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(0) Others

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L TURNER	:	CASE NO. DR0500131
Plaintiff,	:	
v.	:	JUDGE PANIOTO
	:	MAGISTRATE THEILE
JON H. ENTINE	:	<u>DEFENDANT'S MOTION TO</u>
Defendant.	:	<u>MODIFY TEMPORARY SPOUSAL</u>
	:	<u>SUPPORT</u>

Defendant Jon H Entine ("Husband"), by and through counsel, moves the Court for an order increasing the amount of temporary spousal support awarded to Husband under the Court's 75N Order for the reason that Husband's expenses have increased and his income has decreased since the 75N Order was issued. Additionally, Plaintiff Ellen L Turner ("Wife") has understated her wages. Husband's Motion is supported by the following Memorandum of Law and his revised Affidavit of Income, Expenses and Financial Disclosure.

Respectfully submitted,

[Signature]
 Gloria S Haffer #0014333
 Robert J Meyers #0014589
 Attorneys for Defendant Jon H Entine
 BUECHNER, HAFFER,
 MEYERS & KOENIG CO, L PA
 105 East Fourth Street
 300 Fourth & Walnut Centre
 Cincinnati, Ohio 45202
 Telephone No 513-579-1500
 Facsimile No 513-977-4361

FILED

2008 SEP -5 P 3:18
GREGORY HARTMAN
CLERK OF COURTS
HAMILTON COUNTY, OH



D69867121

MEMORANDUM OF LAW

On March 8, 2005, the Court issued its 75N Order awarded Husband spousal support in the amount of \$8,000 00 per month. At the time of the award, Husband's annual income was \$87,000 00 and his monthly expenses were \$11,684 34 as stated in his Affidavit of Income, Expenses and Financial Disclosure.

Since the 75N Order issued, the parties' circumstances have changed. Husband's housing, utilities, and other monthly expenses have increased by \$10,671 66 for a total monthly amount of \$22,356 00.

At the same time, Husband's annual income, excluding spousal support, has decreased. Husband is now self-employed as a consultant and author and is no longer teaching at Miami University. His annual adjusted gross income, excluding spousal support, is now \$32,265 00.

Wife filed a motion seeking to decrease the amount of spousal support to Husband. At the time the 75N Order was issued, the Court used the figure of \$430,000 00 as Wife's annual income. The evidence reveals that Wife's income has not decreased since the time the 75N Order was issued.

Although Wife no longer works at Sara Lee, she has received a generous severance package from Sara Lee. In 2005, she received payments from her stock options, her 401k account, and her retention agreement in addition to severance payments. Wife failed to disclose these payments and their amounts. Wife has also failed and refused to produce her 2005 tax information as requested during discovery making it impossible to ascertain Wife's 2005 income with any accuracy.

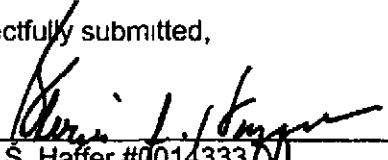
As of July 2006, her paycheck stubs indicate that she has received approximately \$529,000 00 for the first half of 2006.

Upon her termination from Sara Lee, Wife and her partner, Bruce Humbert, established their own consulting company from which Wife earned income in 2005 (and

in 2006) Again, the lack of tax information for 2005 makes it impossible to ascertain Wife's income for 2005

Based upon the foregoing, Husband moves this Court for an order increasing the amount of temporary spousal support awarded to him under the 75N Order Husband also requests that the Court order Wife to reimburse him in the amount of \$2,000.00 for the reasonable attorneys' fees and costs he has incurred in preparing and prosecuting this motion

Respectfully submitted,



Gloria S. Haffer #0014333
Robert J. Meyers #0014589
Attorneys for Defendant Jon H. Entine
BUECHNER, HAFFER,
MEYERS & KOENIG CO., L.P.A.
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No. 513-579-1500
Facsimile No. 513-977-4361

NOTICE OF HEARING

Please take notice that a hearing on the foregoing has been scheduled for the 15th day of September 2006 at 9:00 a.m. before Magistrate Theile at the Hamilton County Court of Common Pleas, Division of Domestic Relations, 800 Broadway Street, Cincinnati, Ohio

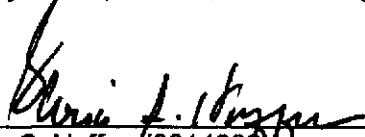


Gloria S. Haffer #0014333
Robert J. Meyers #0014589
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Defendant's Motion to Modify Temporary Spousal Support has been served upon Randal S. Bloch, Attorney for Plaintiff, Wagner & Bloch, PLL, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and Sallee M. Fry, Attorney for Plaintiff, The Law Office of Sallee M. Fry, 2345 Ashland

Avenue, Cincinnati, Ohio 45206 on this 5th day of, September, 2006 through regular
US Mail



Gloria S Haffer #0014338
Robert J Meyers #0014589
Attorneys for Defendant

109741

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L. Turner
Plaintiff

Address 7719 Shawnee Run Road
Cincinnati Ohio 45243

-vs/and-

Jon H. Entine
Defendant

Address 6255 S Clippinger Drive
Cincinnati, Ohio 45243

Date _____

Case No DR0500131

File No _____

CSEA No _____

Judge Pamoto

AMENDED
AFFIDAVIT OF INCOME, EXPENSES
AND FINANCIAL DISCLOSURE

STATE OF OHIO, SS

Now comes Jon H. Entine affiant herein, and having been duly cautioned and sworn, states that he/she has been advised that this affidavit may be used for any or all of the following purposes (1) to make complete disclosure of affiant's income, liabilities and expenses, (2) to assist in determining orders of child support or spousal support when applicable or any changes thereto and (3) to provide for the issuance of the appropriate deduction order for support
Minor and/or Dependent Children of this Marriage

<u>Madeleine Rose Entine</u>	age <u>8</u>	is residing with <u>Both Parents</u>
_____	age _____	is residing with _____
_____	age _____	is residing with _____

GROSS YEARLY INCOME

SECTION I <u>Husband</u> (1)	<u>Yes</u>	Employed	Wife (2) <u>Yes</u>	<u>Wife</u>
\$ <u>0.00</u>	<u>Actual</u>	Base Yearly Wages	<u>Actual</u>	\$ <u>593,121.00</u>
\$ <u>0.00</u>		Yearly Averages Overtime, Commission & Bonus Income		\$ <u>250,000.00</u>
Self		Employer	<u>Humbert + Turner</u>	
<u>6255 So. Clippinger Dr.</u>		Payroll Address	<u>10200 Alliance Dr.</u>	
<u>Cincinnati Oh 45243</u>		City, State, Zip	<u>Cincinnati Ohio 45242</u>	
<u>12</u>		Scheduled Paychecks Per Year		<u>12</u>
\$ <u>0.00</u>		Unemployment Benefits		\$ <u>0.00</u>
\$ _____		Workers' Compensation		\$ <u>0.00</u>
\$ <u>0.00</u>		Social Security or Other Disability Benefits List Sources in Section D-2		\$ <u>0.00</u>
\$ <u>37,440.00</u>		Spousal Support Received		\$ <u>0.00</u>
\$ <u>5,091.00</u>		Interest / Dividend Income List Source in Section D-2		\$ <u>7,000.00</u>
(\$ <u>0.00</u>)		Public Assistance or Income Supplement Security		(\$ <u>0.00</u>)
\$ <u>27,170.00</u>		Other Income Received List Source in Section III-B		\$ _____
\$ <u>69,701.00</u>		TOTAL YEARLY INCOME		\$ <u>850,121.00</u>

Husband (1)

Wife (2)

ANNUAL INCOME, OVERTIME AND BONUSES EARNED (Past Three Years)

Table with columns for Husband (1) and Wife (2), and rows for years 2003, 2004, and 2005. Includes sub-columns for Base Income and Overtime and/or Bonuses.

ADJUSTMENTS

Table of adjustments including Court Ordered Support Paid for other child(ren), Court Ordered Spousal Support Paid to a Former Spouse, Number of Other Dependent Children, Child Support Received for Other Dependent Children, Health Insurance Premium Paid, and For Post Decree Modifications Only.

SECTION II

AFFIANT'S MONTHLY EXPENSES

List expenses below for your present household. There are 1 adults and 1 children in my household

A. Housing

Table listing housing expenses: 1 Rent or Mortgage (\$4350.00), 2 Utilities (Gas & Electric \$370.00, Water & Sewer \$190.00, Telephone \$25.00, Trash Collection \$74.00, Cable Television \$71.00), 3 Other Internet connection and Snow Removal/Spring and Fall clean-up & fertilizing (\$325.00).

TOTAL HOUSING

\$ 5405.00 (A)

B Other

Table listing other expenses: 1 Car Repairs and License (\$150.00), 2 Insurance Auto (\$70.00), 3 Medical Expenses (\$1,100.00), 4 Clothing (\$425.00), 5 Grocery Items (\$350.00), 6 Child Related Expenses (\$200.00), 7 Gasoline & Oil (\$150.00), 8 Other CPA Legal (work-related) (\$2,602.00).

MONTHLY TOTAL

\$ 5,347.00 (B)

C MONTHLY INSTALLMENT PAYMENTS
 (Do not list expenses previously listed in Section B)

To Whom Paid	Purpose	Balance Due	Monthly Payment
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
MONTHLY TOTAL			\$ (C)
GRAND TOTAL MONTHLY EXPENSE (Sum A,B,C, plus D (optional))			\$ 22,696 00

SECTION III FINANCIAL DISCLOSURE

A List all funds on deposit in any and all accounts, in any bank, savings & loan, credit union, regulated investment company, mutual fund or other financial institution. Account includes any of the following: checking, certificate of deposit ("CD"), investment, savings, individual retirement ("IRA"), stock option, etc. Attach additional pages if needed.

Name & Address of Financial Institution	Account No	Name(s) on Account	Balance Date of this Affidavit
<u>SEE ATTACHED</u>	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

B Other income source listed in Section I (i.e., retirement / pension benefits, disability income, interests dividend income, rentals, annuities, etc) not listed in Section III-A) Attach additional pages if needed. Need not complete pre-decree.

Name & Address of Source	Identifying Description (Account No., Claim No., etc.)	Income or Benefits
_____	_____	\$ _____ per month

SECTION IV OTHER ASSETS AND LUMP SUM INCOME

1 Describe assets of more than \$1,000 in value not otherwise listed in this affidavit (equity in real estate, stocks, bonds, other investments, etc) Attach additional pages if needed.

(a)	Value \$ _____
(b)	\$ _____
(c)	\$ _____

2 List any lump sum income (bonus, gifts, inheritance, etc) in excess of \$500, expected to be received within the next six months, not otherwise listed in this affidavit. Attach additional pages if needed.

Source	Value \$ _____
Address	

Affiant state that the information contained herein is complete and accurate to the best of his/her information, knowledge or belief under penalty of law.

Attorney for Sherrill / Suzanne #0014333 Affiant Plaintiff / Petitioner (1)
 Defendant / Petitioner (2)

Sworn to and subscribed on my presence this 7th day of September, 2006

Cynthia Saylor
 Notary Public
 My commission expires _____

CYNTHIA SAYLOR
NOTARY PUBLIC, STATE OF OHIO
 My Commission Expires 02-15-2016

D OPTIONAL

(Additional Monthly Expenses)

Complete if an award of spousal support is at issue or in the event that you are seeking a significant deviation from the child support schedule

1 Special and Unusual Needs of the Children, Specify	\$ _____
2 Extraordinary Parenting Time -Related Travel Expenses	_____
3 Extraordinary Obligations to other children, minor and handicapped, not step-children	_____
4 Mandatory Deduction from Wages (Not taxes, Social Security)	_____
5 Hair Care, Dry Cleaning	<u>\$65 00</u>
6 Newspapers, Periodicals and Books	<u>\$225 00</u>
7 Child Care (not employment related)	<u>\$100 00</u>
8 Children's School Lunch Program	_____
9 Children's Allowances, Activities	<u>\$32 00</u>
10 Tuition (for Minor Children or Self)	<u>\$150 00</u>
11 Entertainment	<u>\$625 00</u>
12 Contributions	<u>\$250 00</u>
13 Additional Taxes Paid (not from wages)	_____
14 Memberships (Associations, Clubs)	<u>\$250 00</u>
15 Travel, Vacations	<u>\$1050 00</u>
16 Water Softener	_____
17 House Repairs	<u>\$350 00</u>
18 Housekeeping	<u>\$236 00</u>
19 Lawn Service	<u>\$90 00</u>
20 Other (Specify) Religious Membership for Jon & Maddeleine	<u>\$170 00</u>
Dog/pet care	<u>\$150 00</u>
Legal/divorce	<u>\$8,201 00</u>
TOTAL OTHER EXPENSES (D)	<u>\$11,944 00</u>

(X) PRE-DECREE () POST-DECREE

() Chg of Cust.
() Vis Enforce/Mod.
() Sup. Enforce/Mod.
(X) Others

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L TURNER	:	CASE NO. DR0500131
Plaintiff,	:	
v.	:	JUDGE PANIOTO
	:	MAGISTRATE THEILE
JON H. ENTINE	:	<u>DEFENDANT'S MOTION TO</u>
Defendant.	:	<u>MODIFY TEMPORARY SPOUSAL</u>
	:	<u>SUPPORT</u>

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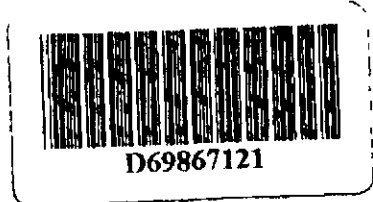
Respectfully submitted,

Gloria S Haffer #0014333
Robert J Meyers #0014589
Attorneys for Defendant Jon H Entine
BUECHNER, HAFFER,
MEYERS & KOENIG CO , L PA
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No 513-579-1500
Facsimile No 513-977-4361

FILED

2008 SEP -5 P 3:18

GREGORY HARTMANN
CLERK OF COURTS
HAMILTON COUNTY, OH



MEMORANDUM OF LAW

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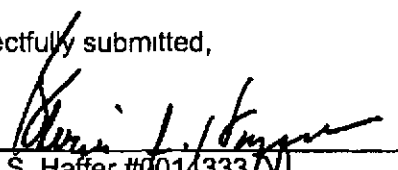
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in 2006) Again, the lack of tax information for 2005 makes it impossible to ascertain Wife's income for 2005

Based upon the foregoing, Husband moves this Court for an order increasing the amount of temporary spousal support awarded to him under the 75N Order Husband also requests that the Court order Wife to reimburse him in the amount of \$2,000 00 for the reasonable attorneys' fees and costs he has incurred in preparing and prosecuting this motion

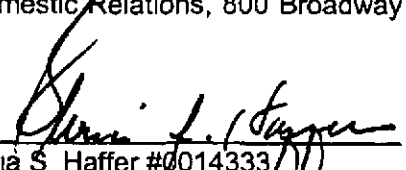
Respectfully submitted,



Gloria S Haffer #0014333
Robert J Meyers #0014589
Attorneys for Defendant Jon H Entine
BUECHNER, HAFFER,
MEYERS & KOENIG CO , L PA
105 East Fourth Street
300 Fourth & Walnut Centre
Cincinnati, Ohio 45202
Telephone No 513-579-1500
Facsimile No 513-977-4361

NOTICE OF HEARING

Please take notice that a hearing on the foregoing has been scheduled for the 15th day of September 2006 at 9 00 a m before Magistrate Theille at the Hamilton County Court of Common Pleas, Division of Domestic Relations, 800 Broadway Street, Cincinnati, Ohio

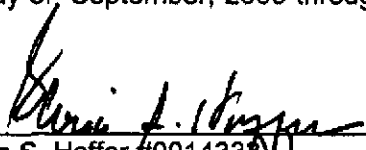


Gloria S Haffer #0014333
Robert J Meyers #0014588
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Defendant's Motion to Modify Temporary Spousal Support has been served upon Randal S Bloch, Attorney for Plaintiff, Wagner & Bloch, PLL, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and Sallee M Fry, Attorney for Plaintiff, The Law Office of Sallee M Fry, 2345 Ashland

Avenue, Cincinnati, Ohio 45206 on this 5th day of September, 2006 through regular
US Mail



Gloria S Haffer #0014338
Robert J Meyers #0014589
Attorneys for Defendant

109741

R

Randal S. Bloch, Esq
Ohio Reg #0010124
Atty for Plaintiff

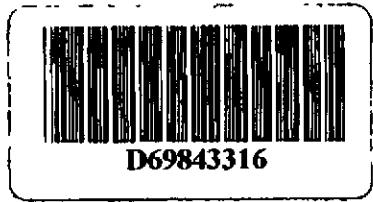
**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

ELLEN TURNER	:	<u>CASE NO. DR05000131</u>
Plaintiff	X	<u>FILE NO. E-233969</u>
vs.	:	Judge Panioto
		Magistrate Theile
JON ENTINE	X	<u>NOTICE OF DEPOSITION</u>
		<u>AND AMENDED</u>
		<u>CERTIFICATE OF SERVICE</u>
Defendant		

Please take notice that on the date and time below indicated, Plaintiff will take the deposition of the following person in this action, upon oral examination, pursuant to the Ohio Rules of Civil Procedure, before a Notary Public or before some other officer authorized by law to administer oaths

<u>DEPONENT</u>	<u>TIME AND DATE OF HEARING</u>
Jon Entine 6255 S Clippinger Dr Cincinnati, OH 45243	September 14, 2006 at 2 00 p m at the office of Wagner & Bloch 2345 Ashland Avenue Cincinnati, OH 45206

The scope of said deposition will include inquiry into all facts and circumstances pertinent to this action. You will be required at that time to produce the materials listed in Exhibit A



FILED
2006 SEP - 1 P 1:50
GREGORY HASTMAN
CLERK OF COURTS
HAMILTON COUNTY, OH

Randal S Bloch tp

Randal S Bloch #0010124
Attorney for Plaintiff
2345 Ashland Avenue
Cincinnati, OH 45206
(513) 751-4420
Wagbloch@yahoo.com

Sallee M Fry

SALLEE M FRY #0042625
Attorney for Plaintiff
2345 Ashland Avenue
Cincinnati, OH 45206
(513) 421-6000
Fax (513) 763-3522
Postmaster@salleeatlaw.com

AMENDED CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice has been sent by regular
U S Mail on the 1 day of September, 2006 to Gloria S Haffer, Esq and Robert J Meyers,
Esq 105 East Fourth Street, Suite 300, Cincinnati, Oh 45202-4057

Randal S Bloch tp
Randal S Bloch

Exhibit A

All check registers and bank statements from July 2004 through the present

All statements for any stock, cash, money market funds or accounts from July 2004 through the present

All statements, documents, receipts or notes showing expenses paid from July 2004 through the present

Documentation of any purchases equal to or more than \$500 from July 2004 through the present

2005 tax return or documents used or supplied for the preparation of the tax return

All credit card statements for all credit card accounts used from July 2004 through the present

COURT OF COMMON PLEAS
 DIVISION OF DOMESTIC RELATIONS
 HAMILTON COUNTY, OHIO

Ellen Turner
 Plaintiff / Petitioner

Date: 8-25-06

-vs/and-

Case No. DR 0500131

File No. E233969

Joan Entine
 Defendant / Petitioner

CSEA No. _____

Judge Pomato
 Judge / Magistrate's

ORDER FOR CONTINUANCE

Whereas, Plaintiff / Defendant / Other _____, has(have) requested a continuance of the hearing set for _____, 20 _____ for the following reason(s):

- conflict of trial assignment
- for the presence of a necessary witness
- for the presence of a party
- to obtain additional information/discovery
- continued in progress
- failure of service
- other to determine compliance with subpoena on Brue Hamblat

Whereas, the complaint / petition / motion was filed on _____ and there have been _____ previous continuances;

Whereas, no other party / counsel objects to this continuance OR _____ objects to the continuance.

THEREFORE, IT IS HEREBY ORDERED:

also CIP on discovery issue

This case is hereby continued to 9-15-06 at _____ am/pm for _____ hour(s), Court of Common Pleas, Division of Domestic Relations, 800 Broadway in Courtroom 2102 before Judge/Magistrate Theile
 For (type of hearing) _____

The motion for a continuance is denied.

Further Orders are as follows: Brue Hamblat has to 9-15-06 at 9:00 am to request to subpoena

This Order is effective immediately. If a Magistrate has issued this Order, either party may appeal the Order by filing a Motion to Set Aside the Order within ten (10) days of the date this Order is filed. The pendency of a Motion to Set Aside the Order does not stay the effectiveness of this Order unless the Magistrate or Judge grants a stay.

[Signature]
 Judge / Magistrate

By signature below, both parties / counsel acknowledge receipt of this Order.

Plaintiff
[Signature]
 Attorney for Plaintiff

Defendant
[Signature]
 Attorney for Defendant
 #0014333

[Signature] 02L 5722
 Other (CSEA #) 5CIP issue

[] COURT [] FILE [] CSEA [] PARTY 1



~~X~~

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER

Plaintiff,

v.

JON H. ENTINE

Defendant.

CASE NO. DR0500131

JUDGE PANIOTO
MAGISTRATE THEILE

DEFENDANT'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION TO SET ASIDE
MAGISTRATE'S ORDER OF
AUGUST 11, 2006

I. INTRODUCTION

Defendant Jon H Entine ("Husband"), by and through counsel, submits his Memorandum in Opposition to Plaintiff Ellen Turner's ("Wife") Motion to Set Aside Magistrate's Order of August 11, 2006. Wife's Motion lacks merit and must be denied. The Court should adopt the Magistrate's Order entered on August 11, 2006.

II. LAW AND ARGUMENT

Ohio supports the fullest opportunity for litigants to complete discovery. Under Ohio's liberal discovery philosophy, "[p]arties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action.² Discovery may be sought as to any document or other information that is relevant or will otherwise lead to relevant information.³ Civ R 26(C) allows the trial court to limit the broad scope of discovery by issuing a protective order only when it is necessary "to protect a party or person from

FILED
2006 AUG 23 PM 3:19
GREGORY J. ENTINE
CLERK OF COURT
HAMILTON COUNTY, OHIO

¹ *Stegawski v Cleveland Anesthesia Group, Inc* (Cuyahoga, 1987), 37 Ohio App 3d 78, 85, 523 N E 2d 902

² Civ R 26(B)

³ Civ R 26(B)



D69722147

BUECHNER, HAFFER,
MEYERS & KOENIG
CO, LPA

Suite 300

105 East Fourth Street
Cincinnati, Ohio 45202

(513) 579-1500

annoyance, embarrassment, oppression, or undue burden " A trial court has broad discretion in controlling the discovery process ⁴

Here, Wife moved for a protective order to bar all discovery in connection with the subpoenas Husband issued to non-parties, which sought relevant, non-privileged documents and information concerning issues related to the parties' premarital agreement

Wife's motion was deficient for a number of reasons She failed to comply with the requirement of Civ R 26(C) that states that the moving party must demonstrate **good cause** for the protective order Wife did not attempt to show good cause She did not explain how she would suffer annoyance, embarrassment, oppression or undue burden or expense by reason of the subpoenas issued to non-parties She did not attach the subpoenas or otherwise enumerate the exact documents that she disputed She did not articulate any good faith basis for a protective order

Wife also failed to comply with the mandate of Civ R 26(C) that requires the moving party prior to moving for a protective order to make a reasonable effort to resolve the matter through discussion with the opposing party or counsel and to submit a statement with the motion reciting the efforts made to resolve the matter No effort was made by Wife or her counsel to resolve the dispute with Husband's counsel prior to filing the motion

According to Civ R 45 and Ohio case law, Wife had no standing to challenge the subpoenas issued to non-parties ⁵ Wife sought to circumvent Civ R 45 with a motion for protective order but again did not show that justice required the Court to issue a protective order to protect her from annoyance, embarrassment, oppression or undue burden or expense The

⁴ *Radovanic v Cossler* (Cuyahoga, 2000), 140 Ohio App 3d 208

⁵ See *Jones v Records Deposition Serv of Ohio, Inc*, Lucas App No L01-1333, 2002-Ohio-2269, 2002 Ohio App LEXIS 2295 (Copy attached)

Magistrate aptly detected Wife's ruse and stated that Civ R 26 did not apply here to defeat the subpoenas

Wife did not present the Magistrate with a good faith basis for imposing a protective order that would bar discovery. And she has not now presented the Court with a good faith basis for setting aside the Magistrate's Order of August 11, 2006, which allows Husband to engage in discovery via the subpoenas. The case law cited in Wife's Motion is not on point and does not add anything to her position. The circumstances in the civil action currently pending in the General Division of the Court of Common Pleas are very different from the present case and should not be compared to the present case. In short, Wife is not entitled to a protective order simply because she wants one.

Husband, on the other hand, demonstrated that he is entitled to the documents and information that he seeks. He needs the materials to meaningfully prepare and present his case on the parties' premarital agreement. Husband has shown that Wife has not and will not cooperate in discovery. In March 2005, he served Wife with his initial relevant, non-privileged discovery requests, and Wife did not completely respond. In March 2006, Husband served Wife with follow-up discovery requests seeking financial information that Wife removed from the marital home when she vacated it in January 2005. Again, Wife did not fully respond to the discovery requests. Instead, she informed Husband that she would not respond to the March 2006 requests on the basis that the discovery cut-off date had passed.

On June 30, 2006, the Court issued an order allowing discovery to continue up through and until September 1, 2006. Because Wife refused to cooperate in discovery, Husband was forced to obtain the documents and information from other sources. Husband is entitled to issue subpoenas to non-parties who possess non-privileged information pursuant to Civ R 45.

Wife's trial strategy in this case is clear. She seeks to prevent Husband from having access to crucial marital documents that will support his position and refute her position. She

was able to deny Husband's access to marital information by first removing the documents from the marital residence and then by refusing to produce them during discovery. Wife has no control over the non-parties upon whom Husband served proper subpoenas. Wife's Motion to Set Aside the Magistrate's Order is a transparent attempt to maintain her unfair advantage over Husband in this action. Trial by ambush is highly disfavored in Ohio. The Magistrate's Order of August 11, 2006 must not be disturbed.

III. CONCLUSION

Husband respectfully requests that the Court deny Wife's Motion to Set Aside and adopt the Magistrate's Order of August 11, 2006 in its entirety.

Respectfully submitted,

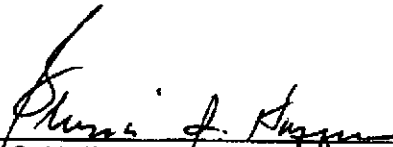

Gloria S. Haffer / #0014383
Robert J. Meyers #0014589
Attorneys for Defendant Jon H. Entine
300 Fourth & Walnut Centre
105 East Fourth Street
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Telephone (513) 579-1500
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E-mail rmeyers@bhmklaw.com

Of Counsel
Buechner, Haffer, Meyers
& Koenig Co., L.P.A.

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copies of the foregoing Memorandum in Opposition to Plaintiff's Motion to Set Aside Magistrate's Order of August 11, 2006 have been served upon Sallee M Fry, Esq , Law Office of Sallee M Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and Randal S Bloch, Esq , Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 23rd day of August, 2006



Gloria S Haffer #00143360
Attorney for Defendant Jon H Entine

109362

BUECHNER, HAFFER,
MEYERS & KOENIG
CO, LPA
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579 1500

[Cite as *Jones v. Rogers*, 2002-Ohio-2269.]

IN THE COURT OF APPEALS OF LUCAS COUNTY

Lora Jones Court of Appeals No L-01-1333

Plaintiff

Trial Court No CI-98-4180

and

George C Rogers (Appellant)

v

Records Deposition
Service of Ohio, Inc

DECISION AND JUDGMENT ENTRY

Appellee

Decided May 10, 2002

* * * * *

George C Rogers, for appellant

Tim L. Collins, for appellee

* * * * *

HANDWORK, J

{¶1} This appeal is from the June 25, 2001 judgment of the Lucas County Court of Common Pleas which sanctioned George Rogers, pursuant to Civ R. 11, for filing and prosecuting an unsupportable case against appellee, Records Deposition Service of Ohio, Inc. Upon consideration of the assignment of error, we affirm the decision of the lower court. Appellant, George Rogers, asserts the following sole assignment of error on appeal:

{¶2} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT IMPOSED CIVIL RULE 11 SANCTIONS AGAINST APPELLANT "

{¶3} The following facts were established by the trial court. In 1995, Lora Jones was

injured in a work-related accident. She brought suit against her employer. Jones signed a release permitting her employer's attorney to obtain her medical records. Appellee was hired by the attorney for Jones' employer to obtain her medical records. By the time Rogers, Jones's attorney, learned of the subpoenaed records, the medical providers had already sent Jones' records to appellee. Rogers argues that the subpoenas were invalid because they did not meet the requirements of Civ R 45. He demanded that appellee return the records to Jones. Appellee refused to do so. Rogers complained to the attorney for Jones' employer and he agreed to work out a compromise. Rogers also filed the current action against appellee, on behalf of Jones, seeking declaratory judgment that the subpoenas were defective and asserting claims of tortious invasion of privacy and conversion.

{¶4} The trial court dismissed the declaratory judgment action on summary judgment holding that appellant lacked standing to complain about the sufficiency of service on the third-party medical providers. Furthermore, the court held that even if appellant could assert the rights of the subpoenaed witnesses, he failed to timely raise his objections. The court also granted summary judgment to appellee on the claims for invasion of privacy and conversion of Jones' medical records. The court held that Jones waived her patient-physician confidentiality privilege by giving a medical release to counsel for her employer and by filing a lawsuit against her employer. Since appellee did nothing more than retrieve the medical records as an agent for counsel for Jones' employer, the court concluded that appellee did not violate Jones' patient-physician privilege.

{¶5} Appellee then sought sanctions against Rogers for filing this suit allegedly in violation of Civ R 11. The court granted appellee's motion and sanctioned Rogers. The court awarded appellee \$9,174.25 for its expenses and reasonable attorney fees expended to defend this action plus interest beginning December 19, 2000. Rogers then sought an appeal to this court.

{¶6} In his sole assignment of error, Rogers asserts several issues. All of the issues relate to the court's imposition of sanctions against Rogers for filing this suit.

{¶7} Civ R 11 provides

{¶8} "Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, *** The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document, that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay *** For a willful violation of this rule an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule *** "

{¶9} On appeal, we must determine as a matter of law whether there were any legal grounds for the pleading *NationsRent v Michael Const Co* (Mar 27, 2002), Summit App No 20755, at 5 We review the trial court's determination of whether there was a willful violation of Civ R 11 and whether sanctions should have been awarded on an abuse of discretion standard *State ex rel Fant v Sykes, Director, Ohio Dept of Admm Services* (1987), 29 Ohio St 3d 65 An abuse of discretion is found only if we find that the trial court made more than error of law or judgment We must find that the trial court's ruling reflected an unreasonable, arbitrary, or unconscionable attitude *Tracy v Merrell Dow Pharmaceuticals, Inc* (1991), 58 Ohio St 3d 147, 152 To constitute a willful violation of Civ R 11, a party must have "willfully signed a pleading which, to the best of his knowledge, information and belief, was not supported by good ground " *NationsRent v Michael Const Co* , supra at 6 citing *Haubeil & Sons Asphalt & Materials, Inc v Brewer & Brewer Sons, Inc* (1989), 57 Ohio App 3d 22, 23

{¶10} Rogers contends that Jones has an actionable claim against appellee for unlawfully inducing her medical providers to breach their physician confidentiality duty not to disclose Jones'

medical records by knowingly sending them invalid subpoenas

{¶11} In *Biddle v Warren Gen Hosp* (1999), 86 Ohio St 3d 395, paragraphs one, two, and three of the syllabus, the Supreme Court of Ohio has recognized the tort of breach of confidentiality where there is a wrongful inducement of another to breach their duty of confidentiality. However, the *Biddle* court also held that disclosure of confidential information is permitted where the disclosure is mandated by the Ohio Revised Code, a common law duty, or public policy. *Id.* at paragraph two of the syllabus. This exception is analogous to the exception to the physician-patient testimonial privilege legislatively expressed in R.C. 2317.02(B)(1)(a)(iii). Therefore, we would agree with appellee that a physician can be compelled to disclose privileged information if the patient signed a release or there is a pending civil action and the information is sought pursuant to Ohio's Civil Rules of Procedure.

{¶12} While Rogers contends on appeal that appellee obtained records beyond those contemplated by R.C. 2317.02(B)(1)(a)(iii), he admitted at the sanction hearing that he did not know if any of the medical records released went beyond those relevant to Jones' civil action. Therefore, Rogers has no basis for arguing that appellee obtained more information than it should have.

{¶13} Rogers argues that the trial court erred by finding that Jones lacked standing to bring a declaratory judgment action to raise the issue of service of the subpoenas. The trial court properly concluded that only the person subpoenaed has standing to file a motion challenging the subpoena under Civ.R. 45(C) in order to quash the subpoena. *North Olmsted v Pisanu* (Nov. 22, 1995), Cuyahoga App. No. 67986 & 67987 and *Ramus v Ramus* (Aug. 19, 1976), Cuyahoga App. No. 34965. However, Jones did not seek to quash the subpoena in this case. Rather, she sought to prove that the subpoena was improperly served in order to demonstrate that appellee wrongfully induced Jones' medical providers into disclosing her medical records. Therefore, we agree that the trial court erred in finding that Jones lacked standing to bring this action.

{¶14} However, we agree with the trial court that even if Jones had standing to seek declaratory judgment, she waived her right to challenge the subpoenas. Ordinarily a party brings a breach of confidentiality action after disclosure of the medical information. However, in this case, we agree with the trial court that Jones lost her right to assert this issue because she did not make an objection nor move for a protective order in the underlying civil action. Had she done so, the trial court could have determined whether appellee gained access to records beyond those relevant to the pending lawsuit and thereby prevented an improper disclosure of Jones' medical records. We need not reach the issue of whether the subpoenas were properly prepared or served.

{¶15} Rogers argues that there was sufficient grounds to justify his filing of the present lawsuit. Upon a review of the evidence in this case, we find that Rogers did not have sufficient facts to justify filing this action. Rogers knew that there had been a waiver of Jones' confidentiality rights and that he failed to challenge the subpoenas in the underlying civil action to prevent improper disclosure of her records.

{¶16} Finally, Rogers argues that there was no evidence that he willfully violated Civ R. 11. He argues that there was no evidence to support the court's finding of personal animus against appellee.

{¶17} At the sanction hearing, Rogers submitted into evidence a letter sent to the attorney for Jones' attorney in which Rogers wrote that he had been involved in a prior incident involving appellee and their process of serving allegedly improper subpoenas. He also stated that he would "not allow non-parties, Records Deposition Service for one, to get disclosure of my client's records and certainly not with a phony subpoena. I will sue the parties responsible for any disclosure of medical records that are obtained by false or fraudulent means." Rogers clearly indicated at the hearing that he intended to bring suit against appellee. He purposely chose to resolve the subpoena

issue by means of this action rather than by challenging the discovery in the underlying civil action. For that reason, the trial court found that Rogers willfully filed this action. We cannot find that the trial court abused its discretion by imposing sanctions against Rogers. Appellant's sole assignment of error is found not well-taken.

{¶18} Having found that the trial court did not commit error prejudicial to Rogers, the judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App R. 24, Rogers is hereby ordered to pay the court costs incurred on appeal.

JUDGMENT AFFIRMED

Peter M. Handwork, J.

JUDGE

Melvin L. Resnick, J.

JUDGE

James R. Sherck, J.

CONCUR

JUDGE

ISSUED to Attorney

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER

Plaintiff,

vs.

JON H. ENTINE

Defendant.

: CASE NO. DR0500131

:

:

:

:

JUDGE PANIOTO
MAGISTRATE THEILE

SUBPOENA DUCES TECUM
FOR DOCUMENT PRODUCTION

TO: Google, Inc.
1600 Amphitheatre Parkway
Building #47
Mountain View, CA 94043



D69688310

STATE OF OHIO, COUNTY OF HAMILTON.....SS:

You are required to appear before a notary public in and for the County and State on September 8, 2006 at 9:00 A.M. at the offices of Buechner, Haffer, Meyers & Koenig Co., L.P.A., 105 East Fourth Street, Suite 300, Cincinnati, Ohio 45202, to produce records hereinafter referred to.

You are required to bring with you and produce the documents listed on the attached Exhibit "A."

This is a Records Subpoena Only, and in lieu of your personal delivery of these records on the date noted, you may send certified copies of all such records that are in your possession, custody and/or control to Robert J. Meyers, Esq., of Buechner, Haffer, Meyers & Koenig Co., L.P.A., located at 105 East Fourth Street, Suite 300, Cincinnati, Ohio 45202, prior to Tuesday, September 5, 2006. A proposed certificate is attached.


This Subpoena is issued pursuant to Rule 45 of the Ohio Rules of Civil Procedure by Robert J. Meyers, attorney of record in the within cause pursuant to division (A)(2) of said rule.

FILED
SEP 8 2006
A 10:55
CLERK OF COURT
HAMILTON COUNTY, OHIO

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

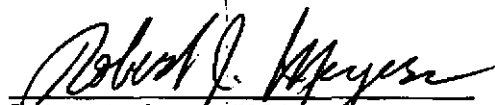
Fail not under penalty of Law.

WITNESS my hand this 21ST day of August,
2006 at Cincinnati, Hamilton County, Ohio.


Robert J. Meyers (0014589)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Subpoena Duces Tecum for Document Production to Google, Inc. has been served upon Sallee M. Fry, Esq., Law Office of Sallee M. Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and upon Randal S. Bloch, Esq., Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 21ST day of August, 2006.


Robert J. Meyers #0014589
Attorney for Defendant

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

CERTIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF _____)

Under penalty of perjury, I hereby verify that I am the authorized Custodian of Records of Google, Inc., and am duly authorized to certify that the attached copies are copies of the complete records relating to Google, Inc.

I further verify that the originals of these documents were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters.

The documents were kept under my control and in the usual manner and course of business of Google, Inc.

Each document was made in the usual manner and course of business of Google, Inc., according to the customary standards of this office.

Records Custodian

Sworn to and subscribed before me this _____ day of _____, 2006.

Notary Public

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

**Ohio Rules of Civil Procedure
Rule 45. Subpoena**

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b) (ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:

- (a) fails to allow reasonable time to comply;
- (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) subjects a person to undue burden

(4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.

Suite 300

105 East Fourth Street
Cincinnati, Ohio 45202

(513) 579-1500

shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

108368

EXHIBIT "A"

1. Copies of all incoming and outgoing emails associated with the email addresses of Ellen.turner@gmail.com and runerun@gmail.com, both held in the name of Ellen Turner, for the period of June 1, 2002 through the date of receipt of this Subpoena.
2. Copies of all incoming and outgoing emails associated with the email address of Bruce.humbert@gmail.com, held in the name of Bruce Humbert, for the period of June 1, 2002 through the date of receipt of this Subpoena.

**BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.**

Suite 300

105 East Fourth Street
Cincinnati, Ohio 45202

(513) 579-1500

ENTERED
AUG 22 2006

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Panioto
8.22.06

ELLEN L. TURNER

:

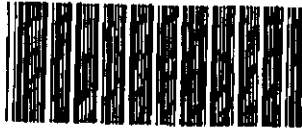
CASE NO. DR0500131

Plaintiff,

:

JUDGE PANIOTO
MAGISTRATE THEILE

vs.



JON H. ENTINE

COMMISSION TO ISSUE
SUBPOENA DUCES TECUM

Defendant.

D69690554

To the California Superior Court for the County of Santa Clara:

The Court of Common Pleas, Division of Domestic Relations authorizes, by this Commission, the California Superior Court for the County of Santa Clara to issue a Subpoena Duces Tecum to Google, Inc., a California corporation, directing it to produce all documents requested therein for the period of June 1, 2002 through the date of receipt of the Subpoena Duces Tecum to the offices of Buechner, Haffer, Meyers & Koenig Co., L.P.A., 105 E. Fourth Street Suite 300, Cincinnati, Ohio 45202 for examination by counsel for Defendant in the above captioned action in connection with Case No. DR0500131 pending in the Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio.

Date

Panioto
Judge Panioto

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.

Suite 300

105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO



ELLEN L. TURNER : CASE NO. DR0500131
Plaintiff, :
vs. :
JON H. ENTINE : **ORDER DIRECTING ISSUANCE OF**
Defendant. : **SUBPOENA DUCES TECUM**
: **PURSUANT TO R.C. § 2319.08, et seq.**

ENTERED
AUG 22 2006

Defendant Jon H. Entine ("Petitioner") having filed a Petition Auxiliary Court of Issuance of Subpoena Duces Tecum Pursuant to R.C. §2319.08, *et seq.* and this Court finding that said Petition is well taken;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Clerk of the Common Pleas Court, Division of Domestic Relations, Hamilton County, Ohio, issue a subpoena duces tecum to Google, Inc., a corporation in the State of California, directing it to produce all relevant documents for the period of June 1, 2002 through the date of receipt of this Subpoena Duces Tecum to the offices of Buechner, Haffer, Meyers & Koenig Co., L.P.A., 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202 for examination by counsel for Defendant in the above captioned action in connection with Case No. DR0500131 pending in the Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Order and the within Subpoena Duces Tecum should be served upon said corporation in any manner permitted by the Ohio Rules of Civil Procedure and/or by special process server, including any employee of Google, Inc., which is hereby appointed to serve the same.

Nothing in this order should be deemed a waiver of any party's right to make objections to discovery by document production as are or may be permitted by the Ohio Rules of Civil Procedure.

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500



D69689300

IT IS SO ORDERED.

Date


Judge Panioto

108393

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

ISSUED to Attorney

IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ELLEN L. TURNER	:	CASE NO. DR0500131
Plaintiff,	:	
vs.	:	JUDGE PANIOTO
	:	MAGISTRATE THEILE
JON H. ENTINE	:	<u>SUBPOENA DUCES TECUM</u>
Defendant.	:	<u>FOR DOCUMENT PRODUCTION</u>

TO: Google, Inc.
1600 Amphitheatre Parkway
Building #47
Mountain View, CA 94043



STATE OF OHIO, COUNTY OF HAMILTON.....SS:

You are required to appear before a notary public in and for the County and State on September 8, 2006 at 9:00 A.M. at the offices of Buechner, Haffer, Meyers & Koenig Co., L.P.A., 105 East Fourth Street, Suite 300, Cincinnati, Ohio, 45202, to produce records hereinafter referred to.

You are required to bring with you and produce the documents listed on the attached Exhibit "A."

This is a Records Subpoena Only, and in lieu of your personal delivery of these records on the date noted, you may send certified copies of all such records that are in your possession, custody and/or control to Robert J. Meyers, Esq., of Buechner, Haffer, Meyers & Koenig Co., L.P.A., located at 105 East Fourth Street, Suite 300, Cincinnati, Ohio 45202, prior to Tuesday, September 5, 2006. A proposed certificate is attached.


This Subpoena is issued pursuant to Rule 45 of the Ohio Rules of Civil Procedure by Robert J. Meyers, attorney of record in the within cause pursuant to division (A)(2) of said rule.

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

FILED
SEP 8 2006
A 10:25
CLERK OF COURT
HAMILTON COUNTY, OHIO

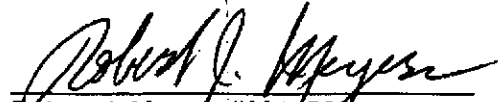
Fail not under penalty of Law.

WITNESS my hand this 21ST day of August
2006 at Cincinnati, Hamilton County, Ohio.


Robert J. Meyers, (0014589)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Subpoena Duces Tecum for Document Production to Google, Inc. has been served upon Sallee M. Fry, Esq., Law Office of Sallee M. Fry, 2345 Ashland Avenue, Cincinnati, Ohio 45206 and upon Randal S. Bloch, Esq., Wagner & Bloch, LLC, 2345 Ashland Avenue, Cincinnati, Ohio 45206, on this 21ST day of August, 2006.


Robert J. Meyers #0014589
Attorney for Defendant

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

CERTIFICATION

STATE OF CALIFORNIA)
) SS:
COUNTY OF _____)

Under penalty of perjury, I hereby verify that I am the authorized Custodian of Records of Google, Inc., and am duly authorized to certify that the attached copies are copies of the complete records relating to Google, Inc.

I further verify that the originals of these documents were made at or near the time of the occurrence of the matters set forth therein, by (or from information transmitted by) a person with knowledge of those matters.

The documents were kept under my control and in the usual manner and course of business of Google, Inc.

Each document was made in the usual manner and course of business of Google, Inc., according to the customary standards of this office.

Records Custodian

Sworn to and subscribed before me this _____ day of _____, 2006.

Notary Public

BUECHNER, HAFFER,
MEYERS & KOENIG
CO., L.P.A.
Suite 300
105 East Fourth Street
Cincinnati, Ohio 45202
(513) 579-1500

**Ohio Rules of Civil Procedure
Rule 45. Subpoena**

(C) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena.

(2)(a) A person commanded to produce under divisions (A)(1)(b) (ii), (iii), (iv), or (v) of this rule need not appear in person at the place of production or inspection unless commanded to attend and give testimony at a deposition, hearing or trial.

(b) Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

(3) On timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does nay of the following:

- (a) fails to allow reasonable time to comply;
- (b) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;
- (c) requires disclosure of a fact known or opinion held by an expert not retained or specifically employed by any party in anticipation of litigation or preparation for trial as described by Civ. R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;
- (d) subjects a person to undue burden

(4) Before filing a motion pursuant to a division (C)(3)(d) of this rule, a person resisting discovery under this rule shall attempt to resolve any claim of undue burden through discussions with the issuing attorney. A motion filed pursuant to division (C)(3)(d) of this rule shall be supported by an affidavit of the subpoenaed person or a certificate of that person's attorney of the efforts made to resolve any claim of undue burden.

(5) If a motion is made under division (C)(3)(c) or (C)(3)(d) of this rule, the court

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CO., L.P.A.

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Cincinnati, Ohio 45202
(513) 579-1500

shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

(D) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall, at the person's option, produce them as they are kept in the usual course of business or organized and labeled to correspond with the categories in the subpoena. A person producing documents pursuant to a subpoena for them shall permit their inspection and copying by all parties present at the time and place set in the subpoena for inspection and copying.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials under Civ. R. 26(B)(3) or (4), the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

108368

EXHIBIT "A"

1. Copies of all incoming and outgoing emails associated with the email addresses of Ellen.turner@gmail.com and runerun@gmail.com, both held in the name of Ellen Turner, for the period of June 1, 2002 through the date of receipt of this Subpoena.
2. Copies of all incoming and outgoing emails associated with the email address of Bruce.humbert@gmail.com, held in the name of Bruce Humbert, for the period of June 1, 2002 through the date of receipt of this Subpoena.

() OBJECTION TO MAG DECISION
 () MOTION TO SET ASIDE
 () REQUEST FOR FINDINGS OF FACTS
 8-21-06
 DATE

Randal S. Bloch, #0010124
 Attorney for Plaintiff

COURT OF COMMON PLEAS
 DIVISION OF DOMESTIC RELATIONS
 HAMILTON COUNTY, OHIO

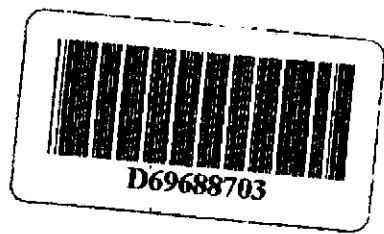
ELLEN TURNER	:	Case No. DR 0500131
Plaintiff	:	File No. E233969
-vs-	:	Judge Panioto Magistrate Theile
JON ENTINE	:	MOTION TO SET ASIDE MAGISTRATE'S ORDER OF AUGUST 11, 2006
Defendant	:	

CLERK OF COURTS
 DOMESTIC RELATIONS DIV.
 HAMILTON COUNTY OFFICE
 2006 AUG 21 P 5:55

2006 AUG 21 P 5:55

FILED

Now comes Ellen Turner, Plaintiff herein, by and through her counsel, and moves this Court for an order setting aside the Magistrate's Order of August 11, 2006 for the reason that the subpoenas served by Defendant pursuant to Rule 45 are in the nature of discovery. The Motion for Protective Order filed by Plaintiff herein is a motion to protect her from the disclosure of information sought by Defendant not relevant to the subject matter and are designed to annoy, embarrass, oppress and cause undue burden and expense. The Court, pursuant to Rule 26(C), can grant a protective order and can make any order regarding the scope, limitation of method, and specify terms and conditions of discovery. This Court has issued an order on July 3, 2006 limiting the subject matter of discovery. The order states as follows, "Discovery may proceed on the issues of the validity and enforceability of the parties' prenuptial agreement." Discovery had been stayed June 22, 2006. Yet, Defendant has issued subpoenas having nothing to do with the validity and enforceability of the parties' prenuptial agreement. This is clear on the face of the subpoenas.



Magistrate Theile, in his Order of August 11, 2006, provides no forum for Plaintiff to object to the subpoenas issued. Although she is the Plaintiff, the information sought concerns her, and the Court has limited the subject matter of discovery, this Court has ruled that because the information sought is by subpoena, Plaintiff has no remedy. This is wrong. Defendant sought the same relief in the General Division of the Court of Common Pleas and was granted relief that he brought against Plaintiff for defamation. What is good for the goose is good for the gander.

Courts have held that Rule 26 does provide relief by means of protective order for similarly situations of discovery subpoenas. In the case of GZK, Inc. v. Schumaker Ltd. Partnership, 2006-Ohio-3744, the court recognized that a subpoena can be used for discovery purposes. Obviously by inference, then Rule 26 must be applicable to provide protection. In Dispatch Printing Co. v. Recovery Ltd. Partnership, 2006-Ohio-1347, the Tenth District Court of Appeals recognized the use of a protective order with regard to subpoenas that were issued.

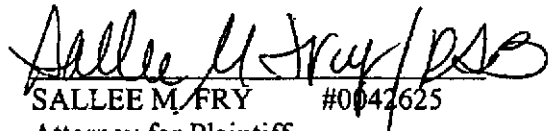
This Court cannot permit Defendant to issue subpoenas and provide no forum to Plaintiff to object to the subpoenas when those subpoenas are issued contrary to the Magistrate's Order of July 3, 2006. The subpoenaed persons or entities have no knowledge of the Magistrate's Order and Defendant will receive information potentially prejudicial to Plaintiff and certainly contrary to this Court's own order. To preclude Plaintiff from raising this objection makes a mockery of the whole system of discovery. Defendant understood this when he sought a protective order in the General Division of the Court of Common Pleas and now this Court must understand it too.

WHEREFORE, Plaintiff respectfully requests that the Magistrate's Decision of August 11, 2006 be set aside, and that the Motion for Protective Order be granted,

for the costs of this action, including attorney fees, and for such other relief as may be equitable and proper.



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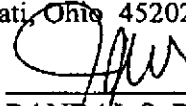
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Cincinnati, OH 45206
(513) 421-6000
Fax: (513) 763-3522
Postmaster@salleelaw.com

NOTICE OF HEARING

The within Motion will be heard on the ___ day of _____, 2006, at ___ m.
before _____, in Room _____ of the Hamilton County Domestic
Relations Court, 800 Broadway, Cincinnati, Ohio 45202.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by facsimile and ordinary
mail the 21st day of August, 2006 to Gloria S. Haffer and Robert J. Meyers, Attorneys for
Defendant, 105 E. Fourth Street, Suite 300, Cincinnati, Ohio 45202, Fax 513-977-4361.



RANDAL S. BLOCH

2006-Ohio-1347; Dispatch Printing Co. v. Recovery Ltd. Partnership;

2006-Ohio-1347

[Cite as Dispatch Printing Co. v. Recovery Ltd. Partnership, 2006-Ohio-1347]

The Dispatch Printing Company et al., Plaintiffs-Appellees,

v.

Recovery Limited Partnership et al., Defendants-Appellants.

The Dispatch Printing Company et al., Plaintiffs-Appellees,

v.

Recovery Limited Partnership et al., Defendants-Appellees, (Stephen Alexander, CPA, d.b.a. Spencer Kremer, CPA, Appellant).

The Dispatch Printing Co. et al., Plaintiffs-Appellees,

v.

Recovery Limited Partnership et al., Defendants-Appellees, (Thomas G. Thompson et al.

No. 05AP-640 & No. 05AP-691 & No. 05AP-731

10th District Court of Appeals of Ohio, Franklin County

Decided on March 23, 2006

(C.P.C. No. 05CVH-04-4220) (C.P.C. No. 05CVH-04-4220) (C.P.C. No. 05CVH-04-4220)

Zeiger, Tigges & Little, L.L.P., John W. Zeiger, Steven W. Tigges and Bradley T. Ferrell, for The Dispatch Printing Company and Donald C. Fanta.

Robol & Winkler, Richard T. Robol, John F. Winkler and Benjamin Winkler, for Recovery Limited Partnership and Columbus Exploration, LLC.

Means, Bichimer, Burkholder & Baker Co., L.P.A., Dennis J. Morrison, Nicole M. Donovsky and John F. Kirtley, II, for Stephen P. Alexander, CPA, Inc.

Cooper & Elliott, L.L.C., Rex H. Elliott, Charles H. Cooper, Jr., and Karen D. Weis, for Thomas G. Thompson and Econ Engineering Assoc., Inc.

APPEALS from the Franklin County Court of Common Pleas.

OPINION

McGRATH, J.

{¶1} Defendants-appellants Recovery Limited Partnership, Columbus Exploration, LLC, Thomas G. Thompson and ECON Engineering Associates, Inc. (collectively "appellants"), appeal the decision of the Franklin County Court of Common Pleas overruling objections to a motion to compel discovery, denying a motion for protective order, and granting a motion to compel discovery. Non-party-appellant Stephen Alexander, CPA, d.b.a. Spencer Kremer, CPA ("appellant Alexander"), has also filed an appeal of the trial court's order.(fn1)

{¶2} The underlying merits of this litigation concern the recovery of sunken treasure from the S.S. Central America, a U.S. mail steamship that sank off the Carolina coast during a hurricane in 1857. Plaintiffs-appellees The Dispatch Printing Company and Donald Fanta (collectively "appellees") initiated this action on April 13, 2005, asserting numerous claims against appellants, including a claim to compel the inspection of various records held by appellants. Appellant Alexander is not a party to this action, but, rather, is an accountant for several of the named appellants. On April 19, 2005, appellees

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initiated discovery by serving a subpoena duces tecum on appellant Alexander. The subpoena requested production of a number of documents and/or records relating to appellants. This resulted in the filing of numerous motions and memorand with the court relative to the issued subpoena.(fn2) The trial court held a status conference on June 2, 2005, to address the various motions. After discussion, the trial court gave appellants two weeks, until June 15, 2005, to file any jurisdictional motions and to present evidence to support their request that the subpoena be quashed. Appellants allege in their motions for protective order and to quash the subpoena that appellees seek the production of trade secrets and proprietary information.

{¶3} On June 17, 2005, the trial court issued a decision captioned, "DECISION OVERRULING OBJECTIONS TO SUBPOENA DUCES TECUM, FILED BY NON-PARTY STEPHEN ALEXANDER, CPA., INC. and DENYING DEFENDANTS' MOTION FOR PROTECTIVE ORDER * * * and GRANTING PLAINTIFFS' MOTION TO COMPEL DISCOVERY." It is from this order that appellants appeal.

{¶4} Appellant Alexander raises the following assignments of error:

ASSIGNMENT OF ERROR NO. I: The trial court erred as a matter of law in overruling the Objections to the Subpoena Duces Tecum served upon Appellant Alexander, as the discovery sought by the Plaintiffs/Appellees was unduly burdensome on Appellant Alexander.

ASSIGNMENT OF ERROR NO. II: The trial court erred as a matter of law in overruling the Objections to the Subpoena Duces Tecum served upon Appellant Alexander, as the production of the discovery sought would cause Appellant Alexander to breach his legal and ethical duties to maintain client confidentiality, and further, to disclose trade secrets.

{¶5} Appellants Recovery Limited Partnership and Columbus Exploration, LLC, raise the following assignments of error:

The Trial Court Erred in Issuing Its June 17, 2005 Decision Requiring Disclosure of Documents Because Defendants-Appellants Asserted that the Documents Contained Trade Secret Information and the Trial Court Did Not Review the Documents, Create a Record of What Was Reviewed, and Determine Whether the Documents Contained Trade Secrets. * * *

The Trial Court Erred in Issuing Its June 17, 2005 Decision Requiring Disclosure of Documents Because the Discovery Granted in the Decision Was That Requested as Final Relief in the Action, Defendants-Appellants Had Informed the Court That They Had Defenses on the Merits to the Granting of Such Relief, Defendants-Appellants Had Requested an Evidentiary Hearing, and the Trial Court Granted Such Relief Without an Evidentiary Hearing. * * *

The Trial Court Erred in Issuing Its June 17, 2005 Decision Because the Relief Granted in the Decision Was That Requested as Final Relief in the Action, Defendants-Appellants Had Informed the Court That They Had Defenses on the Merits to the Granting of Such Relief, Defendants-Appellants Had Informed the Court That They Would Provide Information Relevant to Such Defenses After Issuance of a Confidentiality Order Limiting Dissemination of Such Information, and the Trial Court Issued the Decision Without Entering Such an Order or Considering Such Information. * * *

The Trial Court Erred in Issuing Its June [17], 2005 Decision Because the Decision Required Disclosure of Documents Containing Trade Secret Information, the Court Had Failed to Issue a Confidentiality Order Restricting the Dissemination of the Information, and a Motion of Defendants-Appellants for Such a Confidentiality Order Was Pending. * * *

{¶6} Appellants Thomas G. Thompson and ECON Engineering Associates, Inc., raise the following assignments of error:

B. The Trial Court erred by compelling the disclosure of trade secrets without (i) inspecting the information *in camera* to determine their trade secret status, and (ii) permitting Appellant the opportunity to conduct discovery and participate in an evidentiary hearing to determine whether Appellees had any legal right to Appellants' trade secret information.

C. The Trial Court erred in deciding part of the case on its merits in the form of a discovery order without first addressing important issues regarding the Court's jurisdiction to entertain the action.

D. The Trial Court erred by issuing a discovery order providing Appellees with much of their requested relief before Mr. Thompson was served and before Mr. Thompson and ECON Engineering had an opportunity to respond to the complaint.

{¶7} Appellees filed a motion to dismiss this appeal arguing that because the trial court's decision is a discovery order, and thus interlocutory in nature, it does not constitute a final appealable order. As a general rule, discovery orders are interlocutory in nature, and not immediately appealable. *Gibson-Myers & Assoc. v. Pearce* (Oct. 27, 1999), Summit App. No. 19358, citing *Walters v. The Enrichment Ctr. of Wishing Well, Inc.* (1997), 78 Ohio St.3d 118. However, the Ohio Revised Code has created several exceptions to this general rule. R.C. 2505.02(B) provides, in part:

An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

* * *

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶8} A "provisional remedy" is defined by statute as "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence." R.C. 2505.02(A)(3). This court has previously held that orders compelling discovery of privileged matters, which are potentially protected, constitute a final appealable order. See *Schottenstein, Zox & Dunn v. McKibben*, Franklin App. No. 01AP-1384, 2002-Ohio-5075, *Cuervo v. Snell* (Sept. 26, 2000), Franklin App. No. 99AP-1442, cited with favor in *State v. Muncie* (2001), 91 Ohio St.3d 440. In so holding, this court followed the reasoning of the Ninth District Court of Appeals which held that an order compelling the discovery of trade secrets was a final appealable order. In *Gibson-Myers*, supra, the court stated:

* * * On its face, R.C. 2505.02(A)(3) is flexible and able to address situations where a party has a protectable interest at stake and yet has no meaningful ability to appeal the decision which discloses that interest to others. If a trial court orders the discovery of trade secrets and such are disclosed, the party resisting discovery will have no adequate remedy on appeal. The proverbial bell cannot be unringed and an appeal after final judgment on the merits will not rectify the damage. In a competitive commercial market where customers are a business' most valuable asset and technology changes daily, disclosure of a trade secret will surely cause irreparable harm.

{¶9} While this court agrees with the reasoning of the court in *Gibson-Myers*, we find that the decision presently before us does not constitute a final appealable order because it does not provide for unfettered discovery coupled with the danger of being unable to unring the proverbial bell.

{¶10} The important distinction between *Cuervo*, *Schottenstein*, and *Gibson-Myers*, is that the trial courts in those cases issued general blanket orders compelling discovery and denying protection of the requested materials.^(fn3) Here, while the trial court's order is captioned, and the concluding paragraph states, objections overruled, motion to compel granted, and motion for protective order denied, it is clear from reading the trial court's decision that the trial court fully contemplated that discovery would continue only with adequate safeguards in place. Such presents a much different scenario than those in the above-stated cases, and presents one more akin to a trial court issuing an order providing guidance to the parties as to how discovery will proceed, rather than ordering the production of specific materials.

{¶11} In the trial court's decision, under the findings of the court, the trial court stated: That discovery may include matters of proprietary concern does not defeat the right of discovery in this case. The contractual arrangements between plaintiffs and defendants provide for disclosure of the information sought by plaintiffs. Concerns about public disclosure of proprietary information and trade secrets can be resolved by an appropriate protective order. Plaintiffs have offered a comprehensive confidentiality agreement. The court is satisfied that any legitimate trade secrets or proprietary information can be protected from public disclosure. (June 17, 2005 Decision, at 5.)

{¶12} Thus, it is clear that the trial court envisioned more than just completely unrestricted discovery. To review solely the caption of the trial court's decision without reviewing the decision as a whole is to essentially ignore the reality of the trial court's actions. In effect, the trial court did not simply order the production of proprietary or trade secret information, but, rather, ordered that discovery shall continue with safeguards in place to address the concerns regarding information of trade secrets.

{¶13} It is important to bear in mind the underlying rationale for finding an order compelling discovery to be a final appealable order, which is to prevent the dissemination of protected materials, and avoid the quagmire of being unable to unring the proverbial bell. Neither scenario is present here because the trial court's discovery order fully contemplates the imposition of adequate safeguards during the discovery process. While the exact type of safeguards and the mechanics of how they will be implemented are not clear, the trial court did indicate the use of protective orders and confidentiality agreements, and we are confident that if additional hearings, in camera inspections, and the like are warranted, the trial court will undertake what is necessary to protect the dissemination of proprietary material and trade secret information. However, because the trial court has not issued an order compelling the production of materials, but, rather, issued a directory decision, we find that the trial court's decision does not constitute a final appealable order.

{¶14} Because the trial court's order is not a final appealable order, we grant appellees' motions to dismiss and dismiss these appeals for lack of a final appealable order.

Motions to dismiss granted; appeals dismissed.

KLATT, P.J., and PETREE, J., concur.

Footnotes:

1. This consolidated appeal consists of three separate appeals, one filed by appellants Thompson and ECON Engineering Associates, Inc., one filed by appellants Recovery Limited Partnership and Columbus Exploration, LLC, and one filed by appellant Alexander. All three appeals concern the trial court's order regarding discovery.
2. On April 29, 2005, appellants filed a motion for protective order deferring merits discovery until determination of jurisdiction, and alternatively quashing subpoena duces tecum for appellant Alexander. On May 2, 2005, appellant Alexander filed an objection to the subpoena. On May 12, 2005, appellees filed a motion to compel appellant Alexander to produce documents. The parties filed memoranda contra and appellees filed a reply brief.
3. In *Cuervo*, for example, the trial court granted a motion to compel the production of potentially privileged information without giving the other party an opportunity to respond to the motion. In *Schottenstein*, the trial court granted

a motion to compel the discovery of potentially privileged information after concluding that the opposing party impliedly waived his right to assert that certain materials were privileged when he filed a counterclaim. In *Gibson-Myers*, the trial court granted a motion to compel the production of potential trade secret information without giving the opposing party an opportunity to respond.

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2006-Ohio-3744; GZK, Inc. v. Schumaker Ltd. Partnership;

2006-Ohio-3744

[Cite as GZK, Inc. v. Schumaker Ltd. Partnership, 2006-Ohio-3744]

GZK, INC. Plaintiff- Appellee

v.

SCHUMAKER LIMITED PARTNERSHIP, ET AL. Defendant-Appellants

C.A. Case No. 21166

2nd District Court of Appeals of Ohio, Montgomery County

Decided on July 14, 2006

T.C. Case No. 02-CV-0979

NEIL F. FREUND, Atty. Reg. #0012183, One S. Main Street, 1800 One Dayton Centre, Dayton, Ohio 45402-2017

Attorney for Plaintiff-Appellee

SCOTT A. KING, Atty. Reg. #0037582, CHAD D. COOPER, Atty. Reg. #0074322, 2000 Courthouse Plaza, NE, P.O. Box 8801, Dayton, Ohio 45401-8801 Attorneys for Defendant-Appellants

OPINION

BROGAN, J.

{¶ 1} Food, Folks & Fun, Inc. ("Food-Folks"), appeals from the trial court's decision and entry ordering it to provide certain financial documents to GZK, Inc., pursuant to a subpoena.

{¶ 2} Food-Folks advances two related assignments of error on appeal. First, it contends the trial court erred by ordering it to produce the documents in response to GZK's subpoena. Second, it claims the trial court erred in refusing to place restrictions on the disclosure of its documents.

I. Factual and Procedural Background

{¶ 3} The record reflects that Food-Folks is in the business of operating Kentucky Fried Chicken and other fast-food franchises. GZK is in the business of operating Lee's Famous Recipe Fried Chicken and other fast-food franchises. As sellers of fried chicken, Food-Folks and GZK compete against one another in the region. Food-Folks is not a party to the present lawsuit, which involves a dispute between GZK and FFF Management, Inc. ("FFF"), a corporation that exists for the purpose of buying real estate and leasing it to Food-Folks for the operation of Kentucky Fried Chicken restaurants. Although they are distinct corporate entities, Food-Folks and FFF have the same directors and shareholders.

{¶ 4} In the present case, GZK asserted a cause of action against FFF for tortious interference with contractual relations. The claim stems from FFF's allegedly improper interference with GZK's efforts to purchase real estate in Miamisburg, Ohio, from Dorothy Schumaker. In particular, GZK asserted that FFF attempted to buy the real estate to enable Food-Folk to build and operate a Kentucky Fried Chicken franchise there despite knowing that GZK had a right of first refusal to purchase the property. GZK sought lost profits and punitive damages for FFF's tortious interference.

{¶ 5} In the course of proceedings below, GZK served Food-Folks with a subpoena purportedly requesting "all financial and business documents." (fn1) Food-Folks responded by objecting to the subpoena pursuant to Civ.R. 45(C). Food-Folks asserted that the subpoena was vague and overbroad, that it requested documents that were neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, that it sought discovery of trade secrets, that it improperly had

been served by certified mail, that it had been served without a mileage fee, and that GZK had failed to offer reimbursement for reasonable costs incurred in complying with the subpoena.

{¶ 6} GZK then filed a "response in opposition" to the objections. The trial court construed this filing as a motion to enforce the subpoena. In its filing, GZK agreed to modify the scope of its subpoena and sought, "for the years 2001 through 2004, gross sales figures, expenses, and operating costs, for all the Kentucky Fried Chicken stores under the control of Food, Folks & Fun in Montgomery, Miami, Greene, Warren, Preble and Clark counties." GZK also responded to each of Food-Folks' objections. With regard to Food-Folks' trade-secret objection, GZK argued as follows:

{¶ 7} "Due to Food, Folks & Fun's corporate structure and its position as FFF's operating arm, its financial documents are relevant and likely to lead to the discovery of admissible evidence. Even assuming the production of this information would constitute trade secrets and is otherwise confidential, this Court has previously ruled against FFF in this manner and ordered FFF's documents produced. As such, Food, Folks & Fun, being the same corporate entity, is required to produce the same. FFF and Food, Folks & Fun together constitute the same corporate entity involved in the action giving rise to the claims in this lawsuit. GZK is therefore entitled to financial documents that fully illustrate the entity's financial structure."

{¶ 8} Food-Folks then filed a memorandum in opposition to GZK's motion to enforce the subpoena. Therein, it responded to GZK's trade-secret argument as follows:

{¶ 9} "Food, Folks objected to producing its financial data on the grounds that it constituted trade secrets. GZK argues that (1) the Court has already ruled against FFF on this issue, and (2) Food, Folks is the same as FFF. GZK is simply wrong.

{¶ 10} "First, FFF has never raised a trade secrets objection to the Court. Since FFF never made that objection, the issue could not have been decided against it already.

{¶ 11} "Second, Food, Folks is not the 'same' entity as FFF. Food, Folks is not a party to this lawsuit, and is not bound by any prior rulings. Besides, because it is a third party, its concerns about the confidentiality of its data are different than those of either GZK or FFF.

{¶ 12} "Third, while the Court overruled GZK's trade secrets objection, the evidence before the Court was that GZK had waived that objection by failing to timely raise that objection. Food, Folks has timely raised the issue.

{¶ 13} "In any event, there is no reason that the Court should treat GZK and Food, Folks similarly. GZK placed its profitability at issue by suing to collect lost profits damages; Food, Folks has not."

{¶ 14} On June 16, 2005, the trial court filed a decision and entry "sustaining in part and overruling in part objections of Food, Folks & Fun to subpoena" and "sustaining in part and overruling in part GZK's motion to enforce subpoena." Therein, the trial court held that GZK's document request was overbroad. It limited the subpoena to "gross sales figures, expenses and operating costs for all KFC restaurants under the control of Food, Folks & Fun in Montgomery County" from 2001 through 2004. As so limited, the trial court found that the requested documents were relevant and were reasonably calculated to lead to the discovery of admissible evidence.

{¶ 15} On the trade-secret issue, the trial court stated that GZK had taken the position that the requested documents were not trade secrets. The trial court also noted that it previously had found FFF's financial documents to be relevant and reasonably calculated to lead to the discovery of admissible evidence. The trial court then found that Food-Folks had failed to demonstrate how its confidentiality concerns were different from those of GZK or FFF. As a result, the trial court overruled Food-Folks' trade-secret objection to the subpoena. Finally, the trial court held that Food-Folks' actual knowledge of the subpoena rendered its argument about defective service meritless and that GZK's offer to pay a mileage fee and to reimburse Food-Folks for its expenses disposed of those issues. This timely appeal followed.(fn2)

II. Analysis

{¶ 16} In its appellate brief, Food-Folks has divided its two assignments of error into four arguments. As a means of analysis, we turn first to Food-Folks' final argument, which states:

{¶ 17} "THE TRIAL COURT ERRED BY ENFORCING A FATALLY DEFECTIVE SUBPOENA."

{¶ 18} Food-Folks contends the subpoena issued by GZK was fatally defective because it was delivered via certified mail by someone not authorized to serve it and because it did not include witness attendance and mileage fees. Food-Folks also notes that no return of service was filed. In response, GZK insists that certified-mail service was proper. It also asserts that witness attendance and mileage fees are not applicable here and, in any event, that defects in tendering the fees may be cured after service of the subpoena.

{¶ 19} The foregoing arguments implicate Civ.R. 45(B), which provides:

{¶ 20} "A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any [of the above], by an attorney at law, or by any other person designated by order of court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return of the subpoena with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service or otherwise."

{¶ 21} The first sentence of Civ.R. 45(B) sets forth who may serve a subpoena. The second sentence identifies how service may be made. Food-Folks argues that service was improper here because a mail carrier delivered the subpoena by handing it to Food-Folks' statutory agent. Food-Folks stresses that a mail carrier does not fit within any of the categories of individuals who are authorized to serve a subpoena. Conversely, GZK argues that its attorney delivered the subpoena via the postal service. Because an attorney is authorized to serve a subpoena by delivering it, GZK argues that its service was proper.

{¶ 22} Upon review, we find Food-Folks' argument to be the more persuasive. In our view, an attorney does not deliver a subpoena to a person, within the meaning of Civ.R. 45(B), by placing it in the mail. Rather, we believe the term "delivering" in Civ.R. 45(B) contemplates an attorney or another individual who fits within one of the categories set forth in the first sentence actually presenting the subpoena in person. Delivery of a subpoena by an attorney and delivery by a mail carrier, who is not an authorized server, are not the same thing. If a subpoena could be served merely by placing it in the mail, the recipient would have no way of knowing whether the person who did so was an authorized server under the first sentence of Civ.R. 45. In the present case, we conclude that the mail carrier, rather than GZK's counsel, served the subpoena by delivering it to Food-Folks' statutory agent. Because the mail carrier was not an authorized server, service of the subpoena was defective. (fn3) 2 Klein & Darling Baldwin's Ohio Civil Practice (2004) 301, §45:8 ("Service of a subpoena by a person who does not fall within any of the listed categories is ineffectual.").

{¶ 23} Our interpretation of Civ.R. 45(B) is consistent with the Tenth District's ruling in *Landoll v. Dovell* (March 9, 1995), Franklin App. Nos. 94APF05-617, 94APF05-623, 94APF05-618, 94APF05-622. At issue there was whether the trial court had erred in dismissing contempt proceedings against a witness who had refused to testify at a scheduled deposition. Although the witness had received a subpoena, she argued "that because she was not a party to the action and the subpoena was delivered by certified mail, rather than personal service, she was not required to give testimony at the scheduled deposition." The Tenth District agreed, finding that certified-mail service did not comply with Civ.R. 45(B).

{¶ 24} Other portions of the Ohio Rules of Civil Procedure also support our conclusion. For example, Civ.R. 5(B), which governs the service of papers on parties, provides for an attorney either "delivering a copy to the person to be served" or "mailing it to the last known address of the person to be served." This express distinction between "delivering" and "mailing" lends support to Food-Folks' argument that "delivering a copy" of a subpoena under Civ.R. 45(B) cannot be performed by placing it in the mail.

{¶ 25} Finally, we draw additional support for our interpretation of Civ.R. 45(B) from R.C. §2151.29, which governs the service of subpoenas in juvenile court proceedings. In relevant part, R.C. §2151.29 provides: "Service of * * * subpoenas * * * shall be made by delivering a copy to the person * * * subpoenaed, or by leaving a copy at the person's usual place of residence. If the juvenile judge is satisfied that such service is impracticable, the juvenile judge may order service by registered or certified mail." If "delivering a copy" of a subpoena included sending it via certified mail, then the second sentence of R.C. §2151.29 would be unnecessary. The statute recognizes, however, that "delivering" a subpoena differs from sending it through the mail. We reach the same conclusion with regard to Civ.R. 45(B).

{¶ 26} In finding that GZK's service of the subpoena satisfied Civ.R. 45(B), the trial court relied on *Denovchek v. Bd. of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14. In *Denovchek*, the Ohio Supreme Court stated that "[w]here a subpoena is left at the business location of place of employment of a witness and where that witness has actual knowledge of the subpoena, a valid service of summons has been completed." Because the subpoena in this case was delivered to Food-Folks' statutory agent and Food-Folks had actual knowledge of the subpoena, the trial court determined that service was valid under *Denovchek*. GZK advances the same argument on appeal.

{¶ 27} In our view, the trial court erred in relying on *Denovchek*. Nowhere in its opinion did the Ohio Supreme Court address *who* was required to deliver a subpoena or whether certified-mail service satisfied Civ.R. 45(B). *Denovchek* involved a process server leaving a subpoena on a tray at the front desk where the witness worked. The Ohio Supreme Court rejected the trial court's view that Civ.R. 45(B) disallowed such "constructive" service. Although the *Denovchek* court concluded that a subpoena could be left at a witness' place of employment, it did not address *who* was required to leave it there or whether it could be sent through the mail. Therefore, the trial court's (and GZK's) reliance on *Denovchek* is misplaced.(fn4)

{¶ 28} On appeal, GZK also cites *State v. Castle* (1994), 92 Ohio App.3d 732, to support its argument that certified-mail service is proper. At issue in *Castle* was whether placing a subpoena in the mail constitutes valid service under Crim.R. 17(D), which mirrors the language of Civ.R. 45(B). On review, the Ninth District held that such service was valid where the subpoena was sent to the witness' place of employment and the witness had actual knowledge of it. *Id.* at 734. In support of its holding, the *Castle* court quoted *Denovchek* for the proposition that "[w]here a subpoena is left at the business location or place of employment of a witness and where that witness has *actual knowledge* of the subpoena, a valid service of summons has been completed." *Id.* As noted above, however, *Denovchek* did not address whether a subpoena could be served through the mail. Consequently, *Denovchek* does not support the *Castle* court's holding. The Ninth District cited no other authority for the proposition that mail service of a subpoena is permissible, and it did not address the fact that Crim.R. 17(D), like Civ.R. 45(B), requires delivery of a subpoena by an authorized server. As a result, we find *Castle* to be unpersuasive authority. Based on the reasoning set forth above, we hold that the trial court erred in enforcing a subpoena that was not served in compliance with Civ.R. 45(B).⁵ Food-Folks' assignments of error are sustained insofar as they challenge the validity of GZK's subpoena.

{¶ 29} Although we have found that the trial court erred by enforcing a defectively served subpoena, we anticipate that GZK may re-serve the subpoena in compliance with Civ.R. 45(B). Therefore, in the interest of completeness, we will address Food-Folks' remaining substantive arguments concerning the subpoena and the documents at issue. We turn next to Food-Folks' trade-secret argument, which states:

{¶ 30} "THE TRIAL COURT ERRED BY ENFORCING THE SUBPOENA WITHOUT REVIEWING THE DOCUMENTS CONTAINING FOOD-FOLKS' TRADE SECRETS."

{¶ 31} Food-Folks notes that a trade secret includes any financial information that "derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use," provided that the financial information "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." R.C. §1333.61(D).

{¶ 32} Food-Folks also points out that the Ohio Supreme Court has adopted a six-factor test to determine whether information qualifies as a trade secret. These factors are: "(1) The extent to which the information is known outside the business; (2) the extent to which it is known to those inside the business, i.e., by the employees; (3) the precautions taken

by the holder of the trade secret to guard the secrecy of the information; (4) the savings effected and the value to the holder in having the information as against competitors; (5) the amount of effort or money expended in obtaining and developing the information; and (6) the amount of time and expense it would take for others to acquire and duplicate the information.' *State ex rel. The Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 1997-Ohio-75, citing *Pyromatics, Inc. v. Petruziello* (1983), 7 Ohio App.3d 131, 134-135.

{¶ 33} Food-Folks argues that the trial court should have given it an opportunity to address the foregoing factors. Food-Folks also contends the trial court should have reviewed its financial documents in camera and should have considered a protective order prior to requiring disclosure of the documents. In response, GZK asserts that Food-Folks should have taken the initiative to address the six factors *before* the trial court ruled on the matter. Given Food-Folks' failure to do so, GZK contends the trial court did not err in rejecting the trade-secret argument. GZK also notes that Food-Folks did not request a hearing or an in camera review prior to the trial court's ruling. Finally, GZK argues that FFF previously disclosed some of Food-Folks' financial information, thereby waiving any trade-secret argument.

{¶ 34} Upon review, we agree with Food-Folks that the trial court should have given it an opportunity to address the trade-secret factors and should have conducted an in camera review before ordering disclosure of the financial documents. In reaching this conclusion, we recognize that the party asserting trade-secret status has the burden to demonstrate that its information qualifies as a trade secret. *State ex rel. The Plain Dealer*, 80 Ohio St.3d at 525. A careful examination of the procedural history in this case, however, reveals that Food-Folks had no reason to address the six factors prior to the trial court's ruling.

{¶ 35} Food-Folks responded to GZK's subpoena by serving GZK with written objections, as authorized by Civ.R. 45 (C). One of those objections asserted that the requested documents were confidential trade secrets. Under Civ.R. 45, once an objection is made "the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued." The rule further provides that the party serving the subpoena "may move at any time for an order to compel the production." Here GZK filed a "response in opposition" to the objections. The Civil Rules do not provide for a "response" to objections, however, because objections are not something on which a trial court rules. Rather, as stated in Civ.R. 45(C), objections are served on the party who issued the subpoena. Therefore, we conclude that the trial court properly construed GZK's "response in opposition" as a motion to compel. Therein, GZK addressed each of Food-Folks' objections. With regard to the trade-secret assertion, GZK *did not dispute* that the requested financial records were trade secrets. It argued only as follows:

{¶ 36} "Due to Food, Folks & Fun's corporate structure and its position as FFF's operating arm, its financial documents are relevant and likely to lead to the discovery of admissible evidence. *Even assuming the production of this information would constitute trade secrets and is otherwise confidential*, this Court has previously ruled against FFF in this manner and ordered FFF's documents produced. As such, Food, Folks & Fun, being the same corporate entity, is required to produce the same. FFF and Food, Folks & Fun together constitute the same corporate entity involved in the action giving rise to the claims in this lawsuit. GZK is therefore entitled to financial documents that fully illustrate the entity's financial structure." (Emphasis added).

{¶ 37} In making the foregoing argument, GZK expressly assumed that the financial documents qualified as trade secrets but asserted that they nevertheless were discoverable because they were relevant and because FFF had been required to produce similar documents. In light of GZK's assumption that the financial records at issue were trade secrets, Food-Folks had no reason to address the six trade-secret factors, to argue the trade-secret issue in its memorandum in opposition to GZK's motion to compel, or to request an in camera review. Instead, Food-Folks responded to the points raised by GZK and argued that the documents were not relevant, that FFF, unlike Food-Folks, had never raised a trade-secret defense, and that FFF and Food-Folks were distinct corporate entities.

{¶ 38} In its subsequent decision and entry, however, the trial court misread GZK's motion to compel as presenting an argument "that the information that it is requesting is not trade secret and cannot be withheld on that basis." The trial court then found the financial records to be relevant and noted Food-Folks' failure to specify its trade-secret concerns. As a result, the trial court rejected Food-Folks' trade-secret contention out of hand.

{¶ 39} In our view, the trial court abused its discretion by misreading GZK's motion to compel, which assumed that the documents *were* trade secrets, and then summarily rejecting Food-Folks' trade-secret argument. If the trial court were inclined to reject Food-Folks' trade-secret argument, despite GZK's express assumption that the documents *did* qualify as trade secrets, it first should have granted Food-Folks an opportunity to address the issue and should have conducted an in camera review. In light of GZK's presumption in its motion to compel that the financial documents were trade secrets, Food-Folks had no reason to anticipate that the trial court would rule otherwise. Therefore, we conclude that Food-Folks did not forfeit its ability to challenge the trial court's trade-secret ruling or waive its right to seek a hearing on the matter and an in camera review.

{¶ 40} Finally, we reject GZK's claim that FFF previously disclosed some of Food-Folks' financial information, thereby waiving any trade-secret argument. Although they are closely aligned, FFF and Food-Folks are distinct corporate entities. The fact that FFF may have disclosed some documents in the past does not preclude Food-Folks from raising a trade-secret objection. Moreover, we find it unlikely that FFF previously disclosed the same financial information GZK seeks from Food-Folks. If that were the case, GZK would have no need to obtain the information a second time.

{¶ 41} Based on the reasoning set forth above, we sustain Food-Folks' assignments of error, insofar as it contends the trial court erred in ordering it to produce financial documents to GZK without first allowing it to address the trade-secret issue and without conducting an in camera review.

{¶ 42} In its remaining two arguments, Food-Folks asserts:

{¶ 43} "THE TRIAL COURT ERRED BY COMPELLING DISCLOSURE OF DOCUMENTS THAT ARE NOT REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE TO SUPPORT GZK'S LOST PROFITS CLAIM."

{¶ 44} "THE TRIAL COURT ERRED BY COMPELLING DISCLOSURE OF DOCUMENTS THAT ARE NOT REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE TO SUPPORT GZK'S PUNITIVE DAMAGES CLAIM."

{¶ 45} Food-Folks contends its financial records are irrelevant to the issues in this case and are not reasonably calculated to lead to the discovery of admissible evidence. We disagree. A trial court enjoys broad discretion in the regulation of discovery. *Whitt v. ERB Lumber*, 156 Ohio App.3d 518, 2004-Ohio-1302, at ¶28. We review a trial court's ruling on a discovery matter for an abuse of discretion. *Id.* Based on our examination of the record and the parties' respective arguments, we do not believe the trial court abused its discretion in finding the financial records at issue to be relevant and reasonably calculated to lead to the discovery of admissible evidence. Applying this broad standard, we are disinclined to second-guess the trial court's decision authorizing GZK to review a limited number of Food-Folks' documents. In reaching this conclusion, we do not ignore the fact that Food-Folks, while technically not a party to this lawsuit, differs from defendant FFF only in name and has been characterized by a Food-Folks corporate director as the "operating arm" of FFF. Food-Folks' assignments of error are overruled, insofar as it contends the trial court erred by finding the documents at issue to be relevant and reasonably calculated to lead to the discovery of admissible evidence.

III. Conclusion

{¶ 46} Based on the reasoning set forth above, we hold that the trial court erred in enforcing a defectively served subpoena. The trial court also erred by not giving appellant Food-Folks an opportunity to address its trade-secret argument and by not conducting an in camera review before ordering disclosure of certain financial documents. Accordingly, we hereby reverse the trial court's judgment entry sustaining GZK's motion to enforce the subpoena. Judgment reversed.

WOLFF, J., and DONOVAN, J., concur.

Copies mailed to: Neil F. Freund Scott A. King Chad D. Cooper Hon. John W. Kessler

Footnotes:

1. We have been unable to locate a copy of the subpoena anywhere in the record. For purposes of our analysis herein, we are relying on the parties' undisputed representations about the contents of the subpoena and the manner in which GZK served it on Food-Folks.
2. The parties agree that the trial court's decision and entry is a final, appealable order under R.C. §2505.02(B)(4) because it grants GZK a provisional remedy, it determines the action with respect to the provisional remedy and prevents judgment in favor of Food-Folks, and Food-Folks would not be afforded a meaningful or effective remedy by an appeal following final judgment in the case. In applying the foregoing statute, courts have held that an order compelling disclosure of confidential information such as alleged trade secrets qualifies as a provisional remedy. See, e.g., *Gibson-Myers & Assoc. v. Pearce* (Oct. 27, 1999), Summit App. No. 19358; *Armstrong v. Marusic*, Lake App. No. 2001-L-232, 2004-Ohio 2594, at ¶9-12 (citing cases).
3. On appeal, GZK stresses that Civ.R. 45(B) does not expressly preclude certified-mail service. Therefore, it argues that such service should be permitted. We agree that nothing in the rule prohibits certified-mail service per se. The problem is that mail service is accomplished by a mail carrier delivering a copy of a subpoena to the person to be served. A mail carrier is not authorized to do so, however, unless he or she happens to be "a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any, by an attorney at law, or by any other person designated by order of court who is not a party and is not less than eighteen years of age." There has been no suggestion in this case that the mail carrier who delivered GZK's subpoena fit within any of the foregoing categories.
4. We note too that the quoted language from *Denovchek* is dicta given the Ohio Supreme Court's holding that the appellant had no right to appeal from the dismissal of a contempt motion against the witness who had failed to comply with the subpoena. 5As for Food-Folks' argument about the absence of a return of service, we note that Civ.R. 45(B) does require one to be filed with the clerk. We presume that GZK will take note of this requirement if it serves Food-Folks with a new subpoena. With regard to Food-Folks' argument about GZK's failure to provide a witness fee or a mileage fee, we note the portion of Civ.R. 45(B) stating that "[i]f the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand." This portion of the rule contemplates the subpoenaed witness being required to travel for an "appearance" at some type of proceeding. A representative of Food-Folks may be able to comply with a subpoena duces tecum, however, without traveling anywhere. See, e.g., Civ.R. 45(C)(2)(a) (stating that a person commanded to produce and permit inspection and copying of documents need not appear in person "unless commanded to attend and give testimony at a deposition, hearing, or trial"). If no appearance or travel is required, then Food-Folks would not be entitled to the fees identified in Civ.R. 45(B).

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Randal S. Bloch, #0010124
Attorney for Plaintiff

**COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO**

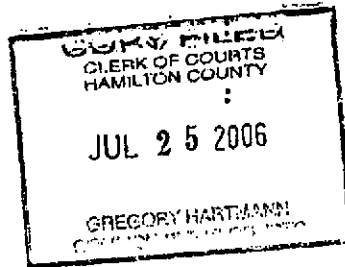
ELLEN TURNER

Plaintiff

-vs-

JON ENTINE

Defendant



Case N. DR05000131

File No. E233969

Judge Panioto
Magistrate Theile

**MOTION FOR
PROTECTIVE
ORDER**

Pursuant to Rules 26 and 45 of the Ohio Rules of Civil Procedure, Plaintiff, Ellen Turner, respectfully requests this Court to issue a protective order prohibiting the disclosure of information sought by Defendant, Jon Entine, in the subpoenas issued by Defendant as listed on Exhibit A on the grounds that the subpoenas require disclosure of information that is not relevant to the subject matter involved in the pending action and that they are designed to annoy, embarrass, oppress, and cause undue burden and expense. This Court had issued a stay of discovery June 22, 2006 yet subpoenas were filed. That stay was lifted but discovery is only to be on the issues of the validity and enforceability of the parties prenuptial agreement. The subpoenas issued are not addressed to those issues.

Plaintiff also seeks an award of reasonable attorney's fees.

Wherefore, for the above noted reasons, Plaintiff respectfully moves this Court to issue a protective order and prohibit the disclosure of information sought by the subpoenas and for her attorneys fees in this matter.

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NOTICE OF HEARING

A hearing on the within matter has been scheduled for 8/3, 2006 at
8:30 a.m. before Magistrate Theile, Room 02-102 of the Hamilton County
Domestic Relations Court, 800 Broadway, Cincinnati, Ohio 45202.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion has this 25 day of July,
2006 been served by ordinary mail upon Gloria S. Haffer and Robert J. Meyers, Attorney
for Defendant, 300 Fourth & Walnut Centre, 105 E. Fourth Street, Cincinnati, Ohio
45202.

Randal S. Bloch
RANDAL S. BLOCH

Turner/Entine	
Subpoenas Issued by Jon	
Exhibit A	
	Date Issued
National City	03/17/2006
NationsBank of Georgia	03/17/2006
Chase Bank	03/17/2006
Bruce Humbert	03/31/2006
Joel Green, Brand Strategy	03/31/2006
Egon Zehnder International	04/03/2006
Heidrick & Struggles	04/03/2006
Boyden	04/03/2006
DHR Executive Research	04/03/2006
Sharon Flanagan, McKinsey Corporation	04/03/2006
Mark Mitten, McKinsey Corporation	04/03/2006
James Mead	04/03/2006
Element 79	04/03/2006
STI, Inc.	04/03/2006
O'Keefe & Partners	04/03/2006
Spencer Stuart	04/03/2006
Korn/Ferry International	04/03/2006
McKinsey Corporation	04/12/2006
Nina Paul Jewelers	04/17/2006
James Free Jewelers	04/17/2006
Cincinnati Bell	04/19/2006
Cingular Wireless	04/19/2006
Renaissance Platinum	04/20/2006
Carol Moss, Brand Strategy	05/08/2006
Sara Lee Foods	06/07/2006
Joel Goren	06/07/2006
Susan Marocco Interiors, Inc.	06/07/2006
Yahoo	07/05/2006
Google, Inc.	07/05/2006
AOL, LLC	07/05/2006

ENTERED
JUL 03 2006

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Ellen L Turner

Plaintiff

-vs-

Jon H Entine

Defendant

Case No: DR0500131
File No: E233969
CSEA: 7053135062

MAGISTRATE'S ORDER

Judge: Panioto
Magistrate Theile

The previous stay of discovery ordered June 22, 2006 is rescinded. Discovery may proceed on the issues of the validity and enforceability of the parties' prenuptial agreement. All discovery on these issues shall be completed by September 1, 2006.

Copies of this order have been mailed to the parties or their counsel. This Order is effective immediately. Either party may appeal this order by filing a Motion to Set the Order Aside within ten days of the date this order is entered. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this order unless the Magistrate or Judge grants a stay.


Magistrate Gregory R Theile 06/30/2006

Copies sent by Clerk of Courts to:
Randal S Bloch Esq, Attorney For Plaintiff
Gloria S Haffer Esq, Attorney For Defendant