

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

JH, et al.,

Plaintiffs,

vs.

Civil Action 2:14-cv-1608
Judge Graham
Magistrate Judge King

MULTI-COUNTY JUVENILE DETENTION
FACILITY, et al.,

Defendants.

OPINION AND ORDER

The Court met with counsel for the parties on February 19, 2015 regarding a discovery matter.

During the course of defendants' deposition of a plaintiff (who is no longer a juvenile), the deponent was asked about and testified to certain events that occurred while he was detained in the detention facility at issue in this case. Prior to that testimony, plaintiffs' counsel had denominated the entire deposition as "confidential" within the ambit of the *Agreed Protective Order*, ¶ 1, ECF 25, which, *inter alia*, restricts confidential information to use only in connection with this litigation. Following the deposition, defendants' counsel expressed an intention to report that portion of the deponent's testimony to relevant prosecuting authorities and sought, pursuant to the *Agreed Protective Order*, ¶ 2, this Court's determination whether plaintiff's designation of confidentiality was proper.

The parties agree that the events about which the deponent testified have been known to a number of people, including government employees and officials, since those events occurred. The parties also agree that they do not know whether the deponent will in fact be subject to criminal prosecution should his testimony be disclosed to prosecuting authorities. Plaintiffs contend that the *Agreed Protective Order* requires that the portion of the deposition not be disclosed to prosecuting authorities; plaintiffs take the position that any such prosecution would be wholly retaliatory for the filing of this lawsuit.

The *Agreed Protective Order* permits any party to designate any deposition as "Confidential Information." *Agreed Protective Order*, ¶1. Confidential Information "may only be used in connection with these proceedings and shall not be disclosed or utilized in any other respect, except as may be otherwise provided for in this Protective Order." *Id.* However, any other party may "apply to the Court for a determination of whether the designation is proper." *Id.*, ¶ 2.

The portion of the deposition presently at issue addresses events that have not been maintained in confidence and which do not implicate matters that have traditionally enjoyed protection. See *Proctor & Gamble Co. v. Bankers Trust Co.*, 78 F.3d 219, 227 (6th Cir. 1996); *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1177 (6th Cir. 1983). Plaintiffs have simply not established a basis for designating that portion of the deposition as "Confidential Information" within the meaning of the *Agreed Protective Order*. It follows, then, that the restrictions on the use and disclosure of Confidential Information required by the *Agreed Protective Order* are inapplicable.

Plaintiffs fear retaliatory prosecution. This fear is, to some extent, grounded on speculation; it is simply unknown whether prosecution will result from disclosure of this portion of the deposition. Of course, should prosecuting authorities institute a formal prosecution based on this portion of the deposition, the deponent remains free to assert retaliation as a defense.

In short, the Court concludes that the designation of the relevant portion of the deposition as confidential was improper. Therefore, the *Agreed Protective Order* does not address the use or disclosure of that portion of the deposition.

February 19, 2015

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