

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
REPLY TO PLAINTIFFS' OPPOSITION
TO HIS MOTION TO STAY RULING
PENDING APPEAL

Defendant Sam Ghoubrial, M.D. ("Dr. Ghoubrial") has moved this Court to *stay* any ruling on Plaintiffs' Motion on Whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoubrial is Protected by Privilege ("Plaintiffs' Motion) until Plaintiffs' currently pending cross-appeal before the Ninth District Court of Appeals (Case Nos. CA-31007 & 31008) is resolved. Plaintiffs chose to put the admissibility of Julie Ghoubrial's deposition transcript before the court of appeals. Plaintiffs' verbal gymnastics notwithstanding, there is no doubt that Plaintiffs are seeking a ruling from the court of appeals on the admissibility of Julie Ghoubrial's transcript. As such, this court is divested of jurisdiction to issue any ruling that could potentially conflict with or impact the decision of the court of appeals.

A challenge to subject matter jurisdiction is never waived, and the Court may re-evaluate its subject matter jurisdiction at any time. *City of Cincinnati v. City of Harrison*, 1st Dist. Hamilton No. C-130195, 2014-Ohio-2844, ¶ 46. Subject matter jurisdiction implicates the Court's power to adjudicate, and it "may be challenged at any time." *Pratts v. Hurley*, 102 Ohio St.3d 81, 83, 806 N.E.2d 992 (May 5, 2004). Despite the disingenuous introductory remarks of Plaintiffs' Opposition, this Court has not affirmatively retained jurisdiction over the matter at issue here. The

Opposition does not provide any quotation from this Court to that effect, because no such ruling exists.

Should this Court assert jurisdiction to decide privileges applicable to Julie Ghoumbrial's Oct. 12, 2018 deposition transcript, its judgment would be void. *Patton v. Diemer*, 35 Ohio St.3d 68, syllabus, 518 N.E.2d 941 (1988) ("A judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*").

According to their submission on March 11, 2024, Plaintiffs have moved this Court to rule on privilege applicable to "The Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial." That transcript *is* the subject of Court of Appeals cases CA-31007 and CA-31008, wherein Plaintiff seeks to determine: "Whether the trial court erred in failing to account for evidence[.]"

Subsequent filings and proceedings have left no doubt that the "evidence" Plaintiffs raise to the Appeals Court *is* the Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial. In Ohio, as "a general rule, the filing of a notice of appeal divests the trial court of jurisdiction over those aspects of the case on appeal." *Young v. Young*, 10th Dist. Franklin No. 13AP-95, 2013-Ohio-4933, ¶ 9 (citing *Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc.*, 70 Ohio St.3d 141, 637 NE.2d 890 (1994)). Quite obviously, the transcript's evidentiary status *is* an aspect of this case on appeal, and this Court's jurisdiction over that aspect is accordingly divested. Accordingly, Dr. Ghoumbrial respectfully renews his request for a stay on any ruling in this Court as to Plaintiffs' Motion on Whether the Inadvertently Disclosed Deposition Transcript of Julie Ghoumbrial is Protected by Privilege, or as to the same subject relative to the June 10, 2024, hearing in this matter. Because any such judgment would be void, Defendant's Motion to Stay should be granted.

Respectfully submitted,

/s/ Bradley J. Barmen

Bradley J. Barmen, Esq. (0076515)

LEWIS BRISBOIS BISGAARD AND SMITH, LLP

1375 East Ninth Street, Suite 2250

Cleveland, OH 44114

Brad.barmen@lewisbrisbois.com

Phone: 216.344.9422

Fax: 216.344.9421

Counsel for Defendant

Sam N. Ghoubrial, M.D.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was filed electronically with the Court on this 25th 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. Ghoubrial, M.D.