

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MARY CUMMINS

vs.

**AMANDA LOLLAR, DENISE
TOMLINSON, DOROTHY HYATT,
MICHELLE MCCAULLEY, KATE
RUGRODEN, LESLIE STURGES, BAT
WORLD SANCTUARY, JOHN DOES 1-10**

Civil Action No.: 4:12-CV-00560-Y

RESPONSE TO MOTION TO QUASH SUBPOENA

NOW COME Amanda Lollar and Bat World Sanctuary, Defendants herein, and make and file this, their Response to Plaintiff's Motion to Quash Subpoena, and in furtherance thereof would show unto the Court as follows:

I. BACKGROUND

The present case was filed on June 5, 2012. See Doc. No. 1. Despite two and a half years having passed subsequent thereto, Defendants have been provided fewer than twenty (20) discrete pages from Plaintiff's medical treatments records, and this just in the past month.¹ After two attempts seeking to compel the production of this, and other information in this case, Plaintiff was ordered on August 26, 2014 to respond adequately to Defendants' discovery. See Doc. No. 122. After yet more delays occasioned by a request for an extension of the deadline by which the Court had required her to respond, Defendants finally learned of the identity of Plaintiff's treaters on October 2, 2014.

Pursuant to the Court's Order, Plaintiff had also been Ordered to provide a signed medical authorization in a form that had previously been provided to her. Plaintiff, however,

¹ This is despite Plaintiff suggesting to the court that she has already provided all of her treatment records. See Motion, p. 3 (stating as to the production of medical records that plaintiff "has already done this in discovery.").

unilaterally altered this medical authorization prior to producing same to Defendants' counsel. *See* Exhibit A. Defendants therefore requested that a legal records service obtain the records of the treaters whom Plaintiff herself had identified, by way of Deposition on Written Questions. Plaintiff now seeks to quash these depositions.

II. ARGUMENT & AUTHORITIES

One must look closely to find a true argument in Plaintiff's motion. Large parts are devoted to the continuing disparagement of Defendants and their counsel that are witnessed in virtually every document filed in this Court by Plaintiff. One might presume that the fact that Defendants hold a Judgment against Plaintiff for roughly six million dollars (\$6,000,000.00) for defamation, obtained by their counsel herein, may be the source of this animus; though it is an animus directed equally at Defendants, their counsel, and even the Judge in the aforesaid case, about whom Plaintiff has blogged extensively.²

But this case, brought after that Judgment issued against Plaintiff, is not about what Ms. Cummins feels about these Defendants. It is about her alleged injuries. She now states as to these injuries that "Plaintiff has only made a claim for a herniated disc at L5/S1." Motion, p. 3. Indeed, the changes made by Plaintiff unilaterally to the medical authorization the Court previously ordered her to execute reflects this same purported limitation. *See* Exhibit A. This is, however, a far cry from the facts pleaded by Plaintiff in her live complaint:

While Cummins attempted to climb through the window late June 2010 she hit her head on a piece of wood. Cummins then fell backward injuring both her head and back passing out onto the hard floor.

Doc. No. 46, p. 2 (emphasis added).

² *See e.g.* https://www.indybay.org/newsitems/2012/06/17/18715651.php?show_comments=1 ("Texas Judge William Brigham censors Freedom of Speech")

Even were the scope of Plaintiff's injuries as limited as she now alleges, Defendants are entitled to explore any conditions which might have pre-existed this alleged incident, or which might be in part the source of past, present or future pain and suffering which Plaintiff seeks for the jury to consider. In this regard, such matters are clearly relevant. The scope of evidence subject to discovery under the Federal Rules is broad:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

FED. R. CIV. P. 26(b)(1). Relevance in discovery is broader than admissibility at trial; information is discoverable if "the discovery appears reasonably calculated to lead to the discovery of admissible evidence." *Id.* The Court should, therefore, deny Plaintiff's Motion.

Plaintiff further complains that the requested information is "privileged." Motion, p. 2. However, the Supreme Court has not recognized a physician-patient privilege under federal common law. *See Whalen v. Roe*, 429 U.S. 589, 602, n. 28, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977)("physician-patient privilege is unknown to the common law."). The court's inquiry regarding the discoverability of plaintiff's general medical records is governed by relevancy standards contained in FED. R. CIV. P. 26 and considerations of confidentiality. The matters, as shown more fully above, are relevant. The Court should, therefore, deny Plaintiff's Motion.

Plaintiff further suggests that "[a] notice of subpoena was not sent to Plaintiff as per Fed Rul Civ Proc 45(a)(4)." Motion, p. 2. However, Notice was sent to Plaintiff by Defendants' record service via Certified Mail, Return Receipt Requested, Article No. 7001 2510 0005 5131

6883. A true and correct copy of the returned green card regarding same is attached hereto as Exhibit B. The Court should, therefore, deny Plaintiff's Motion.

Finally, Plaintiff suggests that an insufficient time was provided for the deponents' compliance with the subpoenas in question. *See* Motion, p. 3. In this regard, Plaintiff merely cites Rule 45(a)(3)(A)(1), which provides that a subpoena may be quashed where same "fails to allow a reasonable time to comply." FED. R. CIV. P. 45(a)(3)(A)(1). Plaintiff notes when the subpoena was served, and when compliance is required. But she cites no case to even suggest that the amount of time in question is not reasonable, and indeed fails to even argument why this is so. *See* Motion, p. 3. The Court should, therefore, deny Plaintiff's Motion.

In conclusion, the scope of allowable discovery is broad, as is the scope of relevance. Plaintiff has put her condition at issue by bringing the present personal injury lawsuit. Defendants are entitled to explore the scope of the injuries alleged, and any conditions alleged which may have pre-existed her alleged fall, or which might otherwise be the source of the pain alleged. Despite more than two and a half years having passed, Defendants have been provided fewer than twenty (20) discrete pages from Plaintiff's medical treatments records. The Court should deny Plaintiff's Motion.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiff's Motion to Quash Subpoena be in all things denied. Defendants further pray for such other and further relief, general or special, at law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted:

By: /s/ Randall E. Turner

RANDALL E. TURNER

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ATTORNEYS FOR DEFENDANTS

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SANCTUARY

CERTIFICATE OF SERVICE

Pursuant to CM/ECF Civil and Criminal Administrative Procedures Manual, I hereby certify that on November 17, 2014, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" to the following attorneys of record and/or pro se parties who have consented in writing to accept this Notice as service of this document by electronic means::

Mary Cummins, Plaintiff
645 W. 9th St. #110-140
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By: /s/ Randall E. Turner

RANDALL E. TURNER