

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
MOTION TO STAY RULING PENDING
APPEAL

Now comes Defendant Sam Ghoumbrial, M.D. ("Dr. Ghoumbrial"), by and through counsel, and hereby respectfully requests that this Court stay any ruling on Plaintiffs' Motion on Whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial is Protected by Privilege ("Plaintiffs' Motion") until the current appeals and cross-appeal pending before the Ninth District Court of Appeals (Case Nos. CA-31007 & 31008) are resolved. Plaintiffs' cross-appeal puts the privilege and admissibility issues relative to Julie Ghoumbrial's deposition transcript squarely at issue in the Court of Appeals. As such, this Court lack jurisdiction to make any ruling relative to Julie Ghoumbrial's deposition transcript while those very same issues are now in front of the Court of Appeals.

On April 19, 2024, this Court issued an Order setting a hearing on Plaintiffs' Motion, as well as on Dr. Ghoumbrial's Motion to Hold Plaintiffs' Counsel in Contempt for violations of various Court Orders relative to Julie Ghoumbrial's deposition transcript. The Court's Order setting the hearing followed an April 11, 2024, telephone conference with all counsel and the Court. During the April 11, 2024, telephone conference, the Court rightly informed Plaintiffs' counsel that it would not have jurisdiction to address the issues of privilege and admissibility of Julie

Ghoubrial's deposition transcript while Plaintiffs' appeal of the Court's February 20, 2024, *nunc pro tunc* Order restricting access to Julie Ghoubrial's deposition transcript was pending. Clearly the Court recognized that the filing of Plaintiffs' appeal of the *nunc pro tunc* Order divested the Court of jurisdiction to address matters pending before the Court of Appeals.

Plaintiffs' counsel, also recognizing that his appeal of the *nunc pro tunc* Order divested this Court of jurisdiction to further address the Julie Ghoubrial deposition transcript, agreed to dismiss the *nunc pro tunc* appeal if the Court would agree to hold a hearing on Plaintiffs' Motion. Over the objections of defense counsel, the Court agreed to hold the hearing if the *nunc pro tunc* appeal was dismissed. Because the April 11, 2024, telephone conference was not recorded and not part of the record, Defendants filed a Joint Motion for Reconsideration and Objection to Order of April 19, 2024, to preserve the record ("Defendants' Joint Motion").¹ The primary argument in Defendants' Joint Motion was that Plaintiffs' cross-appeal stripped the Court of Jurisdiction to hold the hearing on Plaintiffs' Motion. The Court disagreed and the hearing on Plaintiffs' Motion, and on Dr. Ghoubrial's Motion to Hold Plaintiffs' Counsel in Contempt, went forward on June 10, 2024, over Defendants' objections.

As outlined in Defendants' Joint Motion, Plaintiffs filed a cross-appeal of the Certification Order on February 26, 2024. While Plaintiffs' cross-appeal does not directly mention Julie Ghoubrial's deposition transcript, the first assignment of error identified by Plaintiffs in the cross-appeal is "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 Ghoubrial, Floros, and other participants in Defendants'

¹ Defendants' Joint Motion for Reconsideration And Objection to Order of April 19, 2024, is incorporated herein by reference.

cash kickback scheme.” While Defendants articulated in their Joint Motion that it certainly appeared Plaintiffs were referencing Julie Ghoubril’s deposition transcript in their first assignment of error in their cross-appeal, now there can be no doubt.

On July 3, 2024, Plaintiffs/Appellants filed their Motion to File Under Seal and for Extension of Time (“Plaintiff/Appellants’ Motion”) in the Court of Appeals. *See* Appellants’ Motion to File Under Seal and for Extension of Time, attached as Exhibit A. In Plaintiffs/Appellants’ Motion, they make it abundantly clear that the “evidence” referenced in their first assignment of error before the Court of Appeals is indeed the Julie Ghoubril deposition transcript. *See* Exhibit A. Because there is now no doubt that Plaintiffs have placed the privilege and admissibility issues relative to the Julie Ghoubril deposition transcript before the Court of Appeals, there is likewise no doubt that this Court now lacks jurisdiction to issue any ruling on Plaintiffs’ Motion. As such, a stay is necessary to preserve the status quo pending resolution of Plaintiffs’ cross-appeal.

It is well settled that 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. Here, since Plaintiffs’ cross-appeal asserts that it was error for this Court not to consider Julie Ghoubril’s deposition transcript in ruling on class certification, this Court is now divested of jurisdiction to determine the admissibility of, or the privilege issues related to that transcript. In essence, Plaintiffs cross-appeal seeks the same relief Plaintiffs were seeking in the hearing conducted before this Court on June 10, 2024. However, Plaintiffs’ conscious decision to place the issues related to Julie Ghoubril’s deposition transcript before the Court of Appeals now

prevents this Court from issuing any ruling from the June 10, 2024, hearing as any such ruling would necessarily be inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm this Court's certification decision.

For the reasons stated herein, Dr. Ghoumbrial respectfully submits that this Court is divested of jurisdiction to issue any ruling on the admissibility of, or the privilege issues related to the Julie Ghoumbrial deposition transcript until the Court of Appeals renders a decision on those issues as articulated in Plaintiffs' cross-appeal. As such, this Court should stay any ruling from the June 10, 2024, hearing relative to the admissibility of, or the privilege issues related to the Julie Ghoumbrial deposition transcript.

Respectfully submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen, Esq. (0076515)

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Court on this 8TH day of July, 2024. The parties may access this document through the Court's electronic filing system.

/s/ Bradley J. Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant

Sam N. Ghoubril, M.D.

**IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
SUMMIT COUNTY, OHIO**

<p>MEMBER WILLIAMS, <i>et al.</i>,</p> <p style="text-align: center;">Appellants,</p> <p style="text-align: center;">vs.</p> <p>KISLING, NESTICO & REDICK, LLC, <i>et al.</i>,</p> <p style="text-align: center;">Appellees.</p>	<p>Case No. CA-31007/31008</p> <p>Appellants' Motion to File Under Seal and for Extension of Time</p>
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Plaintiff/Appellees-Cross Appellants (“Plaintiffs”) hereby respectfully request, pursuant to App.R. 15, an order authorizing them to file portions of their briefs in this matter under seal, and for permission to file their opening brief in this appeal, which is currently due on July 10, 2024, within 14 days of this Court’s ruling upon this motion. For cause, a deposition transcript that is critical to the analysis of class-certification in this issue and to Plaintiffs’ position in this appeal is subject to orders by the trial court requiring the parties to keep the transcript confidential and filed only under seal in this case. The parties are therefore restricted from publishing its contents, including to this Court’s public docket. For these reasons, explained further below, Plaintiffs respectfully request that this Court permit the filing of portions of their briefing referring to the confidential contents of this transcript under seal to comply with this trial court order, with a redacted version to be filed publicly, so as to permit this Court’s full consideration of the record below and the merits of this appeal without risking violating the trial court’s confidentiality order. For the same reasons, Plaintiffs request an order permitting them to file their opening brief within 14 days of this Court’s issuance of an order on the instant request to file under seal.

EXHIBIT A

This consolidated appeal arises from the trial court's January 26, 2024 order certifying the "price-gouging" class in this matter for a third time, after this Court's second remand requiring the trial court to conduct a more rigorous analysis of the class-certification issue.

For more than five years and counting in this case, Plaintiffs have maintained that Julie Ghoumbrial's October 12, 2018 deposition in her divorce proceedings from Defendant Sam Ghoumbrial—a former doctor whose license has since been permanently revoked by the State Medical Board, and whose participation was integral to the price-gouging scheme at issue in this appeal—is highly relevant to certification of this class. Since at least February 5, 2019, the trial court has recognized that Julie's deposition transcript "is highly relevant, probative, and subject to discovery in this case." And Plaintiffs specifically alleged at paragraph 113 of their Fifth Amended Complaint, dated November 28, 2018, that

Not only did the KNR Defendants seek to profit from inflated attorneys' fees resulting from Ghoumbrial's inflated medical bills, Defendants Nestico and Floros also received direct cash kickbacks from Dr. Ghoumbrial in the form of cash kickbacks that the parties referred to in code as 'olives.'" Additionally, Plaintiffs' December 21, 2018 motion to compel discovery stated that, "Plaintiffs' investigation has revealed that Attorney David Best, who represents the KNR Defendants in this lawsuit, appeared at Julie's deposition in the divorce case to ask her questions about Plaintiffs' allegations [in this lawsuit], the truth of which was confirmed by Julie in response to Best's questions.

Furthermore, at an April 23, 2019 telephonic hearing, Plaintiffs' counsel disclosed directly to the trial court that Julie Ghoumbrial personally told him that Plaintiffs' allegations against Sam Ghoumbrial were true and that Sam Ghoumbrial had paid direct cash kickbacks to his co-defendants. These cash kickbacks from Ghoumbrial to Nestico and Floros, a local chiropractor whose referrals were integral to this scheme, not only allowed Defendants to conceal the true nature of the quid pro quo relationships alleged by Plaintiffs, the kickbacks also allowed the KNR Defendants to collect an additional share of Ghoumbrial's inflated medical bills in excess of what they disclosed to their clients, and in excess of what would or could be considered a "reasonable" fee under Prof.Cond.R. 1.5.

The trial court had long intended to determine whether the transcript was in fact confidential or otherwise privileged, having entered an order on April 26, 2019, in which it compelled submission of the deposition transcript for the purpose of an *in camera* review. This review would determine whether Julie was questioned during the deposition about the allegations in the class action suit, and whether that testimony was entitled to protection from discovery in this case, or otherwise entitled to protection from the courts as privileged and confidential. Such review has not, to date, been completed, though is currently in process as explained below.

On February 12, 2024, the trial court issued the first of a series of orders—dated February 12, February 20, February 21, and March 4, 2024—by which it first published the transcript of Julie Ghoubrial’s October 12, 2018 deposition to the docket of this case, and by which it has since clarified that this publication was “inadvertent,” and purported to bar the parties and their attorneys first from possessing this transcript (Feb. 20 order), then from speaking about its contents on the public docket of this case (Feb. 21 order), and then from speaking about this transcript at all (Mar. 4 order).

Given the obvious relevance and vital importance of Julie’s deposition testimony to the class certification issue in the underlying case,¹ Plaintiffs could not abide a “Nunc Pro Tunc Order” that effectively prevented them from referencing, citing, or otherwise discussing the contents of Julie’s deposition transcript in support of their arguments for class certification. Thus, Plaintiffs had no choice but to appeal the Feb. 20 order and ask this Court to reverse what they believe is an

¹ A full discussion of the relevance of Julie’s transcript (the subject of the Nunc Pro Tunc Order) to Plaintiffs’ class certification arguments, together with supporting documentary evidence, can be found in *Plaintiffs’ Motion for Hearing and Ruling on whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoubrial is Protected by Privilege, Motion for Reconsideration or Clarification of the Court’s Orders relating to the Transcript, and Response in Opposition to Defendant Ghoubrial’s Motion for Civil Contempt and to Show Cause*, which was filed in the underlying case on March 11, 2024, and may be accessed at the following link:

<https://clerkefile.summitoh.net/DOCUMENTS/vola0000000400005CE6.pdf>

unconstitutional gag order by the trial court. Additionally, Plaintiffs filed a motion in the trial court for reconsideration of the Feb. 20 order, and for an immediate hearing on whether the portions of the transcript were actually protected by any privilege or otherwise entitled to continued confidentiality. *See* fn1, *supra* (citing and linking to Plaintiffs' March 11, 2024 Motion for Hearing at the Summit County Clerk of Courts' online docket).

While this appeal was pending, the trial court conducted a status conference on April 11 wherein it stated that it would grant Plaintiffs' motion for a hearing on whether and to what extent this transcript should remain confidential, provided, however, that Plaintiffs first dismiss the appeal of the February 20 order, case number CA-31031. Further orders entered by the trial court on April 19, 2024 directed the Clerk of Courts to provide copies of Julie's sealed transcript to Plaintiffs' counsel and scheduled a hearing on June 10, 2024 regarding said transcript so that it could hold a hearing to determine whether Julie's transcript was in fact entitled to any protection as privileged or confidential in this matter. Accordingly, Plaintiffs moved for dismissal of their appeal of the trial court's Feb. 20 "Nunc Pro Tunc" order on April 24, 2024, which this Court subsequently granted. Following the June 10 hearing, where the trial court heard testimony and argument about whether this transcript was entitled to any protection as "confidential" in this matter or otherwise, the trial court issued another order (attached as **Exhibit 1**) that the deposition was to remain under seal "until further order of this court." At the June 10 hearing, the trial court also ordered the parties to submit post-hearing briefs on the confidentiality/privilege issues, and on July 2 2024, the trial court issued another order (**Exhibit 2**) extending the parties' deadline for submitting their post-hearing briefing until August 1, 2024 (30 days from receipt of the hearing transcript from the court reporter).

For these reasons, Plaintiffs respectfully request that this Court permit the filing of portions of their briefing referring to the confidential contents of this transcript under seal to comply with the trial court's orders, with a redacted version to be filed publicly, so as to permit this Court's full

consideration of the record below and the merits of this appeal without risking violating the trial court's confidentiality order.

For the same reasons, and because the drafting and contents of Plaintiffs' briefing will be substantially impacted by the outcome of this Court's ruling on the sealing issue, also respectfully request an order permitting them to file their opening brief within 14 days of this Court's issuance of an order on the instant request to file under seal.

Respectfully submitted,

/s/ Peter Pattakos

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Attorneys for Appellants/Cross-Appellants

Certificate of Service

The foregoing document was filed on July 03, 2024, using the Court's e-filing system, which will serve copies on all necessary parties.

/s/ Peter Pattakos

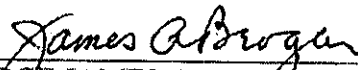
Attorney for Appellants/Cross-Appellants

TAVIA GALONSKI
IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT
2024 JUN 11 AM 11:06

MEMBER WILLIAMS, et al.)	CASE NO.: CV-2016-09-3928
)	
Plaintiffs)	JUDGE JAMES A. BROGAN
)	
-vs-)	
)	
KISLING NESTICO & REDICK LLC,)	<u>ORDER</u>
et al.)	
)	
Defendants)	

The original deposition of Julie A. Ghoubril introduced and admitted in the hearing on June 10, 2024 is to be be filed by the court reporter in the Summit County Clerk of Courts under seal until further order of this Court.

IT IS SO ORDERED.



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

CC: All counsel of record
JACEY SAMIC, Official Court Reporter



TAVIA GALONSKI

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IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT

MEMBER WILLIAMS, et al..

Plaintiffs,

-vs-

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

CASE NO: CV-2016-09-39928


JUDGE JAMES BROGAN

ORDER GRANTING MOTION FOR
EXTENSION OF POST-HEARING BRIEFSSUMMIT COUNTY
CLERK OF COURTS

This matter came before the Court on Third Party Julie Ghoubril's Motion for Extension for Post-Hearing Brief. For good cause shown, the motion is granted.

All parties may file their post-hearing briefs 30 days after receipt of the June 10, 2024 hearing transcript.

IT IS SO ORDERED.


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

CC: Counsel of Record

EXHIBIT2