

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p>Defendant Minas Floros' Brief in Opposition to Plaintiffs' Motion to Appear by Phone or Video Call</p>
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Plaintiffs previously filed a motion for protective order and sanctions against Dr. Floros, on behalf of Taijuan Carter. Plaintiffs argued that Dr. Floros improperly communicated with Mr. Carter and attempted to mislead him into signing a document stating that Peter Pattakos did not represent Mr. Carter.

As Dr. Floros discussed in his brief in opposition, Plaintiffs grossly misrepresent the events and Mr. Carter's affidavit statements. Mr. Carter initiated the contact with Dr. Floros. Both parties voluntarily communicated with the understanding that Mr. Carter was not represented by counsel and not seeking claims against Dr. Floros. The document that Dr. Floros drafted and wanted Mr. Carter to sign reflected this understanding. Mr. Carter voluntarily agreed to meet Dr. Floros for dinner. At dinner, Carter reiterated to Dr. Floros that he was unrepresented. In a follow-up text, Dr. Floros also told Mr. Carter that there was no pressure to sign the document. Additionally, Mr. Carter does not indicate in his affidavit that he felt pressured or misled by Dr. Floros. Nor does Mr. Carter deny telling Dr. Floros that he was unrepresented by counsel and not seeking claims against Dr. Floros. There is thus no evidentiary support for Plaintiffs' claim that Dr. Floros pressured or misled Mr. Carter.

Nor is there good cause for a protective order. Dr. Floros has not communicated with Mr. Carter since his follow-up text message and has no future intentions on communicating with Mr. Carter. Dr. Floros has also never tried to contact any of the named representative parties. And since Mr. Carter now lives in Memphis, Tennessee, it is highly unlikely that Mr. Carter will initiate contact again with Dr. Floros and seek additional chiropractic treatments with Akron Square Chiropractic. This issue is moot.

That said, Plaintiffs have filed a motion to reschedule the hearing set on this issue. Plaintiffs claim that Mr. Carter recently informed them that he could not attend the Court scheduled hearing for July 30, 2019 because he is now living in Memphis, Tennessee.<sup>1</sup> Plaintiffs' also requested that this Court allow Mr. Mr. Carter to appear by phone or video phone call at 1:00 pm.

Dr. Floros objects to Mr. Carter's request to appear by phone or video phone call. Plaintiffs have filed their protective order on behalf of Mr. Carter. It is his burden to prove that he is entitled to a protective order and sanctions. At the very least, Mr. Carter should have to appear in person. Indeed, this Court specifically stated in its order, dated June 6, 2019, that "Mr. Carter and Defendant Floros **shall attend in person** in order to testify to the details surrounding the incident at issue." (Emphasis added).

The testimony elicited in this fashion is also inherently unreliable since the opposing party's ability to effectively cross-examine the witness is compromised, the ability of the witness to examine documents or physical evidence is nonexistent, and the witness's demeanor cannot be

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<sup>1</sup> Over a month ago, Plaintiffs' counsel informed Dr. Floros' counsel that Mr. Carter lived in Memphis and that he would likely be unable attend the hearing in person. Thus, Plaintiffs have been sitting on this information for at least a month.

viewed. Moreover, the fact that Mr. Carter lives in another state and does not want to appear in Ohio further supports a finding that his protective order is without good cause and moot.<sup>2</sup>

For these reasons, Dr. Floros requests that this Court deny Plaintiffs' request to have Mr. Carter testify and appear by phone or video call, since he cannot be effectively questioned in this manner. If Mr. Carter is unwilling to appear in person at court, Floros additionally requests that this Court deny Plaintiffs' motion for a protective order and sanctions.

Respectfully submitted,

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<sup>2</sup> Since Plaintiffs moved for continuance, this Court has informed the parties in an email that the hearing set for July 30, 2019 is cancelled and has asked that additional dates be provided by email.

CERTIFICATE OF SERVICE

Counsel served a copy of Defendant Floros' Brief in Opposition to Plaintiffs' Motion to Appear by Phone or Video Call electronically on this 26<sup>th</sup> day of July, 2019. The parties will receive notice of this filing Notice of this filing by operation of the Court's electronic filing system.

/s/ Shaun H. Kedir  
Shaun H. Kedir (#0082828)