

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

MEMBER WILLIAMS, ET AL.	)	CASE NO.: CV-2016-09-3928
	)	
Plaintiff	)	JUDGE JAMES A. BROGAN
-vs-	)	
	)	
KISLING NESTICO & REDICK LLC, ET	)	<b><u>DECISION</u></b>
AL.	)	
	)	
Defendant	)	

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The Ghoubrials (Defendant Ghoubrial and non-party Julie Ghoubrial) seek clarification “to understand this Court’s jurisdiction over non-party Julie Ghoubrial in this matter” June 5, 2019 Motion to Clarify at pg. 1. They assert the Domestic Relations Court has exclusive jurisdiction over the Domestic Relations case.

First, no matter how many variations of challenges the Ghoubrials make to this Court’s decision, there is simply no dispute as to the Domestic Relations Court’s exclusive jurisdiction over the Ghoubrial’s divorce and there has been no collateral attack on its orders. The fact is this Court separately acquired jurisdiction over non-party Julie Ghoubrial by virtue of Plaintiffs’ subpoena. Civ.R. 45. Julie, through counsel, accepted service of the subpoena and Julie never moved to quash the subpoena, nor did she seek a protective order. Julie and her counsel agreed to schedule her appearance, and did in fact schedule her appearance until Defendants unilaterally cancelled her appearance.<sup>1</sup> The Court issued Orders enforcing Plaintiffs’ subpoena. Although Julie’s subsequently subpoenaed testimony is held in abeyance, the existing deposition transcript has been compelled for production for *in camera* review. The Court has stayed the *in camera* review, but has not stayed its Order to produce and file the transcript under seal.

This Court has respect for Judge Quinn’s confidentiality order over Julie’s transcript and has previously recognized the comity between the Courts. This Court’s separate orders are

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<sup>1</sup> Julie’s appearance was obviously cancelled by Defendants because Plaintiffs’ counsel and a court reporter are the only persons that appeared at the location for the deposition on the date and time Julie’s deposition was previously scheduled and agreed upon by counsel. In fact, Defendants indicated they were miles apart and in separate cities at the time. Nevertheless, the Court strikes the word “sanctionable” from its May 14, 2019 Order and merely notes for the record the unprofessional tit-for-tat gamesmanship that occurred between counsel during the April 17-18 timeframe.

in no fashion a ‘collateral attack’ on the Domestic Relations Court judgment. The Domestic Relations case is closed by settlement and Julie’s transcript from those proceedings is relevant to this Court’s proceedings due to questioning by Attorney David Best about the allegations in Plaintiffs’ Fifth Amended Class-Action Complaint. See prior Court Orders on this issue, filed April 26, 2019 and May 14, 2019. This Court’s orders acknowledge that Judge Quinn could not have known at the time he issued his confidentiality order that Defendant Ghoubril’s business practices would become subject to discovery in this civil action in the General Division. There are simply no facts to support Julie’s alleged fear that she would be sanctioned by the Domestic Relations Court for obeying this Court’s separate order to produce the transcript under seal (and which is to be produced subject to a Protective Order already in place in this case). In balancing the competing interests, the Domestic Relations Judge would certainly understand this Court’s need to review *in camera* the questioning of Julie by Attorney David Best.<sup>2</sup> Further, that Court would also acknowledge that this Court has a separate responsibility to monitor for potential conflicts of interest which could impact the integrity of these proceedings.

Defendant Ghoubril specifically argued, in part, as follows:

The Ohio Supreme Court has held that a collateral attack on a judgment issued by a different court in a civil case will succeed only when the **first** ruling was issued without jurisdiction or was the product of fraudulent conduct. *Ohio Pyro, Inc. v. Ohio Dep’t of Commerce*, 115 Ohio St.3d 375, 2007 Ohio 5024, 875 N.E.2d 550. Orders by a court with exclusive jurisdiction over a particular matter are not subject to collateral attack in another division, but rather, must be attacked directly and through proper steps to have the order rescinded or modified. *Tari v. State*, 117 Ohio St. 481, 494, 159 N.E. 594 (1927). Here, Judge Quinn unquestionably has jurisdiction to enter his Confidentiality Order in the Domestic Relations case and there is no allegation that Order was secured through fraudulent conduct. As such, any collateral attack on Judge Quinn’s Confidentiality Order is improper. Moreover, where a court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. *State ex rel. Columbia Gas of Ohio v. Henson*, 102 Ohio St.3d 394, 2004 Ohio 3208, 810 N.E.2d 953. Not only does Judge Quinn have exclusive jurisdiction over the Ghoubril’s Domestic Relations matter, including the Confidentiality Order at issue, he has jurisdictional priority because the divorce case was

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<sup>2</sup> Attorney David Best represented the Ghoubril’s businesses in the divorce proceedings. In this case, he represents the KNR Defendants.

filed before Plaintiffs filed their Fourth Amended Complaint bringing Dr. Ghoumbrial into this case. Ohio follows the jurisdictional-priority rule providing that, where courts have concurrent jurisdiction over the same matter, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties. *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171. When the jurisdictional-priority rule applies, the judge in the second case patently and unambiguously lacks jurisdiction by operation of rule and therefore, prohibition is an available remedy. *See State ex rel. Lee v. Trumbull Cty. Probate Ct.*, 83 Ohio St.3d 369, 374.

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

Defendant Dr. Ghoumbrial and Julie Ghoumbrial's June 6, 2019 Motion for Clarification of this Court's Decision of May 31, 2019.

The Plaintiffs responded by noting that courts routinely compel the production of information deemed confidential by other courts, citing: *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 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 result was considered justified.") (citing cases); *Grantz v. Discovery for Youth*, 12th Dist. 2005 Ohio 680, ¶19 (court "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-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.").

Further, the Plaintiffs correctly note that collateral estoppel only applies to preclude the re-litigation of issues that were actually and necessarily litigated in a prior action based on a different cause of action between the same party or their privies. The Plaintiffs in this case were not parties to the confidentiality order made in the Ghoumbrial divorce action nor was it actually “litigated.”

In sum, the Ghoumbrials have now raised the jurisdictional priority rule for the first time in their “motion for clarification.” But, it is a condition of the jurisdictional rule that the claims and the parties be the same in both cases so “if the second case is not for the same cause of action, nor between the same parties, the first will not prevent the latter.” *State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 56 (1985); see also *State ex rel. Dunlap v. Sarko, et al.*, 135 Ohio St.3d 171 (2013).

Finally, Defendant Ghoumbrial and Julie also requested clarification “to the extent their respective statutory spousal privileges are implicated.” June 5, 2019 Motion to Clarify at pg. 4. To be clear, during the Court’s *in camera* review the Court will determine whether the Ghoumbrials engaged in conversations or conduct in private or in the presence of third parties or others. See Court’s previous orders on this issue. The Ghoumbrials are concerned because this Court has expressed intent to unseal certain depositions filed on the Court’s public docket. The Court’s order to brief the unsealing of depositions filed on the public docket emphasized and specifically dealt only with electronically filed depositions filed on the public docket. The Court’s order concerning Julie Ghoumbrial specified that the document is to be produced in hard copy form in a sealed envelope to the Clerk of Court. This document shall not be scanned and placed upon the Court’s public docket and it will remain in a sealed envelope with the Clerk of Court until the Court determines to conduct its *in camera* review.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Court fully and finally clarifies the decisions, orders, and the Court’s intent concerning the deposition transcript of Julie Ghoumbrial. Julie Ghoumbrial SHALL produce a hard copy of her deposition transcript in a sealed envelope to the Court for filing under seal subject to the Court’s Protective Order within seven days of the date of this Order.

IT IS SO ORDERED.



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JUDGE JAMES A. BROGAN  
Sitting by Assignment #18JA1214  
Pursuant to Art. IV, Sec. 6  
Ohio Constitution

THE CLERK SHALL SERVE ALL ATTORNEYS AND PARTIES OF RECORD