

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**DEFENDANT SAM GHOUBRIAL, M.D.’S  
BRIEF IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR HEARING  
AND RULING ON WHETHER  
DEPOSITON TRANSCRIPT OF JULIE  
GHOUBRIAL IS PROTECTED BY  
PRIVILEGE, MOTION FOR  
RECONSIDERATION OF THE  
COURT’S ORDERS RELATING TO  
THE TRANSCRIPT**

Plaintiffs’ Motion For Hearing And Ruling On Whether Deposition Of Julie Ghoubrial is Protected By Privilege (“Plaintiffs’ Motion for Hearing”), and Plaintiffs’ Motion For Reconsideration Or Clarification Of The Court’s Orders Relating To The Transcript (“Plaintiffs’ Motion for Reconsideration”) must both be denied. Plaintiffs’ Motions relate specifically to whether or not they are entitled to access and utilize the Julie Ghoubrial deposition transcript, the same issues addressed in this Court’s February 20, 2024, Nunc Pro Tunc Order that Plaintiffs’ appealed to the Ninth District Court of Appeals on February 22, 2024. *See* Docket. Because of Plaintiffs’ filing of their Notice of Appeal of this Court’s February 20, 2024, Nunc Pro Tunc Order, this Court lacks jurisdiction to entertain Plaintiffs’ Motions. *Id.* Because Plaintiffs filed a Notice of Appeal of this Court’s February 20,2024 Nunc Pro Tunc Order that specifically relates to the issues of access and use of the Julie Ghoubrial deposition transcript, this Court does not have jurisdiction to entertain Plaintiffs’ Motions and they must therefore be denied.

The Supreme Court of Ohio has “consistently held that once an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s

jurisdiction to reverse, modify, or affirm the judgment.” *State ex rel. Bohlen v. Halliday*, 164 Ohio St.3d 121, 2021-Ohio-194, 172 N.E.3d 114, ¶ 25, quoting *State ex rel. Rock v. School Emps. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8. “Thus, the timely filing of a notice of appeal generally precludes a trial court from taking further action on claims that affected by the appeal.” *Id.* Further, “after an appeal is perfected, any order issued in the trial court which is inconsistent with the appellate court’s jurisdiction is a nullity.” *Doe v. Dayton Bd. of Edn.*, 2d Dist. Montgomery No. 28487, 2020-Ohio-5355, ¶ 7. This is the case even if the appellate court ultimately dismisses the appeal for lack of a final appealable order. *Id.*

Here, both Plaintiffs’ Motion for Hearing and their Motion for Reconsideration relate specifically to issues revolving around the access to and use of the Julie Ghoubrial deposition transcript. These are the same issues addressed in this Court’s February 20, 2024, Nunc Pro Tunc Order currently on appeal before the Ninth District. A plain reading of Plaintiffs’ Motions demonstrates that Plaintiffs’ Motion for Hearing seeks a hearing on Defendant Ghoubrial’s claims that Julie Ghoubrial’s deposition transcript is protected by the spousal privilege. *See* Plaintiffs’ Motion for Hearing. Likewise, Plaintiffs’ Motion for Reconsideration seeks reconsideration or clarification or all of the Court’s Orders relating to the transcript since February 12, 2024. *See* Plaintiffs’ Motion for Reconsideration. However, prior to filing these Motions, Plaintiffs filed a Notice of Appeal seeking reversal of this Court’s February 20, 2024, Nunc Pro Tunc Order on First Amendment and other grounds. *Id.* Because Plaintiffs’ Notice of Appeal relates to an Order prohibiting access, possession, and distribution of the Julie Ghoubrial deposition transcript, while also ordering destruction of any and all copies that had been downloaded or printed, this Court was divested of jurisdiction to entertain any motion related to the transcript and any order issued at this point would be a nullity.

Quite simply, this Court cannot entertain Plaintiffs' Motions. Due to the filing of Plaintiffs' Notice of Appeal, this Court cannot hold a hearing related to the transcript, nor can this Court issue any new order or revisit any prior order related to the transcript while Plaintiffs' appeal is pending as any such order would necessarily be inconsistent with the jurisdiction of the appellate court. As such, Plaintiffs' Motion for Hearing and their Motion for Reconsideration must be denied.

Respectfully submitted,

/s/ Bradley J. Barmen

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was filed electronically with the Court on this 25<sup>TH</sup> day of March, 2024. The parties may access this document through the Court's electronic filing system.

*/s/ Bradley J. Barmen* \_\_\_\_\_

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