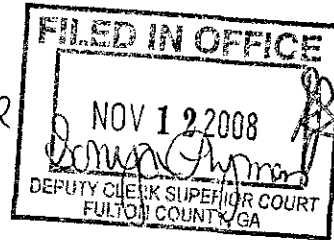


IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



OTIS L. STORY, Sr.,)
)
Plaintiff,)
)
v.)
)
PAMELA STEPHENSON, and the)
FULTON-DEKALB HOSPITAL)
AUTHORITY,)
)
Defendants.)

CIVIL ACTION FILE
NO: 2008-CV-150333

**PLAINTIFF'S RESPONSE TO DEFENDANT
STEPHENSON'S MOTION FOR PROTECTIVE ORDER
CONCERNING HER LAW SCHOOL TRANSCRIPT**

On October 24, 2008, this Court entered an order denying Defendant Stephenson's Motion to Quash Plaintiff's subpoena to Oglethorpe University wherein he requested transcripts or other documents evidencing Stephenson's dates of attendance, classes taken, and degrees received from the Woodrow Wilson College of Law. After a teleconference regarding Defendant Stephenson's Motion to Quash, the Court ordered that the documents be sent to the Court, and not the Plaintiff, for an *in camera* review. According to Defendant Stephenson, Oglethorpe University has provided the one document in its possession responsive to the order—Stephenson's transcript.

In this Motion, Defendant Stephenson reiterates exactly the same basic argument she made in her Motion to Quash to prevent the Court from releasing the transcript to Plaintiff, which is that this evidence is not relevant. The grounds for this motion have been previously rejected by the Court. Despite that rejection, Defendant Stephenson has asserted this inappropriate and redundant Motion designed to foster more delay. She, as an attorney and an officer of the Court, should possess the documents sought by the subpoena from the very outset of this dispute. This resistance has forced the Plaintiff to seek multiple court orders to gain access to documents. Defendant Stephenson's resistance to producing proof of her degree, which typically hangs on the wall of every lawyer's office, begs the question: *What is she trying to hide?*

I. Whether Defendant Stephenson Graduated from Law School is Relevant for Several Reasons.

The scope of discovery under the Civil Practice Act is that any matter may be discovered that is relevant to the subject matter involved in the pending action. O.C.G.A. § 9-11-26(b)(1). Discovery is more encompassing than just the facts that will ultimately be admitted at trial. Instead, parties are allowed to discover facts and evidence that are or may become relevant.

There can be no serious debate about whether Defendant Stephenson graduating from law school is relevant to this dispute. Of course, if she did not graduate, that information could be used for impeachment. However, there are several other reasons this information is relevant to this dispute. Defendant Stephenson acted in her capacity as an attorney on behalf of the Hospital Authority (“the Authority”) throughout the negotiation and creation of Plaintiff Story’s employment agreement. The Authority is defending the case primarily on a theory that she bungled the contract so badly the severance provision is unenforceable. Whether she actually graduated from law school would certainly impact her ability and knowledge in that process. Next, she represented herself to be a lawyer to Plaintiff who entrusted her with the primary drafting responsibilities. Moreover, it is safe to assume that Defendant Stephenson provided legal advice to the Board when it approved the decision to terminate Plaintiff and hire her, a professed “health care lawyer.” The fact Defendant Stephenson offered her own services is at the core of Plaintiff’s claim against her. If she thus fraudulently represented to Grady that her qualification was her status as a lawyer, certainly Plaintiff has a right to know if she graduated from law school. Finally, Plaintiff is seeking punitive damages from Defendant Stephenson. Whether she is a lawyer could impact a jury’s determination

as to whether she willingly and knowingly violated the terms of Plaintiff's employment agreement.

II. FERPA Does Not Apply in This Context.

Defendant Stephenson mistakenly contends that FERPA, 20 U. S.C. § 1232g, prevents the disclosure of her transcript. The statute's apparent purpose is to ensure access to educational records for students and parents and to protect the privacy of such records from the public at large. See Bauer v. Kincaid, 759 F. Supp. 575, 590-91 (W.D. Mo.1991); Student Press Law Center v. Alexander, 778 F. Supp. 1227,1228 (D.D.C. 1991). To accomplish its purpose, the statute requires written consent of the student to release the records. Id. § (b)(1). In the context of litigation, FERPA is often raised as an objection by an educational institution where the educational records of an individual, who is not a party to a lawsuit, are sought by a party. When that occurs, the statute simply commands that the educational institution provide the student, current or former, of notice of the request for documents, and then provide that person with the opportunity to object to the production. Id. Alternatively, a court can order the production of the records. The Red & Black Publishing Company v. The Board of Regents et al., 262 Ga. 848, 852 (1993). In this case, Defendant Stephenson's argument that her records should not be produced to Plaintiff is moot. Defendant already knows her records are being sought because she is a party to the

litigation. Moreover, the Court ordered the production of Defendant Stephenson's educational records, and it would be sanctionable for her to frustrate the progress of this litigation by interposing FERPA to frustrate this Court's Order.

Defendant somehow suggests that her transcript deserves protection over and above what her other educational records may be entitled. Without an official Woodrow Wilson College of Law document that establishes that Defendant earned a law degree and the date that she earned it, her transcript is the next best alternative. By viewing the transcript, Plaintiff can simply compare the credits that she earned to the criteria for graduation. Plaintiff must be afforded access to documents that can assure him that Defendant Stephenson actually graduated from law school, and the transcript—the sole document maintained by Oglethorpe University— provides that assurance.

III. Conclusion

For the foregoing reasons, Defendant Stephenson's Motion for Protective Order should be denied. Additionally, because Defendant Stephenson's Motion simply rehashes arguments already made and addressed by the Court within the last several weeks, the Court should award Plaintiff his attorneys' fees for having to respond to this Motion.

Respectfully submitted this 10th day of November, 2008.



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