

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANDREA J. DYER and TERI H. WOODLING, Plaintiffs	: NO. 14 - 00,516
	:
vs.	: CIVIL ACTION - LAW
	:
	:
RAY E. SHARRETTS, D.O., Defendant	: Motion to Compel

OPINION AND ORDER

Before the court is Plaintiffs’ Motion to Compel, filed November 9, 2015. Argument was heard December 10, 2015.

In the instant action, Plaintiffs allege defamation based on a letter authored by Defendant, directed to the employer of Plaintiff Dyer’s ex-husband, indicating that Mr. Dyer could return to work and stating that a mental health commitment form was falsified. In the instant motion to compel, Plaintiffs ask the court to find that Mr. Dyer waived his privilege under the Mental Health Procedures Act and enter an order which allows Defendant to “discuss the facts related to the hospitalization of David Dyer on February 23, 2012”(the mental health commitment referenced in the letter). Defendant objects on several grounds, and Mr. Dyer has petitioned to intervene in the issue and seeks a protective order.¹

The Mental Health Procedures Act provides, in relevant part, that “All documents concerning persons in treatment shall be kept confidential and, without the person’s written consent, may not be released or their contents disclosed to anyone” except listed persons or entities, not here relevant. 50 P.S. Section 7111(a). Mr. Dyer has not consented to the release of his records or their

¹ Mr. Dyer filed a Motion for Protective Order on December 3, 2015, and a Petition to Intervene on December 8, 2015. The court has granted the petition to intervene in the instant argument only.

contents. Plaintiffs argue that the exception provided for in subsection (3) applies here: “a court in the course of legal proceedings authorized by this act”. The court does not agree. The instant proceeding is not one authorized by the Mental Health Procedures Act, it is a civil lawsuit. The exception clearly does not apply.

Plaintiffs also argue that Mr. Dyer waived his privilege by providing the letter to a custody evaluator in the custody action between himself and Mrs. Dyer, relying on Octave v. Walker, 103 A.3d 1255 (Pa. 2014). Octave is inapposite: there, the plaintiff placed his mental health at issue by bringing the lawsuit, a negligence action against a driver and PennDOT, where the evidence showed that the plaintiff had thrown himself in front of the vehicle in a suicide attempt. Here, Mr. Dyer has not placed his mental health at issue in this case, he is not even a party. As far as the custody proceeding is concerned, even if his mental health was placed at issue in that matter, the fact that he provided the letter to a custody evaluator cannot support a finding that he waived the confidentiality of his mental health records. See M.M. v. L.M., 55 A.3d 1167 (Pa. Super. 2012).

In light of the court’s finding that Mr. Dyer has not waived his right to keep his mental health records confidential, the court need not address Defendant’s further contention that the information is privileged under 42 Pa.C.S. Section 5944 and HIPAA. And, as the court is satisfied that Defendant will not divulge any confidential or privileged information, no protective order will be entered at this time.²

² This ruling is without prejudice to Mr. Dyer’s right to raise the issue again should the need arise.

ORDER

AND NOW, this 11th day of December 2015, for the foregoing reasons, Plaintiffs' Motion to Compel is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Greg Stapp, Esq.
C. Edward S. Mitchell, Esq.
Melody Protasio, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson