

PHILIP GODLEWSKI,

MAURIE E. HINTZ THE COURT OF COMMON PLEAS
Plaintiff, CHAYANNA COUNTY OF LACKAWANNA COUNTY, PA

v.

NO. 2022-cv-2195
No: 2022-cv-2195

CHRIS KELLY et al.,

CLERK OF JUDICIAL
RECORDS & COURT REPORTING

Defendants. : JURY TRIAL DEMANDED

**BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER
AND TO QUASH SUBPOENA**

QUESTIONS PRESENTED

I. WHETHER THE COURT SHOULD PROHIBIT THE DEPOSITION OF DOROTHEA GODLEWSKI AS HER TESTIMONY IS BARRED BY THE PRIVILEGE AGAINST SPOUSAL TESTIMONY.

II. WHETHER THE COURT SHOULD PROHIBIT THE DEPOSITION OF DOROTHEA GODLEWSKI AS HER TESTIMONY IS OUTSIDE THE SCOPE OF PERMISSIBLE DISCOVERY.

STATEMENT OF THE CASE

1. Procedural history.

Plaintiff Philip Godlewski ("Godlewski") initiated this action by filing a Complaint on May 24, 2021. The Complaint alleged causes of action sounding in defamation, false light invasion of privacy, intentional interference with contractual relations (present and prospective). Defendants filed an Answer and New Matter on July 6, 2024. Godlewski countered with an Answer to New Matter on July 6, 2021.

Defendants have conducted extensive discovery, sending notice of intent to serve subpoenas to various parties on October 7, 2021; March 30, 2022; April 18, 2022; May 25, 2002; June 16, 2022; June 21, 2022; August 30, 2022; September 14, 2022; October 3, 2022;

November 14, 2022; November 17, 2022; and November 18, 2022. Additionally, Defendants have served numerous interrogatories, requests for production of documents, and requests for admissions upon Godlewski. A total of four depositions were taken on March 1, 2023 and March 3, 2023 and additional depositions have been scheduled.

On February 23, 2023 Godlewski filed a Motion for Leave to Conduct Discovery Relating to Punitive Damages. Defendants filed a response to this Motion on March 6, 2023. The Court held a hearing on the Motion for April 15, 2023 and has taken the matter under advisement.

On June 6, 2023 Defendants served upon Godlewski a Notice of Taking Depositions on Oral Examination Under Pennsylvania R.C.P. 4007.1 ("Deposition Notice") indicating Defendants' intent to take the deposition of Dori Godlewski ("Dorothea") on Thursday, July 20, 2023 at 10:00 AM. See true and correct copy of Deposition Notice attached hereto as Exhibit 1. Godlewski objects to the taking of this deposition and seeks a protective order.

2. Statement of Facts.

On or July 9, 2010 Godlewski was charged by Criminal Complaint with various sex offenses. Among the the many charges set forth in the Criminal Complaint was Offense 7, Corruption of Minors, Pa.C.S.A. § 6301 (a)(1) asserting that Godlewski "did corrupt the morals of the victim, Brienna DuBorgel, a minor under the said the age of 18 years, by engaging in acts of sexual intercourse..."

By Information docketed on November 16, 2010, the Commonwealth charged Godlewski with a single count of corruption of minors, alleging that Godlewski "did repeatedly have

inappropriate text messages [sic] and contact with a minor. Godlewski was not charged by Information with any sex offense at all.

Godlewski entered a plea of guilty to the single count charged in the Information. Paragraph 16 of the Guilty Plea Colloquy indicates that the elements of the crime charged were, "Being of the age of 18 or older, by an act corrupts or tend [sic] to corrupt the morals of a minor." Paragraph 17 of the Guilty Plea Colloquy contains no indication of the what the District Attorney indicates Godlewski did on the day of the crime charged.

On February 14, 2021 the Scranton Times-Tribune published a column about Godlewski entitled "Chris Kelly: QAnon Realtor sells rabbit holes on YouTube." The column asserts, "In 2011, the former Riverside High School baseball coach pleaded guilty to corruption of minors and admitted to having a sexual relationship with a 15-year-old girl." While it is true that Godlewski pleaded guilty to corruption of minors, Godlewski never made any admission that Godlewski had a sexual relationship with a 15 year old girl.

The column further asserts, "Lackawanna County detectives said Godlweski had sex with the girl in cars and homes he had access to as a real estate agent." While those allegations existed in the original Criminal Complaint, Godlewski was not ultimately so-charged by Information, nor did Godlewski plead to such a charge or admit the veracity of such a charge.

Dorothea and Godlewski were married on September 21, 2012 over two years after the time of the alleged sexual relationship between Godlewski and Brienna DuBorgel. This was also over a year after conclusion of the criminal case regarding DuBorgel on July 11, 2011.

ARGUMENT

I. THE COURT SHOULD PROHIBIT THE DEPOSITION OF DOROTHEA GODLEWSKI AS HER TESTIMONY IS BARRED BY THE PRIVILEGE AGAINST SPOUSAL TESTIMONY.

The courts of Pennsylvania have long recognized the common law marital communications privilege. The Pennsylvania Supreme Court has found that "[t]he great object of these rules being to secure domestic happiness by prohibiting confidential communications from being divulged..." Com. v. Chiappini, 556 Pa. 507, 513, 782 A.2d 490, 493 (2001) citing Cornell v. Vanartsdalen, 4 Pa. 364, 374 (1847). Further, "the rule is the same to that extent, even though the other party is no longer in being, or has even been divorced and married to another person." Id. Additionally, "[t]he rule is the same in its spirit and extent, as that which excludes confidential communications made by a client to an attorney." Id. The Supreme Court clarified that "the common law prohibition on testimony following termination of a marriage extends only to confidential communications made by one of the partners to the other." Id., 556 Pa. at 516, 782 A.2d at 495. This common law privilege has been codified with respect to civil cases at 42 Pa.C.S.A. § 5923.¹

In the case at bar, Dorothea was not a participant in Godlewski's online activities which are publicly available. Dorothea was not in the real estate business with Godlewski. Dorothea does not possess any direct knowledge concerning the subject matter of this litigation. To the extent that Dorothea may possess information concerning the subject matter of this litigation,

¹ The Superior Court has specifically found that § 5923 embodies the common law precept that "the privilege protecting confidentially marital communications remains in effect after divorce or the death of one spouse." CAP Glass, Inc. v. Coffman, 130 A.3d 783, 788 (Pa.Super. 2016) citing Hunter v. Hunter, 169 Pa.Super. 498, 83 A.2d 401, 403 (1951).

that information would be derived exclusively from confidential communications made by Godlewski to Dorothea during the course of their marriage. All such information derived from confidential communications is privileged. Accordingly, the Court should prohibit the deposition of Dorothea Godlweski.

II. THE COURT SHOULD PROHIBIT THE DEPOSITION OF DOROTHEA GODLEWSKI AS HER TESTIMONY IS OUTSIDE THE SCOPE OF PERMISSIBLE DISCOVERY.

The Pennsylvania Rules of Civil Procedure limit the scope of discovery to information reasonably calculated to lead to the discovery of admissible evidence. Pa.R.C.P. 4003.1. Further, discovery shall not be permitted when sought in bad faith; creates unreasonable annoyance, embarrassment, oppression, burden or expense; or is beyond the scope of discovery establish by the rules. Pa.R.C.P. 4011 (a), (b), and (c). The Court has the power to prohibit depositions "to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden, or expense." Pa.R.C.P. 4012 (a)(1). Finally, "[t]he court for good cause shown may stay any or all proceedings in the action until disposition of [a motion for protective order]." Pa.R.C.P. 4013.

The deposition of Dorothea is not reasonably calculated to lead to the discovery of admissible evidence as Dorothea's testimony is barred by the doctrine of spousal communication privilege. Defendants seek the deposition of Dorothea in bad faith as Dorothea's testimony is barred by the doctrine of spousal communication privilege.

The deposition of Dorothea would cause unreasonable annoyance, embarrassment, oppression, burden and expense to Godlewski as the only possible purpose of the deposition, given the privileged nature of communications between Godlewski and Dorothea, is to publicize

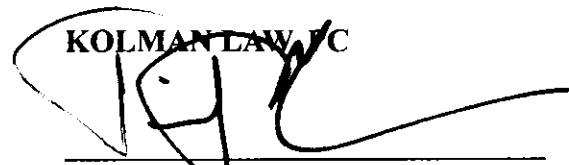
inadmissible and privileged information. Accordingly, the Court should prohibit the deposition of Dorothea.

Given the strong nature of the spousal communications privilege, the interests of justice required that the Court stay the taking of Dorothea's deposition pending disposition of this motion.

WHEREFORE, Plaintiff Philip Godlewski respectfully requests that the Honorable Court grant his Motion for Protective Order and to Quash Subpoena and enter an Order providing the following relief:

- A. Prohibiting the deposition of Dorothea Godlewski and quashing the subpoena directed to Dorothea Godlewski.
- B. Such other relief as the Court may deem just.

Respectfully submitted,



Timothy A. Bowers, PA77980
414 Hulmeville Avenue
Pennel, PA 19047
(215) 750-3134
Attorney for Plaintiff.

DATE: July 10, 2023

COMBINED CERTIFICATE

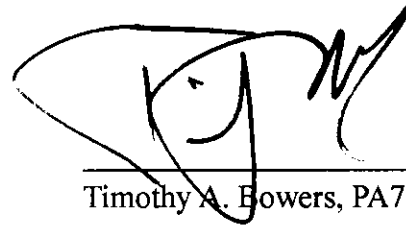
I HEREBY CERTIFY that I have, this 10th day of July 2023, served a true and correct copy of the foregoing document by hand or email upon the following:

J. Timothy Hinton, Esquire
Counsel for Defendants

Courtesy copy:
John R. Williams, Esquire
jrwesq@johnwilliamslaw.com
Counsel for Dorothea Godlewski

PAUL B. KELLY
ALLEGANY COUNTY
JUL 10 10 12 16
CLERK OF JUDICIAL
RECORDS CIVIL DIVISION

I 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.



Timothy A. Bowers, PA77980