

G. WEBER

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

KAITLYN FORSYTH,
Plaintiff

vs.

IAN HOLOBINKO,
Defendant

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NO. FC-21-20105

CUSTODY

FILED
LYCOMING COUNTY
2021 MAY 20 AM 9:29
THOMAS D. HEAP
PROTHONOTARY

OPINION AND ORDER

This matter is before the Court on Ian Holobinko's (Father) Motion for Allowance of Discovery. Kaitlyn Forsyth (Mother) opposes the motion and argument was held on May 7, 2021 at which time Brandon Schemery, Esquire appeared on behalf of Mother and Jennifer Bierly, Esquire appeared on behalf of Father. Father indicated to the Court that he wishes to obtain Mother's employment records from Wendy's as well as her medical records, specifically regarding her marijuana prescription. The basis for these requests stem from cross Petitions for Protection From Abuse Orders ("PFAs") filed by each party against the other. At the time of the hearings on the PFAs, Mother testified regarding her whereabouts on the night of the incident related the PFAs as well as her marijuana prescription and use of the drug.

At the outset, Mother argued that Father must first overcome the burden set forth in the Rules of Civil Procedure regarding discovery in domestic relations matters. Rules 1930.5 states that "[t]here shall be no discovery in a simple support, custody, Protection from Abuse, or Protection of Victims of Sexual Violence or Intimidation proceedings unless authorized by order of court." Pa.R.C.P. 1930.5(a). Mother argues that Father should not be permitted to obtain discovery in this case because it is not a "complex" case. However, there is

nothing in the Rule that says discovery cannot be sought unless the case is “complex.” Rather, the Rule simply states that discovery cannot be sought **without permission from the Court**. Additionally, the 2000 Explanatory Comment explains that the term “complex” only applies to a support proceeding. Pa.R.C.P. 1930.5 (Explanatory Comment, 2000). Further, this illustrates that “complex” only applies to support matters that leave of Court is not required to conduct discovery. It is not a burden that must be met for an Order of Court to permit discovery in a custody matter.

Father first argues that he is entitled to obtain Mother’s employment records from Wendy’s. He states that the records are relevant because, at the PFA hearings, Mother testified that, on the night in question, she had been working late into the night and then went to a friend’s house. Father expects that the records will show that Mother actually left work earlier than she admitted. However, Mother’s Counsel represented that Mother is no longer employed at Wendy’s. The Court finds that Mother’s work schedule or other records from Wendy’s is not relevant for purposes of a custody trial. This issue was already litigated at the PFA hearings. Therefore, Father’s request to obtain Mother’s employment records is denied.

Next, Father argues that he is entitled to obtain Mother’s medical records regarding her marijuana prescription. At the PFA hearings, Mother testified that she obtained a medical marijuana card from a “Dr. Brown” whom she has never met before and has only spoken with remotely. Father argues that these records are necessary in order to determine why Mother has the prescription, for what disorder the drug is intended, how much and at what frequency the prescription

is used. Mother argues that allowing Father to obtain her medical records is an invasion of privacy and irrelevant since Mother's use of the drug is prescribed and therefore medicinal in nature.

The Superior Court has held that the trial court is free to make relevant findings concerning the effect of a parent's marijuana use whether medicinal or otherwise. *H.R. v. C.P.*, 224 A.3d 729, 736–37 (Pa. Super. 2019). The Court has held that “the Medical Marijuana Act expressly reaffirms § 5328(a) as the controlling mechanism for determining a child's best interest That statutory framework explicitly requires the fact-finder to consider not only a parent's history of drug and alcohol use but also their mental health and physical conditions. Thus, rather than requiring the court to ignore Father's marijuana use, the Medical Marijuana Act obligated the trial court to contemplate Father's physical condition, *i.e.* the nerve pain he complains of in his right wrist, and his reliance upon medication to subdue that pain. By way of comparison, OxyContin®, Vicodin®, codeine, and morphine are legal substances when prescribed by a physician; however, it is beyond cavil that, prior to making a custody determination, § 5328(a)(14) and (15) mandates that a trial court consider how a parent's legal use of any of these substances impacts his or her child's best interest.” *Id.*

Based on the above case law, Mother's marijuana use, and the condition for which it treats and its impact on Mother's ability to care for the Child, are all relevant to the custody proceedings and the Court is within its rights to take that evidence into consideration when determining the best interest of the parties'

child. Therefore, Father's request to obtain Mother's medical records is granted to the extent they relate to Mother's use of marijuana.

ORDER

AND NOW, this 19th day of **May, 2021**, for the reasons set forth above, Father's Motion for Allowance of Discovery is **GRANTED** in part and **DENIED** in part. Father may obtain Mother's medical records as they relate to her use of marijuana. A copy of any records obtained by Father shall be forwarded to Mother's Counsel at Father's expense. However, Father may not obtain Mother's employment records from Wendy's, Mother's prior employer.

BY THE COURT,



Hon. Ryan M. Tira, Judge

RMT/ads

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