

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RYAN LEE MILLER,	:	NO. 20-0131
Plaintiff	:	
vs.	:	
	:	
TODD BARTLEY, individually and as agent of COLONIAL RADIO	:	
GROUP OF WILLIAMSPORT, LLC d/b/a FOX SPORTS	:	
WILLIAMSPORT, FOX SPORTS RADIO, PREMIERE	:	CIVIL ACTION
NETWORKS, INC., FOX BROADCASTING COMPANY, LLC,	:	
FOX CORPORATION and iHEARTMEDIA, INC.;	:	
COLONIAL RADIO GROUP OF WILLIAMSPORT, LLC	:	
d/b/a FOX SPORTS WILLIAMSPORT; FOX SPORTS RADIO;	:	
PREMIERE NETWORKS, INC.; FOX BROADCASTING CO., LLC.;	:	
FOX CORPORATION and iHEARTMEDIA, INC.,	:	
Defendants	:	
	:	<i>Motion to Compel</i>

ORDER

AND NOW, following argument held June 8, 2021, on the Motion to Compel Plaintiff's Discovery Responses filed by Defendants Todd Bartley and Colonial Radio Group of Williamsport, LLC, d/b/a Fox Sports Williamsport, the Court hereby issues the following ORDER.

By Complaint filed on January 24, 2020, Plaintiff Ryan Lee Miller ("Plaintiff") alleges counts of Defamation, Invasion of Privacy, and Intentional Infliction of Emotional Distress against all above-captioned Defendants. These claims relate to the publication of an article titled "*Millionaire Baseball Mayhem in Myrtle Beach*" ("*Millionaire Mayhem*")¹ and a follow-up seven-part series titled "*A Baseball Story in the Birthplace of Little League Baseball*" ("*Baseball Story*")² written by Defendant Todd Bartley and published on the Fox Sports Williamsport ("FSW") website. *Baseball Story* includes purportedly false and defamatory allegations that Plaintiff was the perpetrator of a domestic assault during a 2018 Myrtle Beach baseball tournament when, in fact, Plaintiff and an associate witnessed and reported an assault to the police.³ A copy of the reporting officer's incident report was attached to part one of *Baseball Story*, but was redacted to

¹ *Millionaire Mayhem* is attached as Exhibit. 1 to the Complaint.

² *Baseball Story* is attached as Exhibits 2-8 to the Complaint.

³ See Complaint ¶¶ 22-27.

create the false impression that Plaintiff had been arrested for the assault.⁴ *Millionaire Mayhem* and the *Baseball Story* series also included purportedly false statements that Plaintiff was involved in a conspiracy to cover-up an alleged inappropriate incident involving members of the Williamsport Area High School (“WAHS”) Boy’s Baseball Team that took place during the same tournament.⁵ The Complaint alleges that following republication on the complete *Baseball Story* series on the FSW Facebook page, damaging rumors have spread to the effect that Plaintiff is a domestic abuser and has participated in a conspiracy to cover-up misdoings.⁶

Following the close of pleadings and this Court’s issuance of a Scheduling Order setting discovery deadlines, on April 28, 2021, the Court received Defendants Todd Bartley and Colonial Radio Group of Williamsport, LLC, d/b/a Fox Sports Williamsport’s (“Moving Defendants”) Motion to Compel Plaintiff’s Discovery Responses (“Motion to Compel” or “Motion”). The Court set argument on the Motion for June 8, 2021, and directed Plaintiff to file a response. Plaintiff filed a Response to Defendants’ Motion to Compel Discovery Responses (“Response”) on May 28, 2021.

As per the facts pled in the Motion to Compel, on August 5, 2020, Moving Defendants served Interrogatories and a Request for Production of Documents upon Plaintiff.⁷ Plaintiff served his responses to the Interrogatories on September 29, 2020.⁸ Plaintiff served his responses to the Request for Production of Documents on October 14, 2020.⁹

Moving Defendants’ Interrogatory No. 36 requested Plaintiff state whether he had received any treatment since the alleged defamatory communication for mental or emotional disturbance. Plaintiff provided in response that he had undergone professional counseling and therapy.¹⁰ On January 7, 2021, the office of Moving Defendants’ counsel, Julian F. Truskowski, Esquire, sent the office of Plaintiff’s counsel,

⁴ See Complaint ¶¶ 28-37. The original police report is attached as Exhibit 9 to the Complaint. The redacted version is attached as Exhibit 10.

⁵ See Complaint ¶¶ 38-46.

⁶ See Complaint ¶¶ 47-48.

⁷ A copy of Moving Defendants’ discovery requests are attached at Exhibit A to the Motion to Compel.

⁸ Plaintiff’s Responses to Interrogatories are attached as Exhibit B to the Motion to Compel.

⁹ Plaintiff’s Responses to Requests for Production of Documents are attached as Exhibit C to the Motion to Compel.

¹⁰ Motion to Compel Plaintiff’s Discovery Responses ¶¶ 7-8 (April 28, 2020).

Allen P. Page IV, Esquire, correspondence requesting Plaintiff sign an authorization for Moving Defendants to access the medical records of Timothy Bryant, M.D.¹¹ Having received no response, on February 8, 2021, Attorney Truskowski's office sent follow-up correspondence seeking Plaintiff's signature on the authorization.¹² Moving Defendants claim that to date, they have not received a response to either of these requests.¹³ Within his Response, Plaintiff denies that his counsel failed to respond to these requests. Rather, Plaintiff explains that Attorney Page communicated to opposing counsel that because the foregoing action is premised on an invasion of privacy and defamation, Plaintiff would be unwilling to release medical records until the parties had agreed upon the terms of a Stipulated Confidentiality Agreement and executed the same.¹⁴

In response to Moving Defendants' Interrogatory No. 16, asking Plaintiff to identify the sources of his electronically stored information, Plaintiff had responded that he possesses a smartphone, which he uses for e-mail, text messaging, social media, and telephone communication.¹⁵ Attorney Truskowski's office sent Attorney Page's office correspondence on February 11, 2021, requesting Plaintiff's cell phone carrier's name and address, the full name of the account, and Plaintiff's cell number, so that Moving Defendants could subpoena the carrier.¹⁶ On March 18, 2021, Attorney Page responded by way of correspondence that Moving Defendants should request the cell phone records "by serving a formal request for discovery" and further provided that "the information sought is not relevant to this matter," indicating that Plaintiff would also object to a formal discovery request for the same information.¹⁷

In addition to seeking complete responses to their requests for medical records and cell phone carrier information, Moving Defendants also seek full responses to Interrogatories Nos. 28, 29, 30, 38, 41, 42, and 43, which Plaintiff objected to on the

¹¹ The January 7, 2021 correspondence is attached as Exhibit D to the Motion to Compel.

¹² The February 8, 2021 correspondence is attached as Exhibit E to the Motion to Compel.

¹³ Motion to Compel Plaintiff's Discovery Responses ¶ 11.

¹⁴ See Plaintiff's Response to Defendants' Motion to Compel Discovery Responses ¶ 11 (May 28, 2021).

¹⁵ Motion to Compel Plaintiff's Discovery Responses ¶¶ 5-6.

¹⁶ The February 11, 2021 correspondence is attached as Exhibit F to the Motion to Compel.

¹⁷ The March 18, 2021 correspondence is attached as Exhibit G to the Motion to Compel.

basis that these are contention interrogatories.¹⁸ Plaintiff provides in his Response that, without waiving objections raised, he did in fact respond to these Interrogatories.¹⁹

The Court first considers Moving Defendants' request for Plaintiff's cell phone carrier information. Moving Defendants have not attached a proposed subpoena limiting the scope for the request. They apparently seek unqualified access to information regarding all incoming and outgoing calls made to and from Plaintiff's cell phone, including the telephone numbers of those persons Plaintiff has called, and who have called Plaintiff, the duration of those calls, and potentially cell-tower location data for each call. The Court holds that Moving Defendants' discovery request, which would allow them to obtain Plaintiff's complete cell phone records, is beyond the scope of permissible discovery and would constitute an invasion of not only Plaintiff's privacy, but of third parties having no connection to this litigation. Attorney Page explained at argument that through the course of discovery Plaintiff has already provided text messages and email communications between Plaintiff and Defendant Todd Bartley. Plaintiff has also provided communications made during his time as coach of the WAHS Boy's Baseball Team. The Court finds that Plaintiff has made good faith efforts to provide all relevant electronic communications. To the extent Moving Defendants feel it necessary to supplement the discovery already provided, they must serve formal interrogatories or a document request upon Plaintiff, and the discovery sought must be of a limited scope tailored to the facts of this case.

The Court also finds that Plaintiff's refusal to provide medical information pending the execution of a Stipulated Confidentiality Agreement reasonable in the context of this case, which involves an alleged invasion of privacy. This is especially true in light of Attorney Page's representation at argument that in previous instances, Defendants have improperly disclosed private information revealed in discovery. Attorney Truskowski could not articulate at argument any reason why his clients would be prejudiced in signing a confidentiality agreement.

Finally, the Court considers whether Plaintiff has sufficiently answered Moving Defendants' Interrogatories. Interrogatory No. 28 is as follows:

¹⁸ Motion to Compel Plaintiff's Discovery Responses ¶ 17.

¹⁹ Plaintiff's Response to Defendants' Motion to Compel Discovery Responses ¶ 17.

28. Describe in detail the facts supporting the alleged liability of Defendants, indicating as to each alleged defamatory communication:
- a) its date, time, location, mode of publication, description, language, and wording;
 - b) the names, addresses, and roles or functions of all persons, firms, corporation and associations involved in any way;
 - c) any facts extrinsic to such communications that, accompanied by such communication, would create or enhance any defamatory meaning or reference to the Plaintiff;
 - d) the identities or descriptions of any groups or persons that do or might have knowledge of such extrinsic facts;
 - e) the identities or descriptions of any groups or persons that the Plaintiff contends have become aware of the alleged defamatory communication, indicating whether this awareness arises from the original publication or from its republication by anyone;
 - f) what role the defendant or any agent or employee of the defendant had in making, publishing, authorizing, or participating in the making or publishing of such communication;
 - g) whether the Plaintiff alleges such communication to have been libel or slander;
 - h) reasons the Plaintiff claims that the alleged communication was defamatory, describing the groups which allegedly had their opinions of you affected by the alleged communication, the manner in which such opinions were affected, and the manner in which such groups learned of such communication; and
 - i) all facts, contentions and opinions which support the contention that an average or normal person becoming aware of such communication would realize that the Plaintiff was the subject identified, described, or referred or alluded to in the communication.

Plaintiff provided in response to Interrogatory No. 28:

Plaintiff objects to this Interrogatory on the basis that it is a contention interrogatory, it is vexatious, unduly burdensome, and beyond the scope of permissible discovery. The legitimate purpose of contention interrogatories is the narrow the issues for trial, not to force the plaintiff to marshal all of his evidence on paper. See, Saint Luke's Hospital of Bethlehem v. Vivian, 2013 Pa. Dist. & Cnty. Dec. LEXIS 55 (C.C.P. Lehigh Cnty. 2013). Moreover, contention interrogatories this early in litigation are disfavored, especially when the Complaint is not facially inform and

the Defendants have control over much of the evidence of their misconduct. *Id.* By way of further response, Plaintiff directs the Defendants to the allegations contained in the Complaint.

Contention interrogatories are those interrogatories seeking the summation of the facts supporting the contentions within a Complaint. As noted in the Explanatory Comment to Pennsylvania Rules of Civil Procedures 4003.1 and 4005, adopting Civil Discovery Standard No. 8 of the Civil Bar Association, “[c]ontention interrogatories, like all forms of discovery, can be susceptible to abuse.”²⁰ Contention interrogatories may be used to “tie up the opposing party rather than to obtain discovery. The legitimate purpose of contention interrogatories is to narrow the issues for trial, not to force the opposing side to marshal all its evidence on paper. . . . [C]ontention interrogatories ordinarily are more appropriate after the bulk of discovery has already taken place.”²¹ “A party filing contention interrogatories early in the pretrial period, before substantial documentary or testimonial discovery has been completed, has the burden of justification.”²²

The Court sustains Plaintiff’s objection to Interrogatory No. 28 as an improper use of contention interrogatories. Moving Defendants’ Interrogatory No. 28 is overbroad and in several instances seeks Plaintiff to reiterate or expand upon information clearly pled in the Complaint. The Complaint is specific, for example, as to what information in the identified articles is purportedly defamatory, clearly names all parties alleged to have been potentially liable for such communications, and is clear that the defamatory statements were written, so constituting libel. Further, certain of the information sought, such as the time, date, and publication method of the purportedly defamatory statements, are as much, if not more, within the knowledge of the Moving Defendants as the Plaintiff. Moreover, Moving Defendants’ Interrogatory No. 28 seeks information that could be better identified through depositions or document exchange.

Were Interrogatory No. 28 more narrowly drafted, the Court might reasonably expect Plaintiff to cite to the relevant sections within the Complaint. However, given the extensive scope of the information requested, the Court is satisfied that Plaintiff’s

²⁰ Pa.R.C.P. 4003.1, Explanatory Comment (2008); Pa.R.C.P. 4005, Explanatory Comment (2008).

²¹ *Id.*

²² Saint Luke's Hospital of Bethlehem v. Vivian, No. 2011-C-1182, 2013 WL 1364022 (Lehigh Cty. Feb. 27, 2013).

citation to the Complaint generally was appropriate. This determination applies not only to Plaintiff's response to Interrogatory No. 28, but as to Plaintiff's identical responses to Interrogatories Nos. 29²³ and 30,²⁴ which present analogous issues.

In regard to Plaintiff's Interrogatories Nos. 38, 41, 42, and 43, the Court is satisfied that Plaintiff has provided sufficient answer to the inquiries while preserving their objection. For example, Interrogatory No. 38 asks:

38. Describe in detail Plaintiff's reputation before the alleged defamation compared to Plaintiffs [sic] reputation afterward, indicating all facts, contentions and opinions that reflect in any way upon Plaintiffs [sic] reputation before and after the alleged defamation.

While raising the same objection as to this being an improper contention interrogatory as that asserted against Interrogatories Nos. 28-30, Plaintiff adds:

By way of further response, Plaintiff's professional and personal reputation in the community was unblemished. After the publication of the defamatory statements by Defendants, Plaintiff was subjected to a false and defamatory narrative that Plaintiff was a drunken criminal who abused women.

The Court is satisfied that this is an adequate response to the question raised. Similarly, in response to Interrogatory No. 41, asking the basis for the Complaint's claims that redactions in the Myrtle Beach Police Report linked to Part I of *Baseball Story* were not made by the Myrtle Beach Police Department, Plaintiff responds that

²³ Interrogatory No. 29 provides:

29. With respect to each allegedly defamatory communication, please state whether the Plaintiff claims that the Defendants intended:

- a) to make a statement by words or conduct, and set forth that statement;
- b) that such communication be understood to refer to the Plaintiff;
- c) that such communication convey a defamatory meaning;
- d) that such communication be untruthful; and
- e) that such communication damage Plaintiff's reputation.

²⁴ Interrogatory No. 30 provides:

29. With respect to each allegedly defamatory publications in the "Millionaire Mayhem" article and the "Baseball Story" follow-up articles:

- a) if any part of such communication was truthful, set forth such truthful part;
- b) if the Plaintiff claims that any part of such communication was untrue, set forth such allegedly untrue part and state the reasons for this contention that it was untrue;
- c) if the Plaintiff is uncertain about the truth of any part of such communication, please set forth such possibly truthful part and state the reasons for this uncertainty about its truthfulness; and
- d) state all actual and possible sources for the information in such communication to the best of your knowledge and belief.

Plaintiff's counsel was personally informed by the Police Department that they did not make the subject redactions. In response to Interrogatory No. 42, asking the basis for the Complaint's claims that the redactions were intentionally made by Defendant Todd Bartley, Plaintiff provides that Defendant Bartley admitted to redacting the information in response to Plaintiff's Request for Admission. As to Interrogatory No. 43, asking the basis for the Complaint's claims that Defendant Bartley was aware that Plaintiff had no knowledge of the alleged inappropriate incident involving members of the WAHS Boy's Baseball Team, Plaintiff directs generally to the Complaint. As this is a specific inquiry of limited scope, it would have been better practice for Plaintiff to cite to the specific paragraphs addressing this issue.²⁵ However, to the extent that the "Facts" section of the Complaint is brief, consisting of some four-and-a-half pages, Moving Defendants could have easily identified this information for themselves.

Pursuant to the foregoing, Moving Defendants' Motion to Compel is DENIED.

IT IS SO ORDERED this 13th day of July 2021.

BY THE COURT,

Eric R. Linhardt, Judge

ERL/cp

cc: Thomas Marshall, Esq. / Allan Page, Esq.
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²⁵ The factual allegations supporting Plaintiff's claim that Defendant Bartley was aware that Plaintiff had no knowledge of the alleged incident are provided in paragraphs 43-46 of the Complaint.