

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

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendant.

Case No.: 2016-09-3928

Judge: James Brogan

**DEFENDANT SAM GHOUBRIAL,
M.D.'S AND JULIE GHOUBRIAL'S
JOINT REPLY IN SUPPORT OF
MOTION TO CLARIFY THIS
COURT'S MAY, 31, 2019 ORDER**

Plaintiffs' Response to the Ghoumbrial's Motion to Clarify the Court's May 31, 2019 Order ("Plaintiffs' Response") is just the latest example of the lengths they will go to get what they want. However, Plaintiffs' Response in no way articulates why Dr. and Julie Ghoumbrial are not entitled to the clarification they request. Notwithstanding Plaintiffs' factual and legal misrepresentations, clarification of this Court's May 31, 2019 Order is necessary to ensure that both Julie and Dr. Ghoumbrials' rights are protected and to ensure that Julie Ghoumbrial is not forced to violate one court's order for the sake of complying with that of another.

First and foremost, Plaintiffs' statement they never previously agreed Julie Ghoumbrial's deposition transcript is wholly irrelevant to class certification is patently and demonstrably false. *See* Plaintiffs' Response, pg. 6. In their May 1, 2019 Motion to Stay Ruling on Certain Discovery Issues Relating to Julie Ghoumbrial, Plaintiffs stated "At this point in the proceedings, Plaintiffs are confident that Julie's testimony.... is not necessary for Plaintiffs to meet the requirements for class certification under Civ. R. 23." *See* Plaintiffs' May, 1, 2019 Motion to Stay, attached as Exhibit "A". If, as Plaintiffs expressly represented to this Court in their May 1, 2019 Motion, Julie Ghoumbrial's testimony is not necessary for them to meet the requirements for class certification under Civ. R. 23, then her testimony is wholly irrelevant to issues of class certification by

definition.¹ Regardless of Plaintiffs' inconsistent representations, this Court has already determined it will not review Julie Ghoumbrial's deposition transcript until after a determination has been made relative to class certification. Again, her testimony is therefore wholly irrelevant to issues of class certification.

Plaintiff cannot continue to simply ignore orders they do not like.² While Plaintiffs' counsel acknowledges having been admonished by the Court for his "inappropriate" and "insulting" suggestion the Court wrongfully review and consider evidence outside of the record for purposes of making its decision relative to class certification, Plaintiffs' counsel then doubles down, making the exact same inappropriate and insulting suggestion once again.³ The suggestion this Court should consider Julie Ghoumbrial's transcript "if the Court is inclined to deny class-certification" is incredible in light of the Court's proper recognition that it simply cannot do so. *See* Plaintiffs' Response, pg. 7. That Plaintiffs' counsel would again suggest this Court consider material outside of the record for the purpose of making its decision relative to class certification is telling.

Plaintiffs argument the Ghoumbrials are relying on collateral estoppel to prevent this Court from reviewing Julie Ghoumbrial's deposition transcript is simply incorrect. The Ghoumbrials never argued collateral estoppel applied to bar this Court from viewing Julie's transcript *in camera*. *See* Plaintiffs' Response, footnote 3. On the contrary, the Ghoumbrials sought, and are seeking, clarification regarding this Court's jurisdiction over non-party Julie Ghoumbrial to order her to

¹ Evid. R. 401 defines "relevant evidence" as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

² As an example, Plaintiffs continue to argue Dr. Ghoumbrial is liable for breaching some fiduciary duty despite the fact this Court previously dismissed the breach of fiduciary duty claim against Dr. Ghoumbrial.

³ In different rulings Plaintiffs' counsel has now been found by this Court to be "misleading," "inappropriate," and "insulting."

produce the subject transcript in light of the authority cited, as well as this Court's authority to mandate that she violate the Confidentiality Order of Judge Quinn. Plaintiffs' counsel's assertion that Judge Quinn's simply "rubber-stamped" the requested Confidentiality Order in no way diminishes the effect that Order, nor does it protect Julie Ghoubrial from the potential ramifications to her if she were to violate that Order. *See, Id.* Under these circumstances, clarification of this Court's May 31, 2019 Order is not only appropriate, it is necessary.

Interestingly, Plaintiffs and their counsel do not even address the Ghoubrials' reasonable concern regarding this Court's recently stated intent to unseal and make public all deposition transcripts filed in this case. Plaintiffs and their counsel likewise ignore the Ghoubrials' legitimate concern regarding Plaintiffs' counsel's proven history of sharing case information with the media and his habit of posting case information on social media.⁴ Both Dr. and Julie Ghoubrial have a statutory spousal privilege to protect communications between them during their marriage. As such, this Court should clarify its May 31, 2019 Order regarding the production of Julie Ghoubrial's deposition transcript, including the timing of the production, to ensure the Ghoubrials' statutory spousal privilege is respected and protected. Although an *in camera* inspection of Julie Ghoubrial's deposition transcript arguably may not implicate the Ghoubrials' statutory spousal privilege, the public release of the transcript and/or the production of the transcript to Plaintiffs' counsel necessarily does implicate the Ghoubrials' spousal privilege.

Neither Dr. Ghoubrial nor Julie Ghoubrial are trying to obstruct legitimate discovery. Julie Ghoubrial is simply seeking clarification to ensure that she is not forced to violate one court's order so that she can comply with that of another. As such, Julie Ghoubrial has a right to understand this

⁴ As previously stated, not only does Plaintiffs' counsel regularly post case information on social media, he does so in a dishonest and misleading way. This Court has already determined at least one of Plaintiff's counsel's social media posts was misleading.

Court's jurisdiction over her considering she is a non-party, as well as the Court's authority to order her to violate Judge Quinn's Confidentiality Order. Julie Ghoumbrial also seeks clarification to ensure that her legal rights, including but not limited to her statutory spousal privilege, are protected.

Julie Ghoumbrial is not a party to this action and she has legitimate and protected right to keep her private family matters private. As Plaintiffs agree her transcript is not relevant to issues of class certification, and because this Court recognizes it cannot consider information outside of the record and Plaintiffs' counsel's repeated suggestion the Court do just that is inappropriate and insulting, there is no reason to force Julie Ghoumbrial into an untenable position at this phase of the litigation. Rather, the Court should clarify its May 31, 2019 Order, articulating its jurisdiction and authority, as well as the contemplated timing of production, so Julie Ghoumbrial can ensure her rights are protected and proceed accordingly.

Respectfully Submitted,

By: /s/ Bradley J. Barmen

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CERTIFICATE OF SERVICE

The foregoing Defendant Sam Ghoubrial, M.D.'s and Julie Ghoubrial's Joint Reply in Support of Motion to Clarify this Court's May 31, 2019 Order has been filed this 10th day June, 2019 using the Court's electronic filing system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

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

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

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, <i>et al.</i> , Plaintiffs, vs. KISLING, NESTICO & REDICK, LLC, <i>et al.</i> , Defendants.	Case No. 2016-CV-09-3928 Judge James A. Brogan Plaintiffs' Motion to Stay Ruling on Certain Discovery Issues relating to Julie Ghoumbrial
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The Defendants have gone to extreme lengths to keep Defendant Ghoumbrial's ex-wife, Julie, from providing testimony about the allegations at issue in this case. Recently, in his Motion for Reconsideration filed on April 23, 2019, and supplemented on April 26, Defendant Ghoumbrial asked the Court to rule that Julie should be excused from testifying at all in this case. According to Defendant Ghoumbrial, all of Julie's testimony, no matter what it may be, is somehow subject to the spousal privilege, despite that under Ohio law the privilege does not apply to "communication[s] ... made, or act[s] done, in the known presence" of a third party, and must be "strictly construed" and applied "only to the very limited extent that" "excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." R.C. 2317.02; *State v. VanHoy*, 3d Dist. Henry Case No. 7-2000-01, 2000-Ohio-1893, at *8-9, citing *State v. Mowery*, 1 Ohio St.3d 192, 199, 438 N.E.2d 897 (1982).¹ Additionally, Defendant Ghoumbrial just yesterday moved to stay and set aside the Magistrate's April 26 order that Julie

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



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

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

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

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

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

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

Respectfully submitted,

/s/ Peter Pattakos

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

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Attorneys for Plaintiffs

Certificate of Service

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

/s/ Peter Pattakos

Attorney for Plaintiffs



Peter Pattakos <peter@pattakoslaw.com>

Ghoubrial hearing today re: Julie's transcript

Peter Pattakos <peter@pattakoslaw.com>

Wed, Mar 27, 2019 at 11:03 AM

To: "Rosen, Gary M." <groser@dayketterer.com>, jlemerman@dayketterer.com

Good morning Gary and Josh,

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

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

Thank you for your consideration.

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