in a discovery dispute is justified” and that “it would only be after this *in camera* review and a trial court order compelling disclosure that ... substantial rights ... would be implicated”). The Ghoumbrials also argued, without any support in law or fact, that the April 26 order violates the “full faith and credit” clause of the U.S. Constitution, and would somehow subject Julie to sanctions by the D.R. court. 04/29/2019 Ghoumbrial Mot. to Set Aside at 4–6. On May 1, the Plaintiffs filed a motion to stay the Court’s ruling on the discovery issues relating to Julie, taking the position that if the Court agreed that there was sufficient evidence to support class-certification without Julie’s testimony, multiple interlocutory appeals could be avoided. Ghoumbrial opposed this motion to stay on May 9, again arguing, as he did in a reply brief filed on May 7, that the Court should not review the transcript *in camera* because it would violate the spousal privilege and subject Julie to sanctions by the D.R. court. The Court rejected these arguments by an order of May 14, where it noted that “*in camera* inspection is the appropriate procedure for reviewing confidential materials and/or matters that may be privileged in any fashion” 05/14/2019 Order. This prompted yet another round of briefing by the Defendants and Julie, arguing that the *in camera* review should be stayed because the Court would be improperly influenced by the transcript in deciding on class-certification. *See* 05/22/2019 Ghoumbrial Mot. to Stay at 1–3; KNR Mot. to Clarify and Correct the Record at 3. On May 31, the Court rejected these arguments as well, noting that “[j]udges often hear evidence they must disregard in making a later ruling,” and that the Court is “quite capable” of doing the same. 05/31/2019 Order. This prompted the instant “Motion to Clarify,” which Ghoumbrial is using as a vehicle to argue, for the first time, after all of the above, that collateral estoppel bars the Court from reviewing Julie’s transcript *in camera*.

Discovery for Youth, 12th Dist. Butler Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680, ¶ 19.

(courts “may order disclosure” of information held to be “confidential” in juvenile court proceedings “when pertinent to pending civil and criminal actions” after holding “an in camera inspection to determine 1) whether the records are necessary and relevant to the pending action; 2) whether good cause has been shown by the person seeking disclosure; and 3) whether their admission outweighs ... confidentiality considerations”); *Abel v. Mylan, Inc.*, N.D.Okla. No. 09-CV-0650-CVE-PJC, 2010 U.S. Dist. LEXIS 106436, at *8-11 (Oct. 4, 2010) (“Plaintiff here should not be required to take action to seek modification of the various protective orders entered in these cases. This is a waste of time and resources.”).

Defendants likely did not make the “collateral attack” argument the first dozen-plus times around because it’s so clear that a protective order or confidentiality order is something entirely different from a final judgment on or “determin[ation]” of a “claim for relief” to which the doctrines of collateral estoppel and *res judicata* actually do apply. See *Keen v. Keen*, 157 Ohio App.3d 379, 2004-Ohio- 2961, 811 N.E.2d 565, ¶ 15 (2nd Dist.) (which the Ghoubrials cite in their Motion to Clarify (at 2), but in which the court simply applied *res judicata* to bar the plaintiff from pursuing “a new action on the same claims for relief which were adjudicated in a prior action between the parties and on related claims which could have been presented in the prior action but were not”).

Indeed, collateral estoppel only applies to preclude the relitigation of issues that were “**actually and necessarily litigated** in a prior action which was based on a different cause of action.” *Teagle v. Lint*, 9th Dist. Summit C.A. NO. 18425, 1998 Ohio App. LEXIS 1560, at *6-7 (Apr. 15, 1998) (emphasis added). In other words, collateral estoppel does not apply where an issue is not actually litigated in a prior action, and it does not apply unless “resolution of the issue was necessary to the prior judgment.” *Montesi v. Nationwide Mut. Ins. Co.*, W.D.Tenn. No. 12-cv-02399-JTF-tmp, 2013 U.S. Dist. LEXIS 164432, at *11 (Nov. 5, 2013) (quoting Alabama’s similar formulation of the

requirements for collateral estoppel).

Here, like with any such protective order, the Domestic Relations court's confidentiality order was plainly not necessary to the resolution of the Ghoubrials' divorce.

Nor was the confidentiality issue "actually litigated" in the D.R. court. Not only did that court fail to make any findings to justify its confidentiality order, and denied the Plaintiffs leave to intervene to challenge it in the first place (*See Ex. 5*, 04/03/2019 D.R. Order); the D.R. proceedings were "terminated by a settlement," which means "there was no decision or judgment" by which any issue could have been "actually or directly litigated." *Teagle*, 1998 Ohio App. LEXIS 1560, at *9. Thus, collateral estoppel cannot possibly apply. *Id.*

In sum, the Ghoubrials' argument that this Court lacks jurisdiction to order the production of Julie's transcript is nonsense piled upon nonsense.

2. Julie's testimony is not "irrelevant to issues of class-certification" and the Court is not required to delay its *in camera* review of the transcript.

The Ghoubrials also claim, falsely, that "all Parties and the Court agree Julie Ghoubrial's deposition transcript is wholly irrelevant to issues of class certification." Motion to Clarify at 5. The truth is that Julie's transcript is highly relevant to the merits of this case. Thus, it is also relevant to class certification pursuant to the Court's mandate to undertake a "rigorous analysis" that requires consideration of "factual and legal issues" pertaining to "the merits of [Plaintiffs'] underlying claims" that are "enmeshed in" or "overlap" with Rule 23's requirements. *Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614, ¶ 18, ¶ 51.

Plaintiffs did agree to wait to receive Julie's transcript and take her deposition testimony until after class-certification is determined, pursuant to their 05/01/2019 Motion to Stay. But this was hardly because the information is "wholly" or even partly "irrelevant." Rather, as made clear in their Motion to Stay, Plaintiffs believe that they have submitted plenty of evidence to support certification of the three requested classes without Julie's testimony, and are willing to defer receipt of Julie's

testimony in order to avoid multiple interlocutory appeals.

The Court has since admonished Plaintiffs' counsel for having made an "inappropriate" and "insulting" "suggestion that th[e] Court utilize the information it gleans from the *in camera* review [of Julie's transcript], or be influenced in deciding [on] class certification." 05/14/2019 Order; 05/31/2019 Order.

Thus, Plaintiffs wish to clarify as follows: The undersigned only suggested that the Court "apply its analysis of the transcript to ... its ruling on class-certification (**as it deems appropriate**)."

05/21/2019 Motion to Stay at 3 (emphasis added). Counsel made this suggestion understanding that the Court is "quite capable" of "hear[ing] evidence [it] must disregard in making a ... ruling."

05/31/2019 Order. And counsel further understands "that this Court cannot consider evidence or testimony that is outside the record in determining any substantive issue." 05/14/2019 Order. If the Court decides to grant class-certification without reviewing Julie's testimony, there is no issue here. What Plaintiffs wish to (and believe they are entitled to) avoid is a situation where the Court denies class-certification without any consideration of this testimony. Plaintiffs hope that it is not insulting or inappropriate to suggest that if the Court is inclined to deny class-certification, it should consider Julie's transcript first, order that any relevant and discoverable portions be produced to the Plaintiffs, and consider briefing as to whether Julie's testimony and any additional related discovery might affect the class-certification determination.

In sum, the Defendants should not be permitted to benefit from their obstruction regarding Julie, and the Plaintiffs should not be punished for their willingness to wait for access to her testimony that they have duly and expeditiously sought and to which they are entitled under the Civil Rules.

Respectfully submitted,

/s/ Peter Pattakos

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Certificate of Service

The foregoing document was filed on June 7, 2019, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

Attorney for Plaintiffs

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

JULIE GHOUBRIAL)	CASE NO: DR-2018-04-1027
)	
Plaintiff,)	
)	JUDGE QUINN
-vs-)	
)	
SAMEH N. GHOUBRIAL, et al.)	MAGISTRATE DENNIS
)	
Defendants.)	
)	
)	Brief in Opposition of Intervening
)	Parties' Motion to Intervene and
)	for Amendment of the January 25,
)	2019 Confidentiality Order re:
)	Julie Ghoumbrial's Deposition
)	Testimony

Now comes, Sameh Ghoumbrial, by and through counsel, and hereby submits his Opposition of Intervening Parties' Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoumbrial's Deposition Testimony.

In their brief, Intervening Parties cite to Ohio Civ. R. 24(B) for the basis of their intervention into the divorce matter. However, Ohio Civ. R. 24 **DOES NOT APPLY** in divorce cases. Ohio Civ. R. 75(B) states that:

“(B) Joinder of parties. Civ.R. 14, 19, 19.1, and 24 shall not apply in divorce, annulment, or legal separation actions, however:

(1) A person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant;

(2) When it is essential to protect the interests of a child, the court may join the child of the parties as a party defendant and appoint a guardian ad litem and legal counsel, if necessary, for the child and tax the costs;

EXHIBIT 1

(3) The court may make any person or agency claiming to have an interest in or rights to a child by rule or statute, including but not limited to R.C. 3109.04 and R.C. 3109.051, a party defendant;

(4) When child support is ordered, the court, on its own motion or that of an interested person, after notice to the party ordered to pay child support and to his or her employer, may make the employer a party defendant.”

The Eleventh District Court of Appeals described the application of Ohio Civ. R. 75(B) in *Rymers v. Rymers*, 2010 Ohio 4289 as follows:

“Civ.R. 75(B) precludes intervention in a divorce action unless ‘[a] person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant.’ Civ.R. 75(B)(1). In order to intervene, the intervenor applicant must have claimed an ‘interest in property.’ *Moore v. Moore*, 175 Ohio App.3d 1, 2008-Ohio-255, 884 N.E.2d 1113, ¶17. ‘Interest’ means a ‘lien or ownership, legal or equitable.’ *Id.*”

The Intervening Parties are not alleging any interest in an asset or debt of the marital estate. The Intervening Parties are seeking to intervene for the limited purpose, as they state in their brief, “to determine which, if any, limited portions of the testimony are subject to discovery in the civil case.” This is ***specifically barred*** under Ohio Civ. R. 75(B). Therefore, based on the plain language of Ohio Civ. R. 75(B), the Intervening Parties’ Motion must be denied.

Due to the fact that the Intervening Parties have no basis for intervening in the divorce proceedings, the remainder of the Intervening Parties’ arguments are irrelevant and must be stricken from the record. However, it is important to note that the confidentiality order is good policy and must remain in place. The Ghoubrial’s are attempting to resolve their divorce matter. The parties have voluntarily submitted to depositions. Both parties are office holders in the various businesses at issue in this matter. The parties should be able to testify regarding the business and

marriage without fear of outside parties invading the process. Further, the parties are freely testifying regarding the status of the businesses while under the impression that a confidentiality order is in place. A precedent allowing third parties to invade the discovery process in a divorce matter will have drastic effects and cause increased contention in a divorce. Therefore, confidentiality agreements and orders should not be disturbed for any reason.

Wherefore, for all of the above reasons and as a matter of law, the Intervening Parties' Motion to Intervene must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam R. Morris, do hereby certify that a copy of the foregoing has been sent via e-mail
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IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
SUMMIT COUNTY, OHIO

JULIE GHOUBRIAL

Plaintiff,

v.

SAMEH N. GHOUBRIAL, ET AL.,

Defendants.

Case No. DR 2018-04-1027

Judge John P. Quinn

Magistrate Dennis

**Brief in Opposition to Intervening Parties'
Motion to Intervene and for
Amendment of the January 25, 2019
Confidentiality Order re: Julie Ghoubrial's
Deposition Testimony**

Now comes Defendant Sameh Ghoubrial M.D. ("Dr. Ghoubrial"), by and through undersigned counsel, and hereby respectfully requests that Intervening Parties, Member Williams, Thera Reid, Monique Norris, and Richard Harbour's (hereinafter, the "Intervening Parties") Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoubrial's Deposition Testimony be denied.

The Court entered a valid Order concerning legitimate confidentiality issues on January 25, 2019. The Order explicitly states that Julie Ghoubrial's deposition transcript should be used "for the limited purposes of the within divorce case and for no other purposes of any kind or nature." No circumstances have changed since the Court entered its Order in its sound discretion. Nevertheless, the Intervening Parties seek to amend this Court's Confidentiality Order in an improper attempt to inject Dr. Ghoubrial's unrelated and personal divorce proceedings into a separate and distinct uncertified class-action proceeding.¹ Simply put, Dr. Ghoubrial's divorce is unrelated to the pending

¹ The uncertified class-action lawsuit, captioned *Member Williams, et al., v. Kisling, Nestico & Redick, LLC, et al.*, Case No. CV-2016-09-3928, is currently pending in the Summit County Court of Common Pleas. The case has been pending against Kisling, Nestico & Redick, LLC since September 2016 and remains in the discovery phase, as Plaintiffs have yet to move (footnote continued)

uncertified class-action lawsuit, which itself is nothing more than a fishing expedition. The Intervening Parties submitted their factually inaccurate Motion in furtherance of their continued efforts to engage in unsubstantiated mudslinging against Dr. Ghoumbrial in the pending uncertified class action. Intervening Parties' request is improper, unsupported, unwarranted and meant solely to harass Dr. Ghoumbrial.

Although Dr. Ghoumbrial is only named personally in the pending uncertified class action, the Intervening Parties likely seek to inject the divorce proceedings into the pending uncertified class action to create an issue involving the entities affiliated with Dr. Ghoumbrial's medical practice, which Julie Ghoumbrial is an officer of and which undersigned counsel represents herein, thereby depleting the marital estate. As such, in the interest of both parties to the divorce proceeding, this Court should deny the Intervening Parties Motion and uphold the valid January 25, 2019 Confidentiality Order as it currently stands.

Moreover, Intervening Parties' Motion is improper under the Civil Rules. The Intervening Parties cannot intervene in this divorce action under Civil Rule 24(B). Civil Rule 75(B) expressly prohibits precisely the relief being sought by Intervening Parties. As such, Intervening Parties' Motion must be denied on those grounds alone.²

for class certification. In October 2018, the court granted Plaintiffs' Motion for Leave to File Fourth Amended Complaint, which added Dr. Ghoumbrial as a defendant in the case. Plaintiffs currently bring claims arising out of Dr. Ghoumbrial's medical treatment rendered to clients of Kisling, Nestico & Redick. Dr. Ghoumbrial has a pending Motion for Judgment on the Pleadings, which seeks judgment in favor of Dr. Ghoumbrial on all of Plaintiffs' unsubstantiated and untimely allegations, as each are time-barred medical claims.

² Defendant Ghoumbrial adopts the Brief in Opposition of Intervening Parties' Motion to Intervene by on February 19, 2019 by Adam Morris as if fully incorporated herein.

A. The January 25, 2019 Confidentiality Order is valid and bars *in camera* review in an unrelated uncertified class-action lawsuit.

It is well established that a trial court has broad discretion in regulating the discovery process. *See State ex rel. Daggett v. Gessaman* (1973), 34 Ohio St. 2d 55, 295 N.E.2d 659, paragraph one of the syllabus. The purpose of protective orders is to prevent an abuse of the discovery process. *See In re Guardianship of Johnson*, 35 Ohio App. 3d 41, 519 N.E.2d 655, ¶ 1 of the syllabus (10th Dist. 1987). Additionally, while there is a common law right of public access to judicial proceedings in civil cases, that right is not absolute. *See, e.g. Putnam Pit, Inc. v. City of Cookeville*, 221 F.3d 834, 840-841 (6th Cir. 2000), *citing United States v. McDougal*, 103 F.3d 651, 659 (8th Cir. 1996).

This Court, in its sound discretion, entered the Order to Mark Deposition Transcript as Confidential Information on January 25, 2019. Critically, this Court entered its Order precisely to limit the use of Julie Ghoubril's deposition transcript to the parties of the divorce proceeding and counsel "for the limited purposes of the within divorce case and for no other purposes of any kind or nature." (Confidentiality Order, at 4). The Intervening Parties seek amendment to the Order for improper purposes and their Motion should be denied for several reasons.

Initially, the Court was well within its discretion when it entered the Order. The purported "required findings" suggested by the Intervening Parties are satisfied to the extent they are legitimately required. The Intervening Parties rely on two cases to suggest that Ohio law requires specific and on the record showings of clear and convincing evidence that any order restricting public access to information is essential to protect values higher than those protected by the First Amendment. (*See Intervening Parties' Motion*, p.5). However, the Intervening Parties intentionally misrepresent the cases upon which they rely and they are simply wrong. Both cases supporting the Intervening Parties' proposition unequivocally dealt with the public's right of access to criminal

proceedings, a far cry from the present Confidentiality Order at issue. Intervening Parties cite no authority supporting their requested relief in a domestic relations matter because no such authority exists. In short, Intervening Parties cannot rely on Civil Rule 24(B) and authority applicable only to criminal matters in an effort to circumvent a necessary and proper Order of this Court.

First, the Intervening Parties cite to *State ex rel. National Broadcasting Co. v. Court of Common Pleas*, wherein the Court stated,

Criminal trials have historically been open to the public, and public access has always been considered essential to the fair and orderly administration of our criminal justice system. Under *Richmond Newspapers*, supra, and *Press-Enterprise II*, supra, such trials are presumptively open. Accordingly, we hold that a gag order cannot issue unless ‘specific, on the record findings’ are made demonstrating that a gag order is ‘* * * essential to preserve higher values and is narrowly tailored to serve that interest. * * *’

(Citations omitted.) 52 Ohio St. 3d 104, 108, 556 N.E.2d 1120, 1124-1125, 1990 Ohio LEXIS 255, *12, 17 Media L. Rep. 2209. Accordingly, the Court was obviously opining on the public’s rights as it applies to criminal proceedings only. As such, *State ex rel. National Broadcasting Co.* cannot stand to require this Court to make such findings, as this case is not criminal in nature and the Court retains “broad discretion” in regulating discovery under the Rules of Civil Procedure. This broad discretion is especially critical in domestic relations cases, considering the extremely personal and potentially embarrassing subject matter when dealing with a couple’s divorce.

Moreover, the additional support for the Intervening Parties’ proposition is similarly inapplicable to the facts at hand. In *State ex rel. Vindicator Printing Co. v. Wolff*, the Court explicitly noted that its holding did not apply to civil discovery, stating:

Notwithstanding respondents' assertions, in Ohio, a ‘bill of particulars has a limited purpose—to elucidate or particularize the conduct of the accused alleged to constitute the offense.’ *State v. Sellards*, 17 Ohio St.3d 169, 171, 17 Ohio B. 410, 478 N.E.2d 781 (1985). Its express purpose is not ‘to serve as a substitute for discovery.’ *Id.* See also

United States v. Smith, 776 F.2d 1104, 1111-1112 (C.A.3, 1985), holding that the First Amendment and common-law rights of access ‘extend to bills of particulars because we think them more properly regarded as supplements to the indictment than as the equivalent of civil discovery.’

Therefore, the sealed bills of particulars are not exempt from disclosure under state law as either discovery materials or work product. Nor is a recitation of facts in a response to a dispositive motion in a criminal case the equivalent of discovery or work product. Therefore, the sealed records are entitled to the presumption of access accorded case documents under Sup.R. 45(A).

132 Ohio St. 3d 481, 490, 2012-Ohio-3328, P30-P31, 974 N.E.2d 89, 99, 2012 Ohio LEXIS 1822, *21-22, 40 Media L. Rep. 2641, 2012 WL 3031255. Thus, each case cited by the Intervening Parties plainly concern public access to criminal trials and not to matters covered by the Rules of Civil Procedure. As such, Intervening Parties’ proposition that the Court’s Order is deficient because it does not include “specific, on the record” findings of clear and convincing evidence, is unsupported and should be disregarded.

Instead, this Court has broad discretion to regulate the discovery process and may enter into protective orders to prevent abuse of such process. Therefore, the Court was well within its discretion when it entered into the January 25, 2019 Order marking the deposition transcript confidential and subjecting it to the Protective Order. Because both parties to the divorce have legitimate interests to keep the deposition transcript confidential and separate from the unrelated and uncertified class-action lawsuit, the Court must deny the Intervening Parties’ Motion.

B. The Court should not be persuaded by the Intervening Parties’ factually inaccurate Motion.

Beyond the unreliable propositions of law and misguided reliance upon Civil Rule 24(B), the Intervening Parties’ Motion contains factually inaccurate representations calculated to disingenuously suggest that the two cases are related, when in reality they are not. Specifically,

despite allegations otherwise, undersigned counsel does not represent Dr. Ghoubrial in the uncertified class-action and he never has. (*See* Motion to Intervene, p. 1). Instead, in the uncertified class action, Dr. Ghoubrial is represented by Brad J. Barmen of the Lewis Brisbois firm. Contrary to Intervening Parties' misrepresentation, undersigned counsel represents a separate defendant in the matter, Kisling, Nestico & Redick. Consequently, when I engaged in questioning during Julie Ghoubrial's deposition, I was not simultaneously engaged in representing Dr. Ghoubrial in the unrelated lawsuit. The Intervening Parties' representation otherwise was a knowing and improper attempt to mislead this Court.

Finally, the Court must consider the Intervening Parties' true interest in injecting the divorce proceedings into the uncertified class action: to harass, embarrass and sling mud at Dr. Ghoubrial using the highly sensitive, personal, and inflammatory nature of his ongoing divorce. Dr. Ghoubrial's personal affairs with Julie Ghoubrial are not relevant to the treatment he provided former clients of Kisling, Nestico & Redick. Further, Dr. Ghoubrial is only named personally within the uncertified class-action lawsuit, his affiliated business entities are not part of the case. However, Julie Ghoubrial is an officer of two of the entities, namely Sam Ghoubrial, MD, Inc. and in SGM Holdings, Inc.. Consequently, allowing the unrelated divorce proceedings to be injected into the uncertified class-action lawsuit would potentially serve to deplete the marital estate, to the detriment of both parties to the divorce proceedings. Accordingly, the Court must uphold the Confidentiality Order, as Dr. Ghoubrial has already shown good cause for keeping Julie Ghoubrial's deposition transcript confidential and out of the hands of third parties seeking to use this highly sensitive information for inappropriate purposes.

C. Conclusion

For the reasons stated, the Court should deny the Intervening Parties' Motion to amend the Confidentiality Order. Specifically, the Court's Order is valid and must be upheld as it stands because the Intervening Parties' Motion lacks support in law and fact and the interests of both parties to the divorce proceedings require the Confidentiality Order to remain unimpeded. Dr. Ghoubrial's legitimate interests in keeping the deposition transcript confidential and subject to the Protective Order in this matter outweighs the Intervening Parties' illegitimate interest in having Dr. Ghoubrial's irrelevant, highly personal, and unrelated divorce proceedings injected into an uncertified class-action lawsuit. As such, Dr. Ghoubrial respectfully requests that this Court uphold its Confidentiality Order and prevent future mudslinging by the Intervening Parties.

Respectfully Submitted,

By: /s/ David M. Best

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Sameh N. Ghoubrial, M.D.

CERTIFICATE OF SERVICE

The foregoing Defendant Sameh Ghoubril, M.D.'s Brief in Opposition to Intervening Parties' Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order re: Julie Ghoubril's Deposition Testimony has been filed on the 19th day of February, 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/ David M. Best

David M. Best (0014349)

Counsel for Defendant

Sameh N. Ghoubril, M.D.

1 IN THE COURT OF COMMON PLEAS

2 DOMESTIC RELATIONS DIVISION

3 SUMMIT COUNTY, OHIO

4 JULIE GHOUBRIAL,) CASE NO.
5) 2018-04-1027
6 Plaintiff,)
7 -vs-) TRANSCRIPT OF
8) PROCEEDINGS
9 SAMEH GHOUBRIAL,) JOHN P. QUINN,
10) JUDGE
11 Defendant.)

12 On Behalf of the Plaintiff: Gary Rosen
13 and Joshua Lemerman, Attorneys at Law
14 On Behalf of the Defendant: Adam Morris,
15 Attorney at Law
16 On Behalf of Corporations: David Best
17 On Behalf of Plaintiffs in separate case:
18 Peter Pattakos and Rachel Hazelet,
19 Attorneys at Law
20 On Behalf of Defendant in separate case:
21 Bradley Barmen, Attorney at Law

22 - - -

23 BE IT REMEMBERED that this
24 cause came on to be heard before the
25 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

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. Ghoubrial 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. Ghoubrial 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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1 C E R T I F I C A T E

2 STATE OF OHIO,)
3) SS:
4 SUMMIT COUNTY.)

5 I, Tami A. Vega, Official
6 Reporter, do hereby certify that I
7 transcribed, in its entirety and to the
8 best of my ability, from a digital
9 recording, the proceedings had and the
10 testimony taken in the foregoing-entitled
11 matter, being a Transcript of
12 Proceedings; and I do further certify
13 that the foregoing-entitled Transcript of
14 Proceedings, consisting of forty-five
15 (45) pages, is a true and accurate
16 transcription from a digital recording of
17 said matter and Transcript of
18 Proceedings.

19
20 /s/Tami A. Vega
21 Tami A. Vega, Reporter

22 Dated: Akron, Ohio
23 April 19, 2019

24 - - -
25

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>BRIEF REGARDING SPOUSAL</u>
Defendants	*	<u>PRIVILEGE</u>

Now comes Defendant, Sameh N. Ghoumbrial (“Husband”), and hereby submits his brief regarding spousal privilege. This Court held a hearing on March 27, 2019 regarding the Motion to Intervene and for Amendment of the January 25, 2019 Confidentiality Order Re Julie Ghoumbrial. The Court had raised a question regarding spousal privilege in a civil matter.

The marital privilege has a long history in Ohio and the nation. It arose from the common law and examples of the doctrine preexist the formulation of the United States. As early as 1883 in *Sessions v. Trevitt*, 39 Ohio St. 259, the Ohio Supreme Court justified the privilege and stated that public policy requires that a husband and wife not be allowed to betray the trust and confidence which are essential to the happiness of the marital estate.

Ohio has codified a statutory privilege regarding marital communications in Revised Code Section 2317.02(D) which reads as follows:

"The following persons shall not testify in certain respects:

.

EXHIBIT 4

(D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist."

As stated above, spousal privilege can be asserted by either husband or wife on communication made by either party. It is further well settled in Ohio that the spousal privilege in Ohio cannot be waived unilaterally and allows a person to prevent his or her spouse from testifying as to any and all privileged communications made during the marriage and in reliance on the confidentiality and sanctity of marital relationship.

Communications between husband and wife occurring during the marriage are deemed confidential, if expressly made so, or if the subject is such that the communicating spouse would probably desire that the matter be kept secret. It is not necessary that the spouse claiming the privilege establish the confidential nature of the communication. Generally, the courts have presumed that communications between husband and wife are confidential and privileged. *Pereira v. United States*, 347 U.S. 1, 74 S.Ct. 358, 98 L.Ed. 435 (1954)

Attorney Pattakos, it is believed upon good faith, intends to take deposition testimony made in this Honorable Court and present it as evidence in a different proceeding. These alleged communications occurred during the marriage by Defendant Sam Ghoubril to his wife Julie Ghoubril in the trust and confidence of the marriage. It is clear that Ohio law protects all communications made by a husband to his wife, even incriminating statements (not applicable

here) because the sanctity of trust in a marriage mandates this protection. Neither party waived spousal privilege in this matter. By attempting to obtain the deposition transcript, the intervening party is attempting to circumvent R.C. 2317.02 which would allow Plaintiff or Defendant to assert spousal privilege of all communications and acts done between the Plaintiff and Defendant. Therefore, the intervening party is not only asking the Court to violate Ohio Civ. R. 75(B) but also violate R.C. 2317.02 by unsealing the deposition transcript of Plaintiff.

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CERTIFICATION

I, Adam Morris, hereby certify that a copy of the foregoing document has been emailed
this 1st day of April, 2019, to:

Gary Rosen, Esq.
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Peter Pattakos
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**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. Metalicca, 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.

EXHIBIT 5

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,

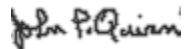
2012-Ohio-3328, (2012) (holding that “sealed bills of particulars are not exempt from disclosure under state law as either discovery materials or work product”). The unfiled deposition transcript is not a court record for purposes of the Rules of Superintendence.

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

CC:

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