

**IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

MEMBER WILLIAMS, et al.

Plaintiffs,

vs.

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

Defendants.

CASE NO: CV-2016-09-3928

JUDGE JAMES BROGAN

**THIRD PARTY JULIE GHOUBRIAL'S
POST-HEARING BRIEF ON MOTION TO
QUASH PLAINTIFF'S SUBPOENA**

Now comes third party Julie Ghoubrial, and respectfully requests that this Honorable Court quash the subpoena served upon her by Plaintiff on April 25, 2024 and determine that Julie's deposition transcript and the audio recording played during the deposition are subject to the spousal privilege and therefore are not discoverable. Both Julie and Sam Ghoubrial are asserting the spousal privilege.

The testimony presented at the hearing before the Court on June 10, 2024 confirmed that the deposition transcript was confidential and the information contained therein is subject to the spousal privilege.

LAW AND ARGUMENT

I. Julie's Deposition Transcript is Subject to a Confidentiality Order in Domestic Relations Court.

It is undisputed that the Domestic Relations Court entered a confidentiality order that governed its proceedings, including Julie's deposition. Plaintiff has not presented any

compelling reason why that confidentiality provision should be overruled. To the extent the deposition revealed communications between Julie and her ex-husband, those communications are protected by the spousal privilege. To the extent the deposition refers to vague communications with others, those communications are discoverable by traditional means and there is no cause to overrule the confidentiality provision put in place by the Domestic Relations Court in order to access that information through her deposition, when that information is easily obtained elsewhere.

II. The Communications Between Julie and Her Ex-Husband Described in Her Deposition Are Subject to the Spousal Privilege.

Julie's domestic relations deposition described sensitive and private information about her family. Those details should not be disclosed. Julie's understanding is that Plaintiff seeks access to certain limited information contained in portions of the deposition beginning on or about page 104 of the deposition.

In that portion of her deposition, Julie described confidential marital communications between her and her ex-husband. (Deposition of Julie Ghoubril, filed under seal, p. 105-107). Julie confirmed that no one else was ever present for these conversations. (Ghoubril Depo. under seal, p.107:7-9). A review of the content of the conversations as described in the deposition facially demonstrate the confidential nature of the communications—they are the type of conversations an individual in those circumstances might share with a spouse but would not share with others.

In addition to describing certain conversations she had with her ex-husband, during the deposition Julie also discussed an audio recording—the contents of which are recorded in the sealed deposition beginning on page 135. Again, the content of the conversation indicates that it is a confidential conversation among spouses. At the hearing, Julie testified that no one else was

present when that conversation captured on audio occurred. (Sealed Transcript of Proceedings on June 10, 2024; p.72:11-16). While the conversation occurred after Julie had filed for divorce, the nature of the conversation itself confirms that it involved an attempt by Julie's ex-husband to convince Julie to remain in the marriage. At the hearing, Julie testified that while separated, the spouses were still having conversations where her husband was trying to salvage the marriage, and it "was not 100 percent" broken, but rather the parties were still talking. (Sealed Transcript, p. 72:22-73:7).

III. The Spousal Privilege Was Not Waived.

Unlike other privileges, the spousal privilege must be waived by both parties in order for a valid waiver to occur. Julie submits that none of her vague conversations with third parties described in the deposition could possibly constitute a waiver of her spousal privilege.

Moreover, in order for a waiver to occur, Plaintiff must demonstrate that **both** Julie and her ex-husband waived the spousal privilege. There was no testimony whatsoever that Sam Ghoubrial waived his spousal privilege.

The only possible argument Plaintiff has in support of a waiver on behalf of Sam Ghoubrial is that Sam's counsel did not object at Julie's deposition where corporate counsel was present. This argument is a red herring.

As the parties have briefed, and the Court has acknowledged, Judge Quinn had a confidentiality order in place in the domestic relations case, and all parties had a reasonable belief that the deposition communications would be held in confidence. More importantly, the spousal privilege *does not apply in divorce proceedings*. See *City of Fairfield v. Profitt*, 12th Dist. Butler No. CA96-11-260, 1997 WL 451382 (Aug. 11, 1997). Divorce proceedings would be completely unworkable otherwise. If the privilege does not apply, there is no reason to assert it.

And if there is no obligation to assert it, the failure to assert it is not a waiver. A waiver requires a voluntary relinquishment of a known right.

IV. The Crime-Fraud Exception Does Not Apply.

The crime-fraud exception does not apply to the spousal privilege. If it did, spouses of alleged criminals everywhere would be forced onto the witness stand in each criminal case in the country. This simply does not occur. There is no crime-fraud exception to the spousal privilege. *See United States v. Sims*, 755 F.2d 1239, 1243 (6th Cir. 1985) and Dr. Sam Ghoubrial's Motion for Reconsideration, filed 4/23/19.

Plaintiff cites *State v. Mowery*, for the proposition that the spousal privilege does not apply, but inexplicably fails to point out that the Court's syllabus was dependent on the fact that the alleged crime was "committed in the known presence of a third person." *State v. Mowery*, 1 Ohio St.3d 192 (1982), at paragraph two of the syllabus. *Mowery* stands for the proposition that the spousal privilege does not apply to prohibit a spouse who wishes to testify from testifying about criminal conduct that occurred in the presence of a third party. That is not the case with respect to the confidential marital communications at issue in Julie's deposition. Additionally, *Mowery* involved a criminal, as opposed to a civil, case.

The crime-fraud exception does not apply to the spousal privilege.

CONCLUSION

Julie's deposition testimony discusses sensitive family issues that should not be publicly disclosed. With respect to those portions of the deposition relating to her ex-husband's business dealings including the audio recording described in the deposition, the information Julie relayed is subject to the spousal privilege and no exception applies.

DATED: August 1, 2024

Respectfully Submitted,

PLAKAS MANNOS

/s/ Kristen S. Moore

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NOTICE OF SERVICE

A copy of the foregoing was filed and served electronically on the 1st day of August, 2024 through the Clerk's electronic filing system.

/s/ Kristen S. Moore

Kristen S. Moore (0084050)

Attorney for Third-Party Julie Ghoubril