

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

FILED IN OFFICE  
NOV - 4 2008  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

OTIS L. STORY, SR.,

Plaintiff,

vs.

PAMELA STEPHENSON and the  
FULTON-DEKALB HOSPITAL  
AUTHORITY,

Defendants.

CIVIL ACTION FILE NO.  
2008-CV-150333

**DEFENDANT PAMELA STEPHENSON'S  
MOTION FOR PROTECTIVE ORDER  
CONCERNING HER LAW SCHOOL TRANSCRIPT**

Oglethorpe University has informed the undersigned counsel that it has complied with this Court's Order of October 24, 2008, and produced to this Court all documents responsive to Plaintiff's subpoena dated July 28, 2008, for this Court's *in camera* review. This production apparently consists of a lone document: Defendant Pamela Stephenson's transcript from the Woodrow Wilson College of Law.

To produce this transcript to Plaintiff would allow precisely what the Georgia Court of Appeals has prohibited: the discovery process to "become a device for the unscrupulous litigant to squeeze concessions from the opposing side in cases where such concessions were totally unwarranted." *E.H. Siler Realty & Bus. Broker, Inc. v. Sanderlin* 158 Ga. App. 796, 797, 282 S.E.2d 381, 382 (citing *Borenstein v. Blumenfield*, 151 Ga. App. 420, 421, 260 S.E.2d 377, 378 (1979)), superseded by rule

on other grounds as stated in *Dikeman v. Mary A. Stearns, P.C.*, 253 Ga. App. 646, 648, 560 S.E.2d 115, 117 (2002).

Ms. Stephenson therefore moves this Court for a protective order under O.C.G.A. § 9-11-26(c) to prevent disclosure of the transcript to Plaintiff. This Court should grant this Motion because: (1) during the teleconference with the Court on October 23, 2008, Plaintiff's counsel specifically disclaimed any interest in the transcript itself, stating that he was only seeking confirmation of Ms. Stephenson's degree, despite that the first word in the subpoena he drafted was "[t]ranscripts," and despite that Plaintiff already has evidence from the Supreme Court of Georgia Office of Bar Admissions that Ms. Stephenson met all requirements for admission to the Bar; (2) Plaintiff's counsel has never even attempted to articulate a basis for the production of the transcript *other than for the sole purpose of impeachment*, making any compelled production thereof clearly erroneous under *E.H. Siler Realty* and other decisions as set forth below; and (3) Ms. Stephenson's federally recognized privacy interest in her transcript far outweighs any purported right of Plaintiff to discovery of her transcript.

**A. This Court should not compel the production of Ms. Stephenson's transcript because Plaintiff seeks it solely for potential impeachment purposes and has not even articulated how it could be relevant to the issues in this case.**

Georgia law prohibits compelled production of the transcript because Plaintiff seeks it solely for purposes of impeachment and it bears no relevance to the primary litigation. It is axiomatic that "[e]vidence of an impeaching nature must itself

relate to a relevant issue in the case.” *Ga. Dep’t of Transp. v. Wright*, 169 Ga. App. 332, 336, 312 S.E.2d 824, 827 (1983) (citation omitted). Georgia appellate courts hold that such impeachment evidence must relate directly to the underlying issues in the litigation. See, e.g., *E.H. Siler Realty*, 158 Ga. App. at 797, 282 S.E.2d at 382; *Bus. Broker, Inc. v. Sanderlin*, 158 Ga. App. at 797, 282 S.E.2d at 382. “A witness may not be impeached based upon a discrepancy relating to a wholly immaterial matter.” *Brown v. State*, 260 Ga. 153, 156, 391 S.E.2d 108, 111 (1990).

The Georgia Court of Appeals’ holding in *E.H. Siler Realty* is controlling here. In *E.H. Siler Realty*, the defendant in a dispute over an alleged fraudulent real estate transaction filed a motion to compel production of the plaintiff’s tax returns, contending misrepresentations were contained therein; the defendant argued the tax returns were relevant as to the credibility of the plaintiff and could be useful for impeachment purposes. See *E.H. Siler Realty*, 158 Ga. App. at 797, 282 S.E.2d at 382. The trial court denied the motion to compel and the Georgia Court of Appeals affirmed that decision, holding the production of the tax returns bore no direct relevance to the primary issue in the litigation—the alleged fraudulent real estate transaction:

The argument that if the tax returns demonstrate that a misrepresentation in fact occurred, they would then become collaterally relevant in the case as evidence otherwise impeaching of [plaintiff’s] general credibility is fallacious. ***Evidence of an impeaching nature must itself relate back to a relevant issue in the case. A witness’ possible lack of credibility concerning matters otherwise irrelevant to any issue in dispute***

***does not thereby become material to the case as an issue of impeachment.***

*Id.* (emphasis added); see also *Kothari v. Patel*, 262 Ga. App. 168, 176, 585 S.E.2d 97, 104 (2003) (holding trial court properly excluded impeachment evidence as to existence or non-existence of defendant's CPA licensure as irrelevant to issues tried in shareholder litigation).

And in *E.H. Siler Realty*, the Court of Appeals cautioned that to compel disclosure of otherwise irrelevant documents and materials would allow the discovery process to "become a device for the unscrupulous litigant to squeeze concessions from the opposing side in cases where such concessions were totally unwarranted. This sort of abuse simply cannot be tolerated in an ordered system of justice." 158 Ga. App. at 797, 282 S.E.2d at 382 (citing *Borenstein*, 151 Ga. App. at 421, 260 S.E.2d at 378).

In this case, Plaintiff asserts a right to the transcript based on the same argument the Georgia Court of Appeals rejected as "fallacious" in *E.H. Siler Realty*. Plaintiff has claimed tortious interference, punitive damages, and attorneys' fees and expenses against Ms. Stephenson. Plaintiff sought, via improper subpoena, Ms. Stephenson's law school transcript for the admitted sole purpose of cross-examination and impeachment evidence. (See Pl.'s Resp. to Mot. to Quash 2.) Ms. Stephenson's transcript bears no relevance whatsoever to the issues in this litigation and Plaintiff does not even contend as such. Rather, Plaintiff's subpoena and briefing on their face seek nothing more than to exact litigation concessions

from Ms. Stephenson using irrelevant personal information where such concessions are totally unwarranted. This is a plain abuse of the discovery process and should not be tolerated by this Court. Accordingly, this Court should prohibit disclosure of the transcript.

**B. Ms. Stephenson's federally recognized privacy interest far outweighs any conceivable relevance of her academic transcript.**

This Court must also consider and balance Stephenson's privacy interest in her transcript against Plaintiff's non-existent right to compel its production. See *Ledee v. Devoe*, 225 Ga. App. 620, 625, 484 S.E.2d 344, 348 (1997). Georgia's appellate courts recognize that "the competing interest in an individual's privacy interest must be accommodated in the discovery process" so as to prevent blatant abuse by the unscrupulous litigant. See *Borenstein*, 151 Ga. App. at 421, 260 S.E.2d at 378; see also *A S. Outdoor Promotions, Inc. v. Nat'l Banner Co.*, 215 Ga. App. 133, 134-35, 449 S.E.2d 684, 686 (1994) (holding appellant's privacy interest in tax returns outweighed any *de minimis* relevancy of discovery request); *E.H. Siler Realty*, 158 Ga. App. at 797, 282 S.E.2d at 381 (same).

Accordingly, it is the duty of the trial court "to assure that the scope of the discovery is restricted to the extent necessary to prevent an unreasonable intrusion into the defendant's privacy." *Ledee*, 225 Ga. App. at 625, 484 S.E.2d at 348. The trial court must balance the competing interests of the parties. *Id.* And when appropriate, the trial court's issuance of a protective order "is a recognition of the

fact that in some circumstances the interest in gathering information must yield to the interest in protecting a party or person from annoyance, embarrassment, oppression, or undue burden . . . ." *Borenstein*, 151 Ga. App. at 421, 260 S.E.2d at 378. When the contested information sought is available by other means—as it is in this case via the produced documents from the Supreme Court of Georgia Office of Bar Admissions—compelled production is improper. *See generally id.*

Furthermore, a party seeking disclosure of educational records, must, under the Family Educational Rights and Privacy Act ("FERPA"), "demonstrate a genuine need for the information that outweighs the privacy interest of the student[]." *Rios v. Read*, 73 F.R.D. 589, 599 (D.C.N.Y. 1977) (citing *The Family Educational Rights and Privacy Act ("FERPA")*, 20 U.S.C. § 1232g). Although courts have held that FERPA does not expressly limit discovery of educational records, it does "place[] a significantly heavier burden on a party seeking access to student records to justify disclosure than exists with respect to discovery of other kinds of information, such as business records." *Id.* (emphasis added); *see also Ellis v. Cleveland Mun. School Dist.*, 309 F. Supp. 2d 1019, 1023 (N.D. Ohio 2004).

In this case, Plaintiff has no right to discovery of Ms. Stephenson's transcript; it is irrelevant to the issues in litigation and is sought for the sole purpose of cross-examination and impeachment. *See, e.g., E.H. Siler Realty*, 158 Ga. App. at 797, 282 S.E.2d at 381. (*See also* Pl.'s Resp. to Mot. to Quash 2.) In addition, the information sought relating to Ms. Stephenson's legal credentials has been provided to Plaintiff via correspondence from the Georgia Board of Bar Examiners. (*See Ex.*

"A" to Def.'s Reply to Pl.'s Resp. to Mot. to Quash). The correspondence from the Georgia Board of Bar Examiners concludes presumptively that Ms. Stephenson met all of the educational and testing requirements set forth in the Georgia Rules Governing Admission to the Practice of Law. (*See id.*) Accordingly, Plaintiff has no legitimate or permissible need for production of the transcript.

In contrast, however, Stephenson has a definitive privacy interest in her transcript. *See Rios*, 73 F.R.D. at 599. And Plaintiff has utterly failed to meet his burden for production, failing even to proffer a legitimate and permissible purpose for the sought after documentation. Because Ms. Stephenson's privacy interest in her transcript unequivocally outweighs the impermissible and illegitimate interest of Plaintiff in the document, this Court should bar its further disclosure.

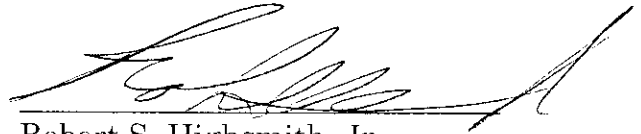
### CONCLUSION

WHEREFORE, Defendant Pamela Stephenson respectfully requests that this Court grant her Motion for Protective Order and prevent disclosure to Plaintiff of Ms. Stephenson's transcript. Plaintiff's subpoena seeks impermissibly to obtain the transcript solely for purposes of impeachment that are not relevant to the subject matter underlying the pending action and therefore not subject to production. In addition, Stephenson's privacy interest in her transcript far outweighs any purported right of Plaintiff to discovery of it.

This 4th day of November, 2008.

Respectfully submitted,

**HOLLAND & KNIGHT LLP**



Robert S. Highsmith, Jr.  
State Bar of Georgia No. 352777  
Jack L. McLean, Jr.  
State Bar of Georgia No. 496855  
Joshua I. Bosin  
State Bar of Georgia No. 143054

One Atlantic Center, Suite 2000  
1201 West Peachtree Street, NE  
Atlanta, Georgia 30309  
Telephone: (404) 817-8500  
Facsimile: (404) 881-0470

Counsel for Defendant  
Pamela Stephenson