

PHILIP GODLEWSKI

Plaintiff

v.

CHRIS KELLY, TIMES SHAMROCK  
COMMUNICATIONS, SCRANTON  
TIMES-TRIBUNE, LARRY HOLEVA

Defendants

IN THE COURT  
OF COMMON PLEASE  
OF LACKAWANNA COUNTY

CIVIL DIVISION

JURY TRIAL DEMANDED

NO. 2021 CV 2195

MAURI B. KELLY  
LACKAWANNA COUNTY  
2021 JAN 22 1:46  
CLERK OF JUDICIAL  
RECORDS

**MEMORANDUM and ORDER**

**Minora, Sr.J.**

In the underlying action, Plaintiff, Phillip Godlewski, alleges he was defamed by Defendants, Chris Kelly, Times Shamrock Communications, The Scranton Times, L.P., and Larry Holeva, by virtue of a publication which appeared in the Defendant-newspaper on February 14, 2021. The publication at issue stated Plaintiff plead guilty in 2011 to a criminal charge of Corruption of Minors within which he admitted to having a sexual relationship with a 15-year-old girl. The crux of Plaintiff’s defamation lawsuit is that the subject publication is false, and that Defendants acted with actual malice in disseminating it. The Defendants are in essence raising truth as their defense.

Now before this Court are a pair of motions submitted by Defendants seeking sanctions relative to asserted deficiencies by Plaintiff in the production of discovery. As we noted in a recent Memorandum and Order in disposition of a separate discovery motion in this matter, “In discovery matters, we are not charged with the responsibility of rendering an opinion on the quality or virtue of the underlying case.” (*Godlewski v. Chris Kelly, et al.*, 21 CV 2195, Memorandum and Order, Minora, S.J., 1/12/2024).

Consequently, while Defendants have presented voluminous written material and hours of oral testimony for the almost exclusive purpose of painting Plaintiff as being intentionally deceitful in various responses to discovery, the unmistakable truth is that the credibility of Plaintiff, or any party, is not within the domain of this Court at this discovery phase. Accordingly, we will distill these discovery motions to their essence and render a disposition as to whether Plaintiff has provided legally sufficient responses to Defendants' discovery requests.

In Defendants' Second Motion for Sanctions, it appears all but one of the asserted bases for sanctions concerns the veracity of Plaintiff's responses to discovery. In that regard, although we may find Plaintiff's answers to be suspect, such is not our concern. As long as his responses to discovery are verified, Plaintiff has satisfied for our purpose his obligation. Therefore, with regard to sanctions sought in reference to Plaintiff's discovery responses considered by Defendants to be patently false, we will deny the motion unless the subject responses are not verified, in which case we direct Plaintiff to personally verify within ten (10) days, and not to verify through counsel in all instances.

We will substantively address the remaining basis for sanctions in Defendant's Second Motion for Sanctions which concerns the alleged failure by Plaintiff to comply with a preservation of evidence request. In that regard, the parties agree that Defendants, through counsel, served upon Plaintiff, directed to counsel, on June 8, 2021, a request to preserve, *inter alia*, "all electronically stored information." As is most presently relevant, the request includes the preservation of information contained in Plaintiff's mobile phone. Although the specifics are a bit unclear, as Plaintiff contends, in response to discovery, he possesses "no text messages" with the minor-victim. Defendants are aware

of such text messaging through being provided same by the minor-victim from her cellphone the other end of the text messages. Resultantly, Plaintiff's answer is either untruthful or an effective admission he failed to safeguard these communications in contravention of the preservation of evidence request.

Sanctions in discovery matters are governed by Rule 4019 of the Pennsylvania Rules of Civil Procedure. Pa. R.C.P. 4019. The purpose of allowing the imposition of sanctions for a failure to comply with discovery is to ensure compliance with proper orders of court and the adequate and prompt completion of discovery. *Taylor v. City of Philadelphia*, 692 A. 2d 308, 313 (Pa. Cmwlth. 1997). Meanwhile, it is well-settled that the imposition of sanctions for discovery violations is vested in the sound discretion of the trial court. *Schweikert v. St. Luke's Hospital of Bethlehem*, 886 A. 2d 265, 268 (Pa.Super. 2005).

In their prayer for relief, Defendants request sanctions consisting of, *inter alia*, a dismissal with prejudice of Plaintiff's complaint, the award to Defendants of a total of Seventy Thousand (\$70,000.00) Dollars, half of which representing reasonable counsel fees and the remaining half attributable to Plaintiff's alleged bad faith, and a directive that Plaintiff surrender for inspection his mobile phone. We agree with Defendants that Plaintiff should be sanctioned for his failing to preserve the text messages in question. However, we find Defendants' demand for dismissal to be too drastic and the specific monetary sanctions requested excessive. In meting out sanctions which are vested in our discretion, we find mandating the production of Plaintiff's mobile phone, along with the imposition of a more modest monetary penalty payable not to Defendants but to Lackawanna Pro Bono, a local non-profit organization through which local attorneys

volunteer to represent low-income individuals facing serious civil legal problems in Lackawanna County, to be more appropriate.

Next, we turn to Defendants' Third Motion for Sanctions, filed in relation to Plaintiff's alleged failure to abide by this Court's Order dated November 14, 2022, which directed discovery production within ten (10) days thereof as follows:

- (a) Plaintiff's full individual federal tax returns and the tax returns for any businesses he held an ownership interest in filed with the IRS for all years from 2016 to the present and serve Defendants' counsel with a verified supplemental answer to Defendants' Request for Production of Documents (Set I), Nos. 2 and 3;
- (b) Plaintiff's live videos streamed or uploaded to any social media outlets or platforms including but not limited to: YouTube, DLive, Telegram, Rumble, etc., identifying each video by the date of the live video from January 1, 2020 to the present date;
- (c) Any Diplomas, Certificates, and/or transcripts from the Harvard Business School concerning any programs or classes Phil Godlewski attended there;
- (d) Any documents evidencing Plaintiff's purchase of any guns, rifles or any firearms in 2020 or 2021; and
- (e) A verification for Plaintiff's Answers to Interrogatories (Set II).

We are satisfied Plaintiff has either failed to produce items which he has in his possession or, if not in his possession, failed to provide a verified response attesting to such. We cannot stress enough the requirement to provide in discovery, not only what is requested but also verification of its production or, in the case where not produced,

verification the information is not within the possession of the party from whom it is requested. As a result, we find Plaintiff has failed to abide by this Court's November 14, 2022 Order, for which the imposition of sanctions under Rule 4019 is warranted. In this regard, we will once again compel Plaintiff to personally provide complete and verified responses to any discovery request to which a sufficient response, including the response that the information sought is not within the possession of Plaintiff, has not been provided. So, to add teeth to this sanction, we will additionally impose a monetary penalty in the nature of counsel fees for Plaintiff's lack of personal verification to date and an ongoing payment of counsel fees should Plaintiff not abide by the Order which now follows.