

PHILIP GODLEWSKI,
Plaintiff

v.

CHRIS KELLY, et al
Defendants.

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IN THE COURT OF COMMON PLEAS
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED

No.: 2021-CV-2195

MAURI B KELLY
LACKAWANNA COUNTY
JUN 28 3:48
CLERK OF SUPERIOR
RECORDS CIVIL DIVISION

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BRIEF IN SUPPORT OF DEFENDANTS' RESPONSE
TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

Defendants, Chris Kelly, The Scranton Times, L.P. and Larry Holeva (“Defendants”), by and through their attorneys, Haggerty Hinton & Cosgrove LLP, file the following Brief in Support of Defendants’ Response to Plaintiff’s Motion for Protective Order.

I. BACKGROUND

Plaintiff, Phillip Godlewski, filed this defamation case on May 24, 2021. He alleges Defendants defamed him in an article published on February 14, 2021. Plaintiff calls himself a patriot reporter and social media influencer with over 75,000 social media followers. Plaintiff is seeking \$5 million in damages in this case. (Complaint, ¶1.) The parties have entered into a Stipulation agreeing that Plaintiff is a “public figure” under the law.

The article in question discusses Plaintiff’s criminal history and states “Lackawanna County detectives said Godlewski had sex with the [minor] girl in cars and homes he had access to as a real estate agent.” Further, the article noted he pled guilty to corrupting the morals of the minor victim. Godlewski, 28 at the time of his conviction, was sentenced to three to 23 months of confinement. Plaintiff now claims in this lawsuit he never had sex with the fifteen-year-old girl and Defendants defamed him by stating such.

II. PLAINTIFF'S COMPLAINT

Discovery in this case should be guided by the averments in the Complaint. The Complaint avers as follows:

1. Paragraph 1 – “Mr. Godlewski has always been a producer of property sales . . . and had, until Defendants destroyed it, an excellent reputation of ethics, responsibility, and care for his clients.”
2. Paragraph 39 – “Defendants directly imply that Mr. Godlewski was a willing participant and/or organizer in an ongoing felonies criminal conspiracy to bring down the United States government by force.”
3. Paragraph 42 – “Defendants also accuse Mr. Godlewski of having a sexual relationship with a 15-year-old pursuant to a criminal matter which occurred in 2011.”
4. Paragraph 48 – Mr. Godlewski “never has sex [with] an underage girl.”
5. Paragraph 81 – Mr. Godlewski, according to Defendants, bears some responsibility for the “millions of Americans who have lost parents, siblings, children and friends to the QAnon cult.”
6. Paragraph 82 – Defendants cast “Mr. Godleski as a quasi-cult figure breaking up families.”
7. Paragraph 113 – Defendants’ article “resulted in a loss of his job [as a realtor].”
8. Paragraph 122 – Defendants grievously fractured Plaintiffs standing in the community and “exposing him to public hatred.”

III. DISCOVERY

Written discovery in this case commenced on July 9, 2021. The victim in Plaintiff’s criminal case for sex crimes in 2010-2011 has executed an Affidavit affirming she had a sexual

relationship with Philip Godlewski when she was fifteen (15) years old and he was ten years older than her.

a. Plaintiff has served answers to Interrogatories (Set I) as follows:

43. Are you claiming damages for physical, psychological or emotion injury?

Answer: Yes.

19-20. Dori [Plaintiff's wife] left February 17, 2021 right after the article was published. (Plaintiff's Supplemental Answer.)

Plaintiff is essentially claiming his wife left him due to the news article and he admits he is seeking damages for physical, psychological or emotional injuries.

IV. ARGUMENT

The purpose of the Pennsylvania "discovery rules is to prevent surprise and unfairness and to allow a fair trial on the merits." Dominick v. Hanson, 2000 PA Super 158, 753 A.2d 824, 826 (Pa.Super. 2000). To that end, Pa.R.C.P. 4003.1 provides that "as a general rule, discovery is liberally allowed with respect to any matter, not privileged, which is relevant to the cause being tried." George v. Schirra, 2002 PA Super 395, 814 A.2d 202, 204 (Pa.Super. 2002). Berg v. Nationwide Mutual Insurance Company, Inc., 2012 PA Super 88, 44 A.3d 1164, 1178 n. 8 (Pa. Super. 2012). Any limitations or restrictions upon discovery should be construed narrowly. Ferguson v. Ghigiarelli, 2012 WL 5376702, at * 4 (Lacka. Co. 2012); McAndrew v. Donegal Mutual Insurance Company, 56 Pa. D. & C. 4th 1, 7 (Lacka. Co. 2002), affirmed without opinion at 855 A.2d 144 (Pa. Super 2004). The party objecting to the production of documents generally bears the burden of establishing that the information or document sought is not discoverable and that the objections should be sustained. McAndrew v. Donegal Mut. Ins. Co., 56 Pa. D. & C.4th 1, 2002 Pa. Dist. & Cnty. Dec. LEXIS 215 (2002), affirmed without opinion by 855 A.2d 144.

In determining whether a discovery request seeks relevant information, the term “relevant” has greater breadth and flexibility than it does for purposes of admissibility at trial. George, 814 A.2d at 205-206 (holding that although the documents requested “may not ultimately be admissible at trial or may not prove germane to the matters that will be litigated, we believe the relevancy standard applicable to discovery matters has been met.”); Fitt v. General Motors Corp., 13 Pa. D. & C.4th 336, 338 (Lacka. Cty. 1992). Any doubts regarding relevancy are to be resolved in favor of allowing discovery; Davis v. Starosta, 62 Pa. D. & C.4th 76, 80 (Northampton Cty. 2002), and if there is any conceivable basis upon which a discovery request may be relevant, a motion to compel such discovery should be granted. Klovensky v. Moore, 57 Pa. D. & C.4th 370, 373 (Franklin Cty. 2002); Fitt, *supra*.

Discovery may be prohibited if it is irrelevant, sought in bad faith, causes unreasonable annoyance, embarrassment, oppression, burden or expense to the responding party, or requires unreasonable investigation by the respondent. See *Pa.R.C.P. 4011*. Litigants should expect that “[a]lmost any discovery request causes some annoyance, embarrassment, oppression, burden or expense.” D.S. v. DePaul Institute, 32 Pa. D. & C.4th 328, 334 (Allegheny Cty 1996). Consequently, the proper inquiry is whether the party objecting to discovery has established unreasonable annoyance, embarrassment, oppression, burden or expense associated with the discovery request. Merrifield v. Gavern, 10 Pa. D. & C.4th 541, 542 (Lacka. Cty. 1991).

Pennsylvania law does not favor evidentiary privileges since “they are in derogation of the search for truth.” Joe v. Prison Health Services, Inc., 782 A.2d 24, 31 (Pa. Cmwlth. 2001) (quoting Com. v. Stewart, 547 Pa. 277, 282, 690 A.2d 195, 197 (1997)). Except in those instances where a party objects to discovery based upon the attorney-client privilege, the party opposing discovery bears the burden of establishing that the requested material is privileged and

shielded from discovery. Yadouga v. Cruciani, 66 Pa. D. & C. 4th 164, 168 & n. 1 (Lacka. Co. 2004); Taylor v. Pars Manufacturing Co., 13 Phila. Co. Rptr. 132, 135 (Phila. Co. 1985). All doubts regarding the discoverability of information should be resolved in favor of permitting discovery. McAndrew, supra; Fitt v. General Motors Corp., 13 Pa. D. & C. 4th 336, 338 (Lacka. Co. 1992).

Pennsylvania Court have long recognized that defamation plaintiff may recover damages for humiliation, mental anguish, and emotional distress caused by the defamatory article. Joseph v. Scranton Times, 634 Pa. 35, 50, 129 A.3d 404 (2015). It is reasonably conceivable that Plaintiff's mother Marie Godlewski, may have knowledge or information regarding these elements of damage and Plaintiff's baseline mental fitness pre-article.

V. CONCLUSION

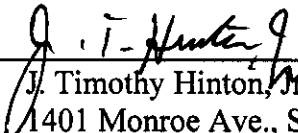
Defendants have scheduled Marie Godlewski's deposition based on a reasonable belief she may have admissible evidence about Philip Godlewski's education and work history, the victim from the criminal case Philip admittedly corrupted, Philip's criminal case from 2010-11 and the reasoning he pled guilty, Philip's marital problems with Dori, Philip's realtor career, Philip's social media communications and followers, his reputation in the community and his alleged physical, psychological and emotional injuries from the article. Plaintiff's counsel's assertion in his motion that "Marie was not in the real estate business with Godlewski" and does not possess direct knowledge of this litigation is completely insufficient to foreclose her discovery deposition. It is Plaintiff's burden here to prevent this deposition under Pa. R.C.P. 4003.1 or Pa. R.C.P. 4011. Defendants' counsel should not have to pre-screen his anticipated questions of Marie to opposing counsel. Plaintiff's counsel is free to object if the law permits such at the deposition. Plaintiff has not met his heavy burden to grant his motion. Plaintiff is

seeking substantial and comprehensive damages here. It is safe to say Plaintiff's mother has knowledge or information relevant to these claims.

RESPECTFULLY SUBMITTED,

HAGGERTY HINTON & COSGROVE LLP

Date: June 28, 2023

By: 

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Attorneys for Defendants,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Is/ J. Timothy Hinton, Jr., Esq.

J. TIMOTHY HINTON, JR., ESQUIRE

PA I.D. 61981

MAILED
JANUARY 28 3:49
JUDICIAL
RECORDS CIVIL DIVISION

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CHRIS KELLY, TIMES SHAMROCK
COMMUNICATIONS, THE SCRANTON
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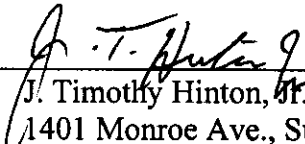
CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June 2023, I caused to be served by electronic mail, a true and correct copy of the foregoing Brief in Support of Defendants' Response to Plaintiff's Motion for Protective Order upon the following:

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*Chris Kelly, The Scranton Times, L.P. and
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ORDER OF COURT

AND NOW, this ____ day of _____ 2023, upon consideration of Defendants' Motion to Request Case Management Conference, it is hereby ORDERED that Plaintiff shall file a response to said Motion on or before July ____, 2023.

A Case Management Conference to establish case management deadlines shall be held on the ____ day of _____ 2023 in Court Room _____, of the Lackawanna County Courthouse at _____ a.m./p.m.

J.