

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MICHELE J. REID,)
) C.A. No. 01C-10-046 (JTV)
Plaintiff Below,)
Appellant,)
)
v.)
)
MICHELLE A. HINDT,)
)
Defendant Below,)
Appellee.)

Submitted: June 13, 2006
Decided: October 10, 2006

William D. Fletcher, Jr., Esq., and Adam C. Gerber, Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorneys for Appellant.

Jeffrey A. Young, Esq., Young & McNelis, Dover, Delaware. Attorney for Appellee.

*Upon Consideration of Plaintiff's Motion
For Reconsideration of Commissioner's Order*
GRANTED IN PART, DENIED IN PART

VAUGHN, President Judge

Reid v. Hindt

C.A. No. 01C-10-046 (JTV)

October 10, 2006

OPINION

Pursuant to Superior Court Rule 132 (a)(3)(ii), Michele J. Reid (“the plaintiff”) has filed a Motion for Reconsideration of Commissioner’s Order dated May 18, 2006, contending it is contrary to law.

FACTS

On September 14, 2005, a jury verdict was rendered in this Court against the plaintiff. A new trial was granted on January 31, 2006. A new scheduling order was issued on February 10, 2006 establishing the dates for a pretrial conference, a trial calendar conference, and a new trial. This order did not set a new discovery deadline. On March 30, 2006, Michele A. Hindt (“the defendant”) sent notice to depose the plaintiff on April 24, 2006. The plaintiff objected to this Notice of Deposition. On or about April 3, 2006, the defendant filed a Motion to Compel Plaintiff’s Deposition and production of her criminal history. A hearing on this motion was held before the Commissioner on May 4, 2006. The Commissioner issued a written Order on May 18, 2006 which stated:

Michelle J. Reid, (“Plaintiff”), shall be produced for a deposition at a time mutually convenient to both counsel. Said deposition shall cover the following since September 1, 2005:

- a. Updated medical history post-initial trial;
- b. Any relevant facts occurring post-initial trial, for example, any subsequent accidents that would be

Reid v. Hindt

C.A. No. 01C-10-046 (JTV)

October 10, 2006

relevant to Plaintiff's current medical condition;

and

c. Plaintiff's criminal history.

The order also required the plaintiff to appear on May 26, 2006 at the State Bureau of Identification ("SBI") and provide the necessary information for a criminal background check to be completed.

CONTENTION OF THE PARTIES

The plaintiff contends that because the Court did not reopen the discovery period, the defendant is only entitled to updated information since the initial trial and not a complete criminal background check. Additionally, the defendant's original Motion to Compel did not contain a request that the plaintiff present herself at SBI to undergo fingerprinting to obtain her criminal record. The plaintiff also claims that if a complete criminal background check is ordered, the defendant is only entitled to information regarding convictions which would be admissible at trial for impeachment purposes under Delaware Rule of Evidence 609(a).

The defendant claims that the credibility of the plaintiff is at issue and therefore the defendant is entitled to access to the information. The defendant maintained at the hearing on the motion in front of the Commissioner that during discovery and under oath while testifying at the first trial the plaintiff denied having any criminal history. The defendant claims it was discovered during trial that those responses were not truthful. Therefore, the defendant wants to do a complete criminal history check.

Reid v. Hindt

C.A. No. 01C-10-046 (JTV)

October 10, 2006

Although such information can be obtained through the Prothonotary's office, the defendant contends that such information is not reliable so, consequently, she wants the search done through SBI.

STANDARD OF REVIEW

Pursuant to Superior Court Rule 132(a)(3)(iv):

A judge may reconsider any hearing or pretrial matter under subparagraph (3) only where it has been shown on the record that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or is an abuse of discretion.

DISCUSSION

After considering the pleadings and oral arguments, the Commissioner was persuaded that she should order the plaintiff to appear at SBI and provide the necessary information to obtain her entire criminal background. The plaintiff has asserted her right to privacy as reason not to submit herself to the background check. In support of her assertion, the plaintiff cites *Frazier v. IMED Corp.*¹ which involved a plaintiff ordered by the court to present herself at SBI for a background check, as the defendant is requesting in this case. The court acknowledged that criminal convictions are admissible for impeachment purposes under DRE 609(a) and the plaintiff has conceded this. But the court also recognized that an individual has a "strong interest in being free of improper and unwarranted intrusions into her privacy

¹ *Frazier v. IMED Corp.*, 2003 LEXIS 141 (Del. Super.).

Reid v. Hindt

C.A. No. 01C-10-046 (JTV)

October 10, 2006

pursuant to well-recognized statutory Delaware public policy.”² Although convictions are admissible should they withstand DRE 403 analysis, DRE 609 does not permit non-convictions to be used as impeachment.³ Thus, the *Frazier* court gave weight to the plaintiff’s concerns regarding the privacy of her criminal records insofar as “non-convictions” are concerned.⁴ Based on this, the court ordered that the plaintiff be given the opportunity to redact portions of her criminal history report which listed dispositions as other than a conviction.

This Court agrees that, as in *Frazier*, disclosure of the entire criminal history report is an unnecessary intrusion into the plaintiff’s privacy. Thus the Commissioner’s order is over-broad in that it requires the production of the plaintiff’s entire criminal history. Accordingly, this Court will permit the plaintiff to redact her criminal history of all non-convictions prior to providing it to the defendant.

As to the remainder of the Commissioner’s order, this Court finds no error, abuse of discretion, or that it is contrary to established law. Therefore, the plaintiff shall comply by providing the defendant with an updated medical history and any relevant facts occurring post-initial trial as per the order. Further, the plaintiff shall be produced for a deposition at a time mutually convenient to both counsel.

Therefore, based on the foregoing, the plaintiff’s motion is ***denied*** in part and

² *Id.* at *2.

³ *Id.*

⁴ *Id.* at *12.

Reid v. Hindt

C.A. No. 01C-10-046 (JTV)

October 10, 2006

affirmed in part.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File