

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
(Ocala Division)
CASE NO: 5:12-cv-635-OC-WTH-PCL

VINCENT SALVATO, as Personal Representative of
the Estate of JOSHUA SALVATO, for the benefit of
Vincent Salvato, surviving parent, Ana Rodriguez,
surviving parent, and the Estate of JOSHUA
SALVATO,

Plaintiff,

v.

CHRIS BLAIR, in his official capacity as Sheriff of
Marion County, Florida; Deputy LAUREN MILEY, in
her individual capacity; and Deputy NORMAN
BROWN, in his individual capacity,

Defendants.

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT NORMAN BROWN'S ANSWERS
TO PLAINTIFF'S INITIAL SET OF INTERROGATORIES AND
PRODUCTION IN RESPONSE TO PLAINTIFF'S INITIAL
REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff Vincent Salvato hereby moves the Court, pursuant to Federal Rule of Civil Procedure 37(a), for an order compelling Defendant Norman Brown's Answers to Plaintiff's First Set of Interrogatories and Defendant Norman Brown's Production in response to Plaintiff's First Requests for Production of Documents. In support of this motion, Plaintiff states as follows:

1. On February 4, 2013, Plaintiff served Defendant Norman Brown with his first set of interrogatories, a copy of which is attached as Exhibit A.

2. On March 6, 2013, Defendant Norman Brown served his answers, a copy of which is attached as Exhibit B. Defendant Brown raised objections to five of Plaintiff's interrogatories. Each objection should be overruled by the Court, as demonstrated below.

3. In Interrogatory 11, Plaintiff asked Defendant Norman Brown:

Please identify every personal e-mail address that you have had at any time from July 5, 2012 – February 1, 2013. For each account, please provide the e-mail address, the service provider, the dates of the account, and/or whether the account is still active.

Response: Defendant Brown objects to Interrogatory number eleven (11) and as grounds would state that said Interrogatory seeks confidential information protected by Florida Statute § 119.071(4). Further, this Interrogatory seeks irrelevant and immaterial information that is not reasonably calculated to lead to admissible information and constitutes a fishing expedition. In addition, this Interrogatory is overbroad with respect to time and scope and the effect of this Interrogatory is annoyance, embarrassment, and oppression. This Interrogatory also invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution.

4. In Interrogatory 12, Plaintiff asked Defendant Norman Brown:

Please identify whether you had any social media accounts and/or profiles, including, but not limited to, Facebook, Twitter, MySpace, you have had at any time from July 5, 2012 – February 1, 2013. For each account, please provide the name and/or username associated with the profile and/or social media account, the type of social media account (e.g. – Facebook, Twitter, etc.), the e-mail address associated with the social media account, the dates you've maintained the account, and/or whether the account is still active.

Response: Defendant Brown objects to Interrogatory number twelve (12) and as grounds would state that said Interrogatory seeks confidential information protected by Florida Statute § 119.071(4). Further, this Interrogatory seeks irrelevant and immaterial information that is not reasonably calculated to lead to admissible information and constitutes a fishing expedition. In addition, this Interrogatory is overbroad with respect to time and scope and the effect of this Interrogatory is annoyance, embarrassment, and oppression. This Interrogatory also invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution.

5. The Defendant has agreed to identify the social media accounts he maintained at the time of the incident, but has refused to identify the e-mail addresses associated with those accounts.

6. In Interrogatory 13, Plaintiff asked Defendant Norman Brown:

Please identify whether you are a member of any list-serves and/or message boards, and/or websites. For each membership, please provide the name and/or username associated with the account, the URL and/or name of the list-serve and/or message board and/or website, the e-mail address associated with the account, the dates you've maintained the account, and whether that account is still active.

Response: Defendant Brown objects to Interrogatory number thirteen (13) and as grounds would state that said Interrogatory seeks confidential information protected by Florida Statute § 119.071(4). Further, this Interrogatory seeks irrelevant and immaterial information that is not reasonably calculated to lead to admissible information and constitutes a fishing expedition. In addition, this Interrogatory is overbroad with respect to time and scope and the effect of this Interrogatory is annoyance, embarrassment, and oppression. This Interrogatory also invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution.

7. On February 4, 2013, Plaintiff served Defendant Norman Brown with his initial request for production, a copy of which is attached as Exhibit C.

8. On March 6, 2013, Defendant Norman Brown served his response, a copy of which is attached as Exhibit D, in which he improperly objected to all four of Plaintiff's requests.

9. In Request No. 1, Plaintiff requested:

Please produce a copy of your personal cell phone(s) records, including any and all text-messages that were sent from July 5, 2012 – February 1, 2013, that relate in any way to the incident that is described in the Second Amended Complaint. Please exclude any text-messages that were sent and/or received exclusively between yourself and your attorney.

Response: Defendant objects to Request Number One (1), and as grounds would state that said Request seeks confidential information protected by Florida Statute § 119.071(4). The Request seeks irrelevant and immaterial information, constitutes a fishing expedition, and does not meet the threshold showing that the

requested information is reasonably calculated to lead to the discovery of admissible evidence. This Request is overbroad with respect to time and scope and the effect of this Request is annoyance, embarrassment, and oppression. Further, the Request invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution and the U.S. Constitution as it seeks confidential, private information and communications.

10. In Request No. 2, Plaintiff requested:

Please produce a copy of any and all e-mails sent and/or received by your personal e-mail address(es) between July 5, 2012 – February 1, 2013, that relate in any way to the incident that is described in the Second Amended Complaint. Please exclude any e-mails that were sent and/or received exclusively between yourself and your attorney.

Response: Defendant objects to Request Number Two (2), and as grounds would state that said Request seeks confidential information protected by Florida Statute § 119.071(4). The Request seeks irrelevant and immaterial information, constitutes a fishing expedition, and does not meet the threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence. This Request is overbroad with respect to time and scope and this Request is harassing in nature and constitutes a fishing expedition. Further, the Request invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution and the U.S. Constitution as it seeks confidential, private information and communications. Lastly, this Request invades a non-party's right to privacy under Article I, Section 23 of the Florida Constitution and the U.S. Constitution.

11. In Request No. 3, Plaintiff requested:

Please produce a copy of any and all electronic communication either sent or received by you through social networking sites, including, but not limited to, Facebook, Twitter, and/or MySpace, between July 5, 2012 – February 1, 2013, that relate in any way to the incident that is described in the Second Amended Complaint. Please exclude any electronic communication that were sent and/or received exclusively between yourself and your attorney.

Response: Defendant objects to Request Number Three (3), and as grounds would state that said Request seeks confidential information protected by Florida Statute § 119.071(4). The Request seeks irrelevant and immaterial information, constitutes a fishing expedition, and does not meet the threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence. This Request is overbroad with respect to time and scope and this Request is harassing in nature and constitutes a fishing expedition. Further, the Request invades the Defendant's right to privacy under Article I,

Section 23 of the Florida Constitution and the U.S. Constitution as it seeks confidential, private information and communications. Lastly, this Request invades a non-party's right to privacy under Article I, Section 23 of the Florida Constitution and the U.S. Constitution.

12. In Request No. 4, Plaintiff requested:

Please produce a copy of any and all comments that were made by you on any website, news article, message board, social networking website, that relate in any way to the incident that is described in the Second Amended Complaint.

Response: Defendant objects to Request Number Four (4), and as grounds would state that said Request seeks confidential information protected by Florida Statute § 119.071(4). The Request seeks irrelevant and immaterial information, constitutes a fishing expedition, and does not meet the threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence. This Request is overbroad with respect to time and scope and this Request is harassing in nature and constitutes a fishing expedition. Further, the Request invades the Defendant's right to privacy under Article I, Section 23 of the Florida Constitution and the U.S. Constitution as it seeks confidential, private information and communications.

13. Each of Defendant's objections is based on claims that Plaintiff's interrogatories and requests for production seek information that is irrelevant and immaterial; overly broad; or confidential pursuant to section 119.071(4), Florida Statutes, Article I, Section 23 of the Florida Constitution, or the United States Constitution. Each of these objections is debunked below.

14. In accordance with Local Rule 3.01, Plaintiff's counsel certifies that he has conferred with counsel for Defendant Norman Brown in a good faith effort to resolve this discovery dispute by agreement but has been unable to do so.

ARGUMENT AND MEMORANDUM OF LAW

“Generally, the purpose of discovery is to remove surprise from trial preparation so the parties can obtain evidence necessary to evaluate and resolve their dispute.” U.S. ex rel.

Schwartz v. TRW, Inc., 211 F.R.D. 388, 392 (C.D. Cal. 2002) (citing Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D. Cal. 1998)). Defendant Norman Brown is thwarting this purpose by failing to answer five of Plaintiff's initial interrogatories and all of Plaintiff's requests for production. Norman Brown's objections to Plaintiff's interrogatories and requests for production are improper and should be overruled.

1. Relevance and Materiality Objections

Pursuant to Federal Rule of Civil Procedure 26(b), the scope of discovery includes "any matter, not privileged, that is relevant to the claim or defense of any party. . . ." "The Courts have long held that relevance for discovery purposes is much broader than relevance for trial purposes." Dunkin' Donuts, Inc. v. Mary's Donuts, Inc., 2001 WL 34079319, *2 (S.D. Fla. 2001) (citing Cohn v. Taco Bell Corp., 147 F.R.D. 154, 156 (N.D. Ill. 1993)). Therefore, "[d]iscovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought has no possible bearing on the subject matter of the action." Id. (citing Gagne v. Reddy, 104 F.R.D. 454, 456 (D. Mass. 1984); Miller v. Doctor's General Hospital, 76 F.R.D. 136, 138 (W.D. Okla. 1977)). "[T]he burden of showing that the requested discovery is not relevant to the issues in the case is on the party resisting discovery." Id. (citing Flora v. Hamilton, 81 F.R.D. 576, 578 (M.D. N.C. 1978)).

Defendant Brown's mere statement that Plaintiff's interrogatories and requests seek information that is irrelevant is not sufficient to preserve an objection to the requested discovery. *See* FRCP 33(b)(4) ("The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."); Josephs v. Harris Corp., 677 F.2d 985, 992 (3d Cir. Pa. 1982) ("[T]he mere statement by a party that the interrogatory was 'overly broad, burdensome,

oppressive and irrelevant’ is not adequate to voice a successful objection to an interrogatory. On the contrary, the party resisting discovery ‘must show specifically how ... each interrogatory is not relevant or how each question is overly broad, burdensome or oppressive.’”) (internal quotation omitted); FRCP 34(b)(2)(B) (“For each item or category, the response [to a request for production] must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.”); Obiajulu v. City of Rochester, Dep’t of Law, 166 F.R.D. 293, 295 (W.D.N.Y. 1996) (“An objection to a document request must clearly set forth the specifics of the objection and how that objection relates to the documents being demanded.”); Middle District Discovery (2001) at §III(A)(6) (“Objections to requests for production should be specific, not generalized”); Middle District Discovery (2001) at § IV(A)(4) (“All grounds for an objection must be stated with specificity.”).

Without even reviewing the substance of Plaintiff’s interrogatories and requests for production, the Court must overrule Defendant Brown’s objections as he failed to set forth his objections with the level of specificity required by the Federal Rules of Civil Procedure. Furthermore, Defendant Brown’s objections fail on the merits because Plaintiff’s interrogatories and requests for production seek information that has a “possible bearing” on this action. Plaintiff is seeking information about statements that Defendant Brown made about the incident at issue in this case, which could include admissions against interest, and could certainly lead to the discovery of admissible evidence. The Court must, therefore, overrule Defendant Norman Brown’s relevance objections.

2. Objections Claiming Requested Discovery is Overly Broad and Annoying, Embarrassing, and Oppressing

The party resisting discovery on the basis that the request is unduly burdensome has the responsibility of establishing the undue burden. Border Collie Rescue, Inc. v. Ryan, 2005 WL 662724, * 2 (M.D. Fla. 2005) (citing Coker v. Duke & Co., 177 F.R.D. 682, 686 (M.D. Ala. 1998)). “Parties ‘cannot invoke the defense of oppressiveness or unfair burden without detailing the nature and extent thereof. Simply decrying the expense to plaintiff will not satisfy this obligation.’” Id. (quoting Porter v. Nationscredit Consumer Disc. Co., 2004 WL 1753255, *1 (E.D. Pa. 2004)). Therefore, a party who objects to discovery on the ground of undue burden must support that claim with evidence, such as detailed affidavits, and demonstrate that the burden is unreasonable in light of the benefits that will result from the discovery. Id. (citations omitted). Furthermore, the Middle District Discovery Rules provide that “[i]f any interrogatory is objectionable because of overbreadth, the responding party, although objecting, must answer the interrogatory to the extent that the interrogatory is not overbroad. In other words, an objection for overbreadth does not relieve the duty to respond to an extent that is not overbroad, while a party awaits a judicial determination.” Middle District Discovery (2001) at § IV(A)(12).

As Defendant Norman Brown has failed to present any evidence that answering Plaintiff’s initial interrogatories or requests for production will result in an undue burden, the Court must overrule his objections made on the grounds that the requested discovery is overly broad, and annoying, embarrassing, and harassing.

3. §119.071(4), Florida Statutes—Confidential Information

“Florida’s Public Records Act in chapter 119 is intended to provide open access to government.” Marino v. Univ. of Fla., 2013 Fla. App. LEXIS 2993, 3-4 (Fla. 1st DCA Feb. 26, 2013). “[A]ll documents falling within the scope of the Act are subject to public disclosure unless specifically exempted by an act of our legislature.” Id. (quoting News-Press Publishing Co., Inc. v. Gadd, 388 So. 2d 276, 278 (Fla. 2d DCA 1980)). “The Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be construed narrowly and limited to their stated purpose.” Id. (citing Tribune Co. v. Public Records, 493 So. 2d 480, 483 (Fla. 2d DCA 1986)). “Absent a statutory exemption, a court is not free to consider public policy questions regarding the relative significance of the public’s interest in disclosure and the damage to an individual or institution resulting from such disclosure.” Id. (quoting Gadd, 388 So. 2d at 278).

The statute cited by Defendant Brown in his objections to discovery, section 119.071(4), exempts certain information from the public disclosure requirements of chapter 119. The only portion of that section even arguably applicable here is section 119.071(4)(d)(2)(a) (emphasis added), which reads:

The home addresses, telephone numbers, social security numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1).

This statute excludes from Florida's public records law the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of civilian law enforcement personnel, as well as certain information about their families. On its face, the statute does not even arguably apply to most of Plaintiff's interrogatories and requests for production: personal email address and emails (Rog #11; Request #2); social media accounts and communications made thereon (Rog # 12; Request #3); list-servs, websites, and message boards (Rog #13); and comments on internet news articles and blogs (Request #4). Thus, Defendant Brown's objections to providing the requested discovery to these items on the basis of section 119.071 is absolutely unfounded.

The only items requested by Plaintiff that section 119.071 even arguably applies to is Plaintiff's request for Defendant Brown's personal cell phone records (Request #1).¹ But "section 119.071(4)(d), Florida Statutes, only provides an exemption from the provisions of section 119.07(1), Florida Statutes, providing that '[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.'" Op. Att'y Gen. Fla. 2010-37, 9 (Sept. 2, 2010). "The exemption is from the disclosure requirements of the state's Public Records Law, but does not mandate the confidentiality of such records." *Id.* Thus, the exemption applies when a person is seeking protected information about a law enforcement officer from a state agency, but it does not apply when the information is sought directly from the officer in litigation. See Delaurentos v. Peguero, 47 So. 3d 879, 881 (Fla. 3d DCA 2010) (section 119.071(4)(b)1 "simply provides an exemption in the event that a citizen makes a public records request for medical records. That

¹ Defendant Brown has agreed to identify his personal cell phone number and provider.

statutory provision does not create a privilege which would insulate such records from discovery in litigation.”). This makes sense because the purpose of 119.071(4) is “to protect current and former law enforcement personnel.” *Id.* at 11. Defendant Brown will not be endangered by providing Plaintiff with his personal cell phone number and cell phone records, and Plaintiff will certainly agree not to disclose this information outside of this litigation if Defendant Brown has a concern for his safety. But Plaintiff is entitled to the discovery.

4. Article I, Section 23 of the Florida Constitution and the U.S. Constitution, Right to Privacy.

Defendant Brown raises both his right and the right of a non-party to privacy under Article I, section 23 of the Florida Constitution, as well as the right to privacy under the United States Constitution in objection to each of the above interrogatories and requests for production. These objections are not well-founded. First, Defendant Brown makes no attempt to explain why allowing the requested discovery would be unconstitutional, thereby failing to preserve his objections. *See, e.g.,* Middle District Discovery (2001) at §III(A)(6) (“Objections to requests for production should be specific, not generalized”); Middle District Discovery (2001) at § IV(A)(4) (“All grounds for an objection [to interrogatories] must be stated with specificity.”). Additionally, the plain language of Article I, Section 23 of the Florida Constitution does not limit the availability to discovery in litigation. That section states in pertinent part, “Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.” Florida courts have relied on this constitutional provision to limit discovery, but only when dealing with confidential information, like one’s personal finances, that was not shown to be reasonably calculated to lead to the discovery of admissible evidence. *See Rappaport v. Mercantile Bank*, 17 So.3d 902, 906 (Fla. 2d DCA 2009).

Plaintiff's discovery requests do not seek such confidential information, see, e.g., Davenport v. State Farm Mut. Auto. Ins. Co., 2012 U.S. Dist. LEXIS 20944, 3 (M.D. Fla. Feb. 21, 2012) (social networking site "content is neither privileged nor protected by any right of privacy"), and his requests are reasonably calculated to lead to the discovery of admissible evidence because they are narrowly tailored in scope and time in an attempt to discover communications Defendant Brown had about the incident that is the subject of this lawsuit.

Furthermore, Defendant's concern regarding the privacy rights of non-parties is unwarranted. Plaintiff's requests are directed only at Defendant Brown's communications related to the incident at issue in this case. The non-party to whom this information was communicated is irrelevant and Plaintiff agrees that Defendant Brown can redact any identifying information of that non-party.

Additionally, because the constitutional right to privacy in Florida does not prohibit the discovery requested by Plaintiff, such discovery cannot be protected by the right to privacy under the United States Constitution. This is so because "Article I, section 23 of the Florida Constitution specifically provides a constitutional right of privacy broader in scope than the protection provided in the United States Constitution." Berkeley v. Eisen, 699 So. 2d 789, 790 (Fla. 4th DCA 1997) (citing Rasmussen v. South Florida Blood Serv., Inc., 500 So. 2d 533, 536 (Fla. 1987); Winfield v. Division of Pari-Mutuel Wagering, Dep't of Bus. Regulation, 477 So. 2d 544, 548 (Fla. 1985)).

CONCLUSION

WHEREFORE, Plaintiff Vincent Salvato, as Personal Representative of the Estate of Joshua Salvato, deceased, for the benefit of his Estate and his statutory survivors, hereby requests that the Court overrule the above objections raised by Defendant Norman Brown and compel him to fully answer Plaintiff's first set of interrogatories and produce the documents requested in Plaintiff's first requests for production of documents.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by email,

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