

CATHY J. MORRISON and ROY	:	IN THE COURT OF COMMON PLEAS OF
WALDMAN, As parents and Natural	:	LYCOMING COUNTY, PENNSYLVANIA
Guardians of KATE LYNN MORRISON,	:	
A Minor,	:	
Plaintiffs	:	
	:	
vs.	:	NO. 02-01,009
	:	
THE WILLIAMSPORT HOSPITAL and	:	CIVIL ACTION - LAW
MEDICAL CENTER; SUSQUEHANNA	:	
HEALTH SYSTEM, INC.; TIMOTHY M.	:	
HEILMAN, M.D. and HORACIO MIGUEL:	:	
AGUEROS, M.D.,	:	MOTION TO COMPEL ADDITIONAL
Defendants	:	DISCOVERY AND DEPOSITIONS

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WALDMAN, As parents and Natural	:	LYCOMING COUNTY, PENNSYLVANIA
Guardians of KATE LYNN MORRISON,	:	
A Minor,	:	CIVIL ACTION - LAW
Plaintiffs	:	
	:	
vs.	:	NO. 03-01,091
	:	
VIOLA PEACHEY-MONAGHAN, M.D.,	:	MOTION TO COMPEL ADDITIONAL
Defendant	:	DISCOVERY AND DEPOSITIONS

***Date: May 26, 2004***

**MEMORANDUM OPINION and O R D E R**

Before the Court is Defendants' Motion to Compel Additional Discovery and Depositions filed April 30, 2004. Also pending before the Court is Plaintiffs' objection to Defendants' Notice of Issuing a Subpoena *Ducas Tacem* to obtain police records pertaining to assaultive behavior exhibited by Roy Waldman, that objection being filed on April 19, 2004. Defendants then filed a Motion to Overrule and Strike the Plaintiffs' Objection on May 12, 2004. Argument was held May 19, 2004 on both the Motion to Compel and Motion to Overrule.

Defendants assert that the purpose of the requested discovery is to properly investigate and prepare a defense to Plaintiffs' claims that Defendants negligently failed to diagnose and treat a placental abruption, which occurred on May 10, 1996 at the time of Kate Lynn Morrison's birth. The placental abruption allegedly led to severe and permanent physical and mental injuries to the child. Defendants assert that the timing and cause of the placental abruption is at issue in the case. They assert that as physical trauma is a known possible cause of placental abruption any physical abuse by Roy Waldman towards Cathy Morrison in the course of their relationship is relevant because the abuse may have occurred under such circumstances as to cause injury to Kate Lynn Morrison prior to her birth. The Motion to Compel seeks to serve additional written discovery upon and schedule second depositions of Cathy Morrison, and Roy Waldman, who have instituted this action as parents and natural guardians of Kate Lynn Morrison, and also Doris Morrison, the mother of Cathy Morrison. Defendants seek to inquire into topics including the backgrounds of the parents, all incidents of violence by, at and between them, and all incidents of alleged violent behavior by Roy Waldman. Defendants also seek the overruling of objections raised by Plaintiffs' counsel during initial depositions of these three individuals, as well as, an order that Plaintiffs' counsel is not permitted to act as counsel for Doris Morrison.

Plaintiffs acknowledge that any physical abuse by Roy Waldman towards Cathy Morrison during the time of her pregnancy would be relevant at least for discovery purposes and have no objection to permitting discovery in that regard. However, Plaintiffs assert Defendants have had sufficient discovery on this particular issue. Defendants disagree with this contention. Defendants contend that while they have asked about such instances of abuse

all three deponents deny that any such abuse occurred Defendants contend that additional exploration of abuse before and after the pregnancy is relevant, as it will lead to other information from which they would hope to be able to demonstrate that physical abuse did occur. Alternately, Defendants assert that such information is relevant as it would relate to evidence concerning the earning capacity of Kate Lynn Morrison and that such earning capacity would be limited because of the abusive situation that exists or alleged to exist between the parents following the birth of the child.

Defendants have learned of five separate criminal complaints being filed concerning Roy Waldman assaulting Cathy Morrison, specifically occurring on August 10, 1996, February 5, 1997, February 1, 1998, October 31, 1998 and October 29, 2000. Defendants assert that on two occasions, August 10, 1996 and October 29, 2000, Cathy Morrison required treatment at the emergency room for injuries she sustained because of Roy Waldman's actions. Defendants acknowledge that there is no evidence in any other hospital record indicating that Cathy Morrison ever suffered injuries inflicted by Roy Williams. However, Defendants assert police records establish that Roy Waldman has exhibited a pattern of violence toward other individuals after the birth of Kate Lynn Morrison and that they need to know the times and circumstances of these incidents of violence in order to discover the identity of witnesses to those events. They believe these witnesses may provide them information that contradicts the assertions of Roy Waldman, Cathy Morrison and Doris Morrison that no physical abuse was exhibited against Cathy Morrison or Kate Lynn Morrison by Roy Waldman during the time of Cathy Morrison's pregnancy with Kate Lynn.

The Court has reviewed the Motion, the arguments, citations of law referenced by the parties, as well as the relevant parts of the depositions previously taken of the three individuals, which were attached to Defendants' Motion to Compel Additional Discovery and Depositions. The Court will first address the Motion to Overrule. As to the Motion to compel, the Court will separately consider the discovery requests pertaining to each of the individuals.

The Court will grant the Motion to Overrule. The possibility of physical abuse during the pregnancy is relevant to the issue of causation concerning the placental abruption. Defendants are entitled to explore this area as a possible defense to Plaintiffs' claims. As will be set forth *infra*, Cathy Morrison and Roy Waldman have denied that any physical abuse occurred during the pregnancy. The police records will permit Defendants to verify this claim and if necessary be a starting point from which to conduct a further investigation to refute the claim. Accordingly, the Motion to Overrule is granted and Plaintiffs' Objection to Defendant's Notice of Issuing a Subpoena *Ducas Tacem* is overruled.

The Court will now address the Motion to Compel. First, the Court will deal with the request for additional discovery as to Doris Morrison. Defendants seek to further explore her knowledge of episodes of violence between Roy Waldman and Cathy Morrison. Specifically, Defendants claim they were prohibited in following up on a question and response relating to the fact that having been aware of an August 10, 1996 assault of Cathy Morrison by Roy Waldman she had suspected a pattern of physical abuse by Roy Waldman against Cathy Morrison. This episode of physical abuse would have occurred three months after the birth of Kate Lynn Morrison.

Defendants will not be permitted to conduct additional discovery concerning Doris Morrison's suspicion of a pattern of violence exhibited by Roy Waldman. Defendants were not precluded from inquiring into this area during the deposition of Doris Morrison. Defendants inquired into this area twice and both time Doris Morrison responded that she did not know why or could not remember why she had such a suspicion. Defendants asked the question and Doris Morrison answered it to the best of her ability. Further inquiry into this area likely would not elicit additional information on the subject. When originally asked the question, Doris Morrison could not articulate the reason for her suspicion. If Defendants were again to ask the same question, they would likely get the same response.

During her deposition, Doris Morrison testified that she was unaware of any violent history that Roy Waldman had which predated the pregnancy. She testified that Cathy Morrison never told her about any instances of physical abuse that occurred prior to the delivery of Kate Lynn. Doris Morrison also testified that Cathy Morrison's sister, who Doris believes aided Cathy in meeting Roy on the weekends while Cathy lived at home during the pregnancy, never expressed a suspicion of physical abuse to her. Doris Morrison further stated that she never witnessed Roy Waldman assault Cathy Morrison during the pregnancy. Doris Morrison testified that she only started to notice signs of abuse, in the form of black eyes, after Cathy Morrison moved out of Doris' home some time after the delivery of Kate Lynn. Based on the testimony of Doris Morrison, she would appear to have no or at best limited knowledge concerning Roy Waldman's violent history and if any of that violence was directed at Cathy Morrison prior to or during her pregnancy with Kate Lynn. Therefore, further inquiry

concerning Doris Morrison's suspicion regarding a pattern of physical abuse by Roy Waldman against Cathy Morrison shall not be permitted.

As would relate to Roy Waldman, the Court will not permit additional discovery directed at Roy Waldman regarding his violent behavior and instances of violence involving him and Cathy Morrison. Defendants made an inquiry into this area during Roy Waldman's deposition and received an answer concerning this issue. Roy Waldman testified that he did not have any physical confrontations with Cathy prior to or during her pregnancy, in which he would have struck, shoved, or pushed her. Roy Waldman's answer goes to the heart of Defendant's contention that possible physical abuse may have caused the placental abruption. Defendants can verify the veracity of Roy Waldman's answer by examining the police reports, court files, and conducting an investigation based on that information.

Defendants were able to obtain from Roy Waldman information concerning two convictions that predate 1996 – public drunkenness and underage drinking. Specifically relating to the public drunkenness conviction, Roy Waldman provided Defendants with a list of individuals who were present during the incident and stated that the incident did not involve Cathy Morrison, although she was present. The individuals whose names Roy Waldman provided to Defendants were his friends and would likely be a source of information Defendants might want to explore to discern Roy Waldman's history of violence and assuage their concerns regarding any violence directed by him at Cathy.

Defendants were not allowed to get an answer to their questions concerning any violence following the pregnancy during the period that Roy Waldman and Cathy Morrison lived together or their questions concerning Roy Waldman's drug and alcohol use. Defendants

contend that these inquiries are relevant to the loss of earning capacity claim in that the parents' backgrounds, the home and family environment, and family's station in life have a direct and material impact on the social, educational, intellectual, and professional horizons of the child. However, for information regarding violent history prior to and after the pregnancy and for any drug or alcohol use to be relevant Defendants must demonstrate a link between this and how it would impact the child's wage loss. Until this link is demonstrated the information is not relevant. Therefore, the Court the Court will not permit additional discovery directed at Roy Waldman regarding his violent behavior and instances of violence involving him and Cathy Morrison.

Finally, the Court comes to Cathy Morrison. The Court will not permit additional discovery directed at Cathy Morrison regarding Roy Waldman's violent behavior and instances of violence involving her and Roy Waldman. In this regard, the relevant information would be any physical abuse that occurred during the pregnancy that could have caused the placental abruption. On this issue, Cathy Morrison testified that at no time during the pregnancy did Roy Waldman strike her. She further testified that the first time Roy Waldman did strike her was in late 1996, after she had given birth to Kate Lynn. According to this testimony, there was no physical abuse during the pregnancy. Defendants were able to make an inquiry into this area and did obtain an answer. While Defendants may not be satisfied with this answer, they can examine the police reports and court records and conduct an investigation into the matter to determine whether there really is something to their theory.

On the issue of Roy Waldman's violent behavior as would pertain to the wage loss claim, additional discovery will not be permitted at this time. As noted earlier, Defendants

must demonstrate a link between the violent behavior and the prospective wages of Kate Lynn before this type of discovery becomes relevant and discoverable. Until that time, the Court will not permit additional discovery on this issue.

Accordingly, Defendants' Motion to Compel is denied.

**ORDER**

It is hereby ORDERED that Defendants' Motion to Overrule and Strike the Plaintiffs' Objection filed on May 12, 2004 is GRANTED.

It is hereby ORDERED that Plaintiffs' Objection to Defendants' Notice to Serve Subpoenas on the Records Custodian of Williamsport City Police, Old Lycoming Township Police Department and Jeffrey B. Miller, Commissioner State Police/Records Custodian filed April 19 is OVERRULED.

It is hereby ORDERED that Defendants' Motion to Compel Additional Discovery and Depositions filed April 30, 2004 is DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: Joseph P. Lenahan, Esquire  
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