

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

<p>MEMBER WILLIAMS, <i>et al</i>,</p> <p style="text-align: center;"><i>Plaintiffs</i>,</p> <p>vs.</p> <p>KISLING, NESTICO &amp; REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants</i></p>	<p>Case No. 2016-CV-09-3928</p> <p>Judge James A. Brogan</p> <p><b>Defendants’ Joint Motion for Reconsideration And Objection to Order of April 19, 2024.</b></p>
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**I. Introduction**

On April 19, 2024, the Court issued an Order setting a hearing on Defendant Dr. Ghoumbrial’s Motion for Contempt and Plaintiffs’ “Motion for Access to Julie Ghoumbrial’s deposition testimony” [sic].<sup>1</sup> The Court’s Order followed a telephone conference with the Court and counsel on April 11, 2024. During that conference, the Court informed Plaintiffs’ counsel that it would not have jurisdiction to address the issue of the admissibility of the deposition testimony of Julie Ghoumbrial from her divorce case while Plaintiffs’ appeal of the Court’s *nunc pro tunc* Order regarding the same deposition testimony was pending. Plaintiffs’ counsel agreed to dismiss the appeal of the *nunc pro tunc* Order contingent on the Trial Court setting a hearing on Plaintiffs’ Motion for Hearing and Ruling on whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial is Protected by Privilege.

Defendants’ objections to such a hearing were overruled. Because the phone conference was not on the record, Defendants now submit their objections to the Court’s April 19, 2024 Order and ask the Court to reconsider proceeding with the hearing currently scheduled for June 10, 2024.

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<sup>1</sup> Plaintiffs’ Motion which the Court set for hearing is actually captioned “Plaintiffs’ Motion for Hearing and Ruling on whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial is Protected by Privilege.”

First, Defendants contend that this Court lacks jurisdiction to proceed with the hearing based upon Plaintiffs' cross-appeal which appears to raise the issue of the admissibility of the deposition transcript which would be the subject of the June 10, 2024 hearing. Second, even if this Court has jurisdiction to conduct the hearing, it should reconsider doing so given the posture of this case and the fact that the current Judge will not ultimately preside over a trial in this matter should a trial ultimately occur.

## **II. Law and Argument**

### **A. The Trial Court lacks Jurisdiction to Conduct a Hearing on the Admissibility of the Transcript due to Plaintiffs' Cross-Appeal on Class Certification.**

On January 30 and 31, 2024, Defendants each filed notices of appeal regarding this Court's most recent certification of Class A related to medical expenses of putative class members who were clients of KNR that treated with Dr. Ghoumbrial. *See*, Order of January 26, 2024. On February 24, 2024, this Court issued its *nunc pro tunc* Order precluding attorneys from accessing the deposition transcript. In response, on February 26, 2024, Plaintiffs filed not only a direct appeal of the *nunc pro tunc* Order (which has now been dismissed), but also a cross-appeal of the certification Order. The first probable issue for appeal identified by Plaintiffs states: "Whether the trial court erred in failing to account for evidence demonstrating the appropriateness of the remedy of disgorgement of all fees collected by Defendants in cases where KNR clients were treated by Defendants Ghoumbrial, Floros, and other participants in Defendants' cash kickback scheme." To the extent the "evidence" referenced by Plaintiffs is the Julie Ghoumbrial deposition transcript, Plaintiffs intend to argue the admissibility of that testimony on their cross-appeal of Certification Order.

Once an appeal is perfected, a trial court "is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the [trial court's]

judgment.” (Citation omitted.) *State ex rel. Elec. Classroom of Tomorrow v. Cuyahoga County Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, ¶ 13. Thus, to the extent Plaintiffs’ cross-appeal asserts that this Court should have considered the Julie Ghoumbrial deposition transcript in ruling on certification, the trial court is divested of jurisdiction to determine its admissibility. Plaintiffs’ cross-appeal essentially says this Court should conduct the hearing that is now set for June 10, 2024. Obviously, a trial court is divested of jurisdiction to do precisely what a party says the court should have done as a basis for appeal. Based upon Plaintiffs’ cross-appeal, the Court of Appeals will decide whether this Court should have conducted a hearing on the Julie Ghoumbrial transcript prior to certifying Class A.

For purposes of transparency and candor with this Court, Defendants fully intend to argue in opposition to Plaintiffs’ cross-appeal that, (1) the time for Plaintiff to raise this issue on appeal has long passed and been waived; and (2) nothing Julie Ghoumbrial could possibly say has anything to do with certification under Civ. R. 23. However, that does nothing to change the simple fact that Plaintiffs are asking this Court to hold a hearing on an issue Plaintiffs have raised on appeal. Thus, this Court is divested of jurisdiction to conduct the hearing on June 10, 2024. Any trial court hearing on this issue must be held after the certification appeals are resolved.

**B. Even if the Court Retains Jurisdiction, It Should Reconsider Conducting the Hearing on the Admissibility of the Transcript.**

During the most recent conferences and hearings involving the parties and the Court, the Court has indicated that the current judge will not be sitting for a trial in this matter if a trial were ultimately conducted. The Court has also expressed the desire to refrain from unnecessarily placing an undue burden on the judge who will ultimately be responsible for conducting any trial in this matter. Thus, it appears the Court believes that resolving the issue of the admissibility of this transcript is urgent.

While Defendants recognize the Court's desire to be thorough and attentive to the issues any new judge may face in this matter, Defendants respectfully suggest that this is precisely the reason this Court should refrain from ruling on this issue at this time. Defendants submit that judicial discretion is best served by allowing the judge who will ultimately sit for trial in this matter to determine whether this testimony is privileged, and if not, whether the transcript is admissible. Therefore, Defendants ask the Court to reconsider its Order of April 19, 2024.

### **III. Conclusion**

For the reasons stated herein, Defendants respectfully submit that this Court is divested of jurisdiction to conduct the hearing on the deposition transcript set by the Court's Order of April 19, 2024. In the alternative, Defendants request that this Court exercise its discretion to reconsider conducting the hearing in June, 2024 so that the presiding judge who will sit for trial can consider and address this evidentiary issue.

Respectfully submitted,

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*Counsel for Defendant Sam N. Ghoubrial*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically with the Court on the 10th day of May, 2024. The parties may access this document through the Court's electronic docket system.

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