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STATE COURT OF
BIBB COUNTY GEORGIA

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IN THE STATE COURT OF BIBB COUNTY
STATE OF GEORGIA

LAVERNE JOHNSON,

Plaintiff,

vs.

MARCUS DICKERSON, JR.,

Defendant.

CIVIL ACTION NO. 78124

ORDER

Plaintiff filed a Motion to Compel Discovery Responses on July 19, 2013, and the Court heard argument regarding this Motion on September 6, 2013. After careful review and consideration of the Court's file, the arguments of counsel, and pertinent legal authority, the Court finds and rules as follows.

Many issues raised in the Motion were resolved by the parties, before the hearing, and the attorneys are commended for working together in that regard. The remaining issues are: (1) discovery relating to an ISO Claims Database Report; (2) discovery relating to surveillance photographs taken of the Plaintiff after commencement of litigation; and (3) attorney's fees and expenses incurred in bringing or defending Plaintiff's Motion.

Discovery is intended to enable the parties to obtain a full and mutual understanding of the facts and issues to be tried and to reduce the element of surprise by preventing parties from hiding factual information relating to the issues to be tried. Despite these broad purposes, O.C.G.A. § 9-11-26(b)(3) protects some types of information from discovery, and the Defendant asserts that the items remaining to be decided under Plaintiff's Motion fall within this protection.

Plaintiff has made a general assertion that Defendant waived his rights to make any objections to Plaintiff's Interrogatories because Plaintiff's interrogatory answers were not verified in a timely matter. Pursuant to O.C.G.A. § 9-11-33(a)(2), objections to interrogatories do not have to be made under oath. Rather, the objections simply must be "signed by the attorney making them." Therefore, the failure to file a timely verification did not waive the objections that were asserted in a timely manner and signed by the attorney making them.

In determining whether O.C.G.A. § 9-11-26(b)(3)'s "trial preparation" exclusion is applicable, the Court applies a two-prong test. In the first prong, the Court must answer two questions:

1. Were the documents at issue "prepared in anticipation of litigation or for trial"?
2. If so, were they prepared "by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer or agent)"?

The Court finds that the documents at issue were prepared in anticipation of litigation and that they were prepared by or for the Defendant, including his attorney or insurer.

Based on these findings, the documents at issue are protected from discovery, unless made discoverable by the Court's application of the second prong. The second prong also requires the Court to answer two questions:

1. Does the party seeking the discovery have "substantial need of the materials in the preparation of [her] case"?
2. If so, is she "unable without undue hardship to obtain the substantial equivalent of the materials by other means"?

Based on the representations made by the Defendant in his Brief and at the hearing, the Court finds that the Plaintiff does not have a substantial need of the

materials for the preparation of her case; therefore, the documents at issue are not discoverable.

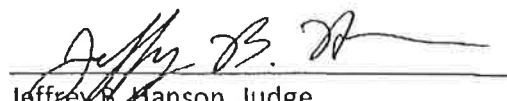
The reason that the Plaintiff does not have a substantial need of these documents to prepare her case is that the Defendant has indicated that he has no intent to make use of these documents in the trial of this case. If, however, the Defendant wants to use these documents, or the information contained in them, at trial (even if only for impeachment) the Court finds that the Plaintiff would have a substantial need for the documents to prepare her case.

In that event, the Court would find that the Plaintiff cannot obtain the substantial equivalent of the report or the photos by other means. While the Plaintiff should know her life history of events that could have generated insurance claims and should know what activities she has performed that could have been photographed, she does not know the information or images the Defendant might try to use as a surprise at trial. Consistent with the purposes of discovery, if the Defendant wants to use these documents or the information contained in them for any purpose at trial, Defendant must produce the documents to the Plaintiff at least ten (10) days before trial.

With regard to an award of expenses, the Court finds that the opposition to the Motion was substantially justified and that the making of the Motion was substantially justified. As a result, the Court will award no fees to either party.

Plaintiff's Motion to Compel Discovery is hereby DENIED, on the conditions stated herein.

SO ORDERED, this 17th day of September 2013.



Jeffrey B. Hanson, Judge
State Court of Bibb County, Georgia