

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

OMAR TARAIZI,

Plaintiff,

vs.

Civil Action 2:10-CV-793
Judge Sargus
Magistrate Judge King

PAMELA G. OSHRY, *et al.*,

Defendants.

OPINION AND ORDER

Plaintiff seeks recovery for defamatory statements allegedly made by defendants during the pendency of highly publicized court proceedings in which plaintiff represented certain litigants. This matter is before the Court on plaintiff's motion for protective order, Doc. No. 94 ("*Motion for Protective Order*").¹ For the reasons that follow, the Court **DENIES** plaintiff's motion.

I. BACKGROUND

Plaintiff, an Ohio attorney who is proceeding *pro se*, previously represented two individuals in "Unruly and Dependency cases in Ohio" involving their daughter, Fathima Rifqa Bary. *Amended Complaint*, Doc. No. 10, ¶¶ 1, 5. Defendant John Stemberger, an attorney and resident of Florida, represented Ms. Bary in a dependency case in the State of Florida. *Id.* at ¶ 2. Various media outlets reported on the proceedings involving Ms. Bary. *See, e.g., id.* at ¶¶ 3, 7, 10, 12-15,

¹Plaintiff also filed a motion for an emergency temporary stay of discovery pending resolution of his motion for protective order, Doc. No. 95, which was later withdrawn. Doc. No. 104.

17.

Following some of this media coverage, plaintiff filed the instant action. Plaintiff sues Defendant Stemberger, who plaintiff alleges held a press conference and appeared on a nationally televised program in order to discuss Ms. Bary's proceedings. *Id.* at ¶¶ 3, 7, 10. Plaintiff also sues Pamela G. Oshry,² a resident of New York who operates a blog known as "Atlas Shrugs," which allegedly reported on Ms. Bary's proceedings. *Id.* at p. 1; ¶¶ 14-23. Plaintiff specifically alleges that defendants, in reporting on these dependency proceedings, defamed plaintiff.

At the initial pretrial conference in this case, the Court set a case schedule requiring, *inter alia*, that discovery be completed by September 30, 2011. *Preliminary Pretrial Order*, Doc. No. 33. After discovery commenced, the Court granted non-parties John Doe and Barbarossa leave to intervene ("the intervenors"). *Opinion and Order*, Doc. No. 71. Barbarossa is a contributor to a blog known as "the Jawa Report" and John Doe is "the confidential source of certain information" referred to in a letter from defendant Stemberger dated June 24, 2010. *Id.* at 2.

After a purported dispute with defendant Geller regarding the scope of discovery, Doc. No. 94, pp. 3-4, plaintiff filed a motion on May 31, 2011,³ asking the Court to issue a proposed protective order.

²This defendant identifies herself as Pamela Geller and denies that her legal name (or commonly used name) is Pamela G. Oshry. *Answer of Pamela Geller to Plaintiff's Complaint Against Defendant Pamela Oshry*, Doc. No. 7, ¶ 2. For ease of reference, the Court will refer to this defendant as "Defendant Geller."

³The instant motion follows multiple discovery-related motions filed by the parties in this litigation. *See, e.g.*, Doc. Nos. 72, 76, 78, 79, 83.

Id. On the same day, plaintiff filed a motion for an emergency temporary stay of discovery pending the Court's resolution of his motion for protective order, which was later withdrawn. Doc. Nos. 95, 104. After the Court established a briefing schedule on these motions, *Order*, Doc. No. 97, defendants and the intervenors filed their responses in opposition to plaintiff's motions. Doc. Nos. 100, 101, 102. With the filing of plaintiff's reply, Doc. No. 103 ("*Reply*"), this matter is ripe for resolution.

II. STANDARD

The Federal Rules of Civil Procedure grant parties the right to "obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense...." Fed. R. Civ. P. 26(b)(1). Nevertheless, Rule 26 provides that a person resisting discovery may move the court, for good cause shown, to protect the person or party from "annoyance, embarrassment, oppression, or undue burden or expense, including. . . forbidding the disclosure or discovery." Fed. R. Civ. P. 26(c)(1)(A). "The burden of establishing good cause for a protective order rests with the movant." *Nix v. Sword*, 11 Fed. Appx. 498, 500 (6th Cir. 2001) (citing *General Dynamics Corp. v. Selb Mfg. Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973)). Specifically, "[t]o show good cause, a movant for a protective order must articulate specific facts showing 'clearly defined and serious injury' resulting from the discovery sought and cannot rely on mere conclusory statements." *Id.* (quoting *Avirgan v. Hull*, 118 F.R.D. 252, 254 (D.D.C. 1987) (internal quotation marks omitted)). A grant or denial of a request for a protective order falls within "the broad discretion of the district court in managing the case.'" *Conti v. Am.*

Axle & Mfg., No. 08-1301, 326 Fed. Appx. 900, at *903-04 (6th Cir. May 22, 2009) (quoting *Lewelling v. Farmers Ins. of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir. 1989)).

Finally, the party seeking a protective order must certify that he "has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action." Fed. R. Civ. P. 26(c)(1). Although plaintiff has not complied with this prerequisite, the Court, based on the circumstances in this particular case, will nevertheless consider the merits of his motion for protective order.⁴

III. DISCUSSION

In the case *sub judice*, plaintiff seeks a protective order to protect "all parties and third parties from being abused by the discovery process for ulterior purposes." *Motion for Protective Order*, p. 4; *Reply*, p. 3. Plaintiff argues that his proposed protective order is necessary because, *inter alia*, defendant Geller "has a history and pattern of using her website as a means of harming individuals with documents acquired from court proceedings." *Motion for Protective Order*, p. 2. Plaintiff also believes that his proposed protective order will encourage the parties to resolve their discovery disputes extrajudicially and eliminate the need for filing discovery motions and additional depositions. *Id.* at 4; *Reply*, pp. 2-3.

This Court disagrees that plaintiff's proposed protective order

⁴Plaintiff has not attached the required certification, but instead represents in the text of his motion that he has tried in good faith to resolve the parties' dispute. Doc. No. 94, p. 1. Under these circumstances, to insist that the motion be re-filed with the required certification would exalt mere formality to an unwarranted degree and would waste the time and resources of both the parties and the Court.

is necessary or appropriate. First, plaintiff fails to meet his burden of establishing good cause. Other than articulating a generalized fear of abuse of the discovery process, plaintiff does not identify the required "specific facts showing 'clearly defined and serious injury' resulting from the discovery sought[.]" *Nix v. Sword*, 11 Fed. Appx. at 500. For example, identifying alleged discovery abuse in an unrelated case resulting in alleged injury to an outside third party or expressing fear on behalf of "other members of the Muslim community," *Motion for Protective Order*, pp. 2-3, do not establish good cause for entering the proposed protective order in this case. Indeed, plaintiff has not established that he properly represents the interests of outside third parties in this lawsuit. Similarly, complaining that defendant Geller and Intervenor Barbarossa have published pleadings filed in this case and in the proceedings involving Ms. Bary do not establish good cause. Not only are the pleadings filed in this case already available to the public through this Court's website, "the prospect that disclosure of unproven allegations will expose a party to reputational or (by extension) commercial harm does not outweigh the common-law presumption of public access to court records." *United States v. Contents of Nationwide Life Ins. Account No. X0961 in the Name of Steve E. Warshak*, No. C-1-05-196, 2006 U.S. Dist. LEXIS 18772, at *14 (S.D. Ohio April 12, 2006) (citing, *inter alia*, *Brown & Williamson Tobacco Corp. v. Federal Trade Comm'n*, 710 F.2d 1165, 1179-1180 (6th Cir. 1983); *Procter & Gamble v. Bankers Trust*, 78 F.3d 219, 225 (6th Cir. 1996)).

Moreover, other than referring to Geller's "question number 2,"

plaintiff fails to identify the objectionable discovery requests, nor does he articulate the specific injury that would likely result from those particular requests. Plaintiff cites to no authority that requires, or even permits, the Court to issue a protective order under these circumstances.

Second, the Court notes that plaintiff's overly broad proposed protective order would permit any party to denominate any material as "confidential" and would require that the filing of any material so denominated be made under seal. *Proposed Protective Order for Confidential Information*, ¶ 3(D), attached to *Motion for Protective Order*. Although parties may maintain discovery materials in confidence, the actual filing of documents - which implicates the interests of the public in unencumbered access to court proceedings - should not routinely be made under seal. *Bankers Trust Co.*, 78 F.3d at 227; *Brown & Williamson Tobacco Corp.*, 710 F.2d at 1177.

Finally, to the extent that plaintiff seeks a protective order to preclude defendants and intervenors from abusing the discovery process, plaintiff seeks an order essentially requiring that defendants and intervenors comply with the Federal Rules of Civil Procedure. However, all parties, whether proceeding *pro se* or with the assistance of counsel, are already required to comply with the Federal Rules of Civil Procedure. See *McNeil v. United States*, 508 U.S. 106, 113 (1993). All parties are reminded that they should follow the Federal Rules and the Court expects that no litigant will utilize information gleaned in this litigation for improper purposes. However, issuing a protective order under the present circumstances would be superfluous, further suggesting that plaintiff has failed to

meet his burden. Indeed, the redundancy of such an order persuades this Court that its discretion is better exercised in denying plaintiff's request.

WHEREUPON, plaintiff's motion for protective order for confidential information, Doc. No. 94, is **DENIED**.

Plaintiff's motion for an emergency temporary stay of discovery, Doc. No. 95, is **WITHDRAWN**. See Doc. No. 104. The Clerk is **DIRECTED** to remove Doc. Nos. 94 and 95 from the Court's pending motions list.

August 15, 2011

s/Norah McCann King
Norah M^cCann King
United States Magistrate Judge

