

1 STATE OF MICHIGAN
2 IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
3 CIVIL DIVISION

4 TAMARA FILAS,

5 Plaintiff,

Case No. 13-000652 NI

6 vs.

7 KEVIN CULPERT and EFFICIENT DESIGN,

8 Defendants.

9 _____ /
10 MOTION

11 BEFORE THE HONORABLE SUSAN D. BORMAN, Circuit Judge,
12 Detroit, Michigan on Friday, June 21, 2013.

13 APPEARANCES:

14 Pro Per Plaintiff:

TAMARA FILAS
6477 Edgewood
Canton, MI 48187
(734) 751-0103

17 For the Defendant:
(Efficient Design)

JAMES WRIGHT, P67613
Zausmer, Kaufman, August & Caldwell, P.C.
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20 For the Defendant:
(Kevin Culpert)

AHMED HASSOUNA, P67995
Vandeveer Garzia
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13 JUL - 30 4:17
OFFICE OF
COURT REPORTING
CIVIL DIVISION
THIRD JUDICIAL
CIRCUIT COURT

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WITNESS:

None

EXHIBITS:

None

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Detroit, Michigan
Friday, June 21, 2013
Morning session - 9:54 a.m.

- - -

THE CLERK: Filas.

THE COURT: Okay, is everybody here on
this? Okay, good morning.

MS. FILAS: Good morning.

THE COURT: Okay, whose motion is this?

MR. WRIGHT: It is mine, Your Honor.

THE COURT: Go ahead.

COURT REPORTER: And you are who?

MR. WRIGHT: I am James Wright. I
represent Efficient Design.

THE COURT: Yeah, please, everybody
identify yourself for the record.

MR. WRIGHT: I'm James Wright and I
represent Efficient Design.

MS. McGRATH: Jennifer McGrath, co-counsel
for Efficient Design.

MS. McGRATH: Good morning.

THE COURT: You're co-counsel?

MS. McGRATH: Yes, Your Honor.

THE COURT: Why are you up here too?

MS. McGRATH: There's two insurance

1 policies.

2 MR. WRIGHT: There's a general automobile
3 liability policy and there's a CGL policy, so there's
4 two different --

5 THE COURT: What is CGEL for?

6 MR. WRIGHT: CGL.

7 THE COURT: What is it?

8 MR. WRIGHT: It's the commercial liability
9 portion of their policy. They have an auto and
10 commercial.

11 THE COURT: What does CGL stand for?

12 MR. WRIGHT: Commercial General Liability.

13 THE COURT: I don't like abbreviations.

14 MR. WRIGHT: Sorry, Your Honor.

15 THE COURT: I don't know what they are.

16 MS. McGRATH: I'm Ahmed Hassouna for Mr.
17 Culpert, Your Honor. Thank you.

18 THE COURT: You're what?

19 MS. McGRATH: For Mr. Culpert.

20 THE COURT: Yeah, but you said I'm a -- I
21 can't understand what you're saying.

22 MR. HASSOUNA: Ahmed Hassouna, Ahmed, last
23 name Hassouna.

24 THE COURT: Oh, that's your name.

25 MR. HASSOUNA: H-a-s-s-o-u-n-a, yes, Your

1 Honor.

2 THE COURT: You're representing whom?

3 MR. HASSOUNA: Mr. Culpert, Your Honor.

4 THE COURT: Okay, and he's the individual
5 defendant?

6 MR. HASSOUNA: That's correct.

7 Third party defendant?

8 MR. HASSOUNA: Yes, Your Honor.

9 THE COURT: And Efficient Design is his
10 employer, I'm guessing?

11 MR. HASSOUNA: Yes, Your Honor.

12 THE COURT: Okay, all right, so this is
13 your motion, go ahead.

14 MR. WRIGHT: This is just a general basic
15 motion to compel, Your Honor. I sent request for
16 admission, interrogatories and request for production
17 of documents.

18 THE COURT: Okay.

19 MR. WRIGHT: The request and admissions are
20 long overdue. They were sent back in February, so I
21 think they're due in the middle -- but the real
22 problem we have, I got interrogatory answers this
23 morning.

24 THE COURT: Yeah, how many interrogatories
25 are there?

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MR. WRIGHT: Probably --

THE COURT: A hundred?

MR. WRIGHT: No, there's not a 100. There are --

THE COURT: I think we should have a Federal system.

MR. WRIGHT: I would agree with you, Your Honor.

THE COURT: Well, then you can do that. It is in within your power to do that.

MR. WRIGHT: They're 57.

THE COURT: Okay, so you got them this morning and you've looked at them?

MR. WRIGHT: I've looked at them and the problem is that I think what we've been having going on with this case since when I was involved back to 2010 is that Ms. Filas is refusing to provide signed medical authorizations. She has revealed 27 treating in this milage log.

THE COURT: Right, and you know you have to do that, Ms. Filas. So you know you're going to leave the Court no alternative but to dismiss this case too.

MS. FILAS: Well, in my motion though I asked that I could have time to investigate whether

1 or not they're even liable because right now they're
2 not even admitting that Mr. Culpert -- that they are
3 the employer of Mr. Culpert.

4 THE COURT: We don't wait for liability.
5 No, no. That's not the way --

6 MS. FILAS: I shouldn't have to give my
7 records to a party that may not even be party to this
8 case though. They haven't --

9 THE COURT: No, they are party to this
10 case.

11 MS. FILAS: But they haven't admitted any
12 liability.

13 THE COURT: They don't -- that's not how it
14 works. You have a choice, you either do it or no
15 case. Now, we've been through this before with your
16 first party case. Nobody cares about your medical
17 records.

18 MS. FILAS: Well, I understand that they
19 have to go to the first party and have them all
20 filled out for Mr. Hassouna as well.

21 THE COURT: Either do it or no case, okay.

22 MS. FILAS: Okay, it's just that Efficient
23 Design hasn't said they were liable, so.

24 THE COURT: Do it or no case.

25 MS. FILAS: Okay.

1 THE COURT: Now are you going to sign the
2 authorizations or not?

3 MS. FILAS: I will fill out authorizations
4 for them.

5 THE COURT: Now, today. Sit down and do
6 it. We'll recall this case if necessary.

7 MR. WRIGHT: I have authorizations.

8 MS. FILAS: It takes a lot more time than
9 that.

10 MR. WRIGHT: I can have my office fax them
11 over. But I just found out who the --

12 THE COURT: Okay, I will adjourn this until
13 Monday.

14 MR. WRIGHT: Okay.

15 THE COURT: If he does not get those
16 authorizations by Monday or you can come back Monday
17 at 2 o'clock, and you can come back with the
18 authorizations. No game playing, Ms. Filas.

19 MS. FILAS: I'm not trying to --

20 THE COURT: Either do it or I'm going to
21 dismiss the case on Monday. It's simple.

22 MR. WRIGHT: Okay, I need a number or fax
23 number or e-mail to send the authorizations too, Your
24 Honor, for her to sign.

25 THE COURT: Okay, would you please give him

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that.

MS. FILAS: Sure. It's F-I-L-A --

THE COURT: Okay, you can do that off the record. Are we done?

MR. HASSOUNA: Your Honor, I would simply ask for the same relief before you do Efficient Design for Mr. Culpert.

MS. FILAS: I have his though.

THE COURT: Excuse me, what same relief?

MR. HASSOUNA: I would like authorizations as well and I would like the answers to interrogatories.

THE COURT: Okay, who are you representing?

MR. WRIGHT: I represent Efficient Design.

MR. HASSOUNA: I represent Mr. Culpert.

THE COURT: Well, you're the same party.

MR. WRIGHT: No, Your Honor.

THE COURT: He's the employee; he's the employer.

MR. WRIGHT: Well, we're not --

THE COURT: It's vicarious liability.

MR. WRIGHT: Well, we're not -- but, yeah, you're right, Your Honor.

MS. FILAS: So they have two separate motions. But I have everything for Mr. Hassouna.

1 THE COURT: Ma'am, just a second.

2 MS. FILAS: Okay.

3 THE COURT: I cannot listen to more than
4 one person at a time and I'm asking them questions.
5 Okay, so was he driving, this Mr. --

6 MR. HASSOUNA: Mr. Culpert.

7 THE COURT: Culpert. Was he on the job?

8 MR. WRIGHT: No, not according to us. He
9 was driving his own private vehicle on the way to
10 work. There's an allegation that he was on his cell
11 phone talking to his employer which hasn't been
12 verified which is the theory.

13 THE COURT: Well, that should be very easy
14 to verify. In all this time why hasn't it been
15 verified yet?

16 MR. WRIGHT: Well, because this case just
17 got off stay, Your Honor, and we haven't been able to
18 take any depositions.

19 THE COURT: Stay?

20 MR. WRIGHT: It was stayed, yes.

21 THE COURT: No, I didn't stay it. It
22 wasn't stayed.

23 MS. McGRATH: He stayed the discovery.

24 THE COURT: What?

25 MR. WRIGHT: Yes, Your Honor, it was

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stayed.

THE COURT: No, it might have been stayed for a month or something, but this case has been pending since when?

MR. WRIGHT: I came into the case in January.

THE COURT: Are you saying that I stayed it?

MR. WRIGHT: Yes.

THE COURT: What?

MR. WRIGHT: Yes, Your Honor.

THE COURT: No, there's an '11 case. I see that, but this isn't an '11 case. This is a '13 case. So it was stayed?

MR. WRIGHT: The last time we were here, Your Honor, it was my motion to compel and you stayed it to allow Ms. Filas to obtain successor counsel which she has yet to do.

THE COURT: Okay. But that was when, when was the last time you were here? It wasn't that long ago, and there was a time before that. In any event, that's not something that she's involved in. All you have to do is check the cell phone records to see if he was at the time talking on the phone to his employer.

1 MR. WRIGHT: We have this, Your Honor.
2 We've been working. We need to take his deposition.
3 That's really it. We were waiting for the stay to
4 get lifted and getting authorizations. We're trying
5 to move forward on this. That's why we're here.

6 THE COURT: Okay, I'll see you Monday.

7 MR. WRIGHT: Okay.

8 MS. FILAS: I also had motions too to be
9 heard.

10 THE COURT: For what?

11 MS. FILAS: One to vacate the Protection
12 Order that was in place from last year. I couldn't
13 get clarification from the other attorneys.

14 THE COURT: What Protection Order?

15 MS. FILAS: The one that was filed in the
16 case the first time it was originally filed back
17 in --

18 THE COURT: Well, may I see that. Do you
19 know what she's talking about?

20 THE CLERK: That's up next Friday.

21 THE COURT: Oh, yeah, your motions are up
22 next Friday.

23 MS. FILAS: Why are they next Friday when I
24 got the praecipe approved. It's supposed to be
25 today. It says on the Register of Actions they're

1 both being heard today.

2 THE COURT: Does it?

3 THE CLERK: One was just received yesterday
4 or the day before.

5 THE COURT: When did you file it?

6 MS. FILAS: Last week. I noticed the
7 hearing for today.

8 THE COURT: Well, I can hear it today. I
9 can --

10 MS. FILAS: And they're already answered.

11 THE COURT: Don't keep me talking over me.

12 MS. FILAS: Sorry.

13 THE COURT: I can hear it today.

14 MS. FILAS: Okay.

15 THE COURT: Have you guys seen these
16 motions?

17 MR. WRIGHT: Yes, Your Honor.

18 MR. HASSOUNA: Yes, Your Honor.

19 THE COURT: Let's deal with all of them,
20 okay.

21 LAW CLERK: We had them for next Friday.

22 THE COURT: I know. We're going to do them
23 today.

24 LAW CLERK: Okay.

25 THE COURT: Okay, we'll recall this case

1 when I get a chance I'll look at them. I don't think
2 they were -- I think I've already looked at them
3 actually, and I don't think they're very difficult.

4 MS. McGRATH: If I may just to make this
5 easy on us on Monday, can we agree today that there
6 can be no amendments to the authorizations?

7 THE COURT: What do you mean amendments?

8 MS. McGRATH: During the --

9 THE COURT: We're going to give her the
10 authorizations. She's going to sign them. Either
11 she signs them or she doesn't sign them. I said to
12 Ms. Filas no game playing, no alterations, okay.

13 MS. McGRATH: Thank you, Your Honor.

14 MR. WRIGHT: Thank you, Your Honor.

15 MR. HASSOUNA: Thank you, Your Honor.

16 (Off the record - 10:10 a.m.)

17 (On the record - 11:10 a.m.)

18 THE COURT: Filas versus Culpert.

19 Okay, we're going to entertain the motions,
20 Plaintiff's motions today. Okay, one of them -- and
21 I'm going to place you under oath, Ms. Filas since
22 you're not an attorney. You do solemnly swear that
23 any testimony that you give or any statements that
24 you make are true?

25 MS. FILAS: I do.

1 THE COURT: Okay, one of her motions is to
2 vacate this Protective Order that wasn't even in this
3 case. Anybody have an objection to that?

4 MR. WRIGHT: No.

5 MR. HASSOUNA: No.

6 THE COURT: Gone. No Protective Order.
7 Okay, the other motion was to return discovery that
8 plaintiff claims that her now fired counsel sent to
9 defendants which was unsigned by her and which was in
10 draft form, correct?

11 MS. FILAS: Yes.

12 THE COURT: And by the way, counsel, I
13 didn't appreciate that sentence in your Reply.

14 MR. WRIGHT: About?

15 THE COURT: Scolding the Court.

16 MR. WRIGHT: Well, Your Honor --

17 THE COURT: For allowing plaintiff a little
18 time. I didn't appreciate it.

19 MR. WRIGHT: It's not a little time, Your
20 Honor. This has gone on and on and on.

21 THE COURT: Counsel?

22 MR. WRIGHT: Yes, Your Honor?

23 THE COURT: I didn't appreciate it.

24 MR. WRIGHT: I apologize, Your Honor.

25 THE COURT: Okay.

1 MR. WRIGHT: But at the same time --

2 THE COURT: Up until I read that sentence,
3 I thought your Response was very good.

4 MR. WRIGHT: Thank you, Your Honor.

5 THE COURT: These are useless. You didn't
6 sign them and they're drafts, so they don't even have
7 anything.

8 MS. FILAS: They're still out there and I
9 think they should be returned to me because I've
10 never seen them.

11 THE COURT: Can you return them to her?
12 Just give them back. Do you have them?

13 MR. WRIGHT: In electronic format, yeah,
14 I'll send them back.

15 THE COURT: Just send them back to her.

16 MR. WRIGHT: Via e-mail?

17 THE COURT: Do you have e-mail?

18 MS. FILAS: Yes, that's fine. He has my
19 e-mail.

20 THE COURT: Okay, send them back by e-mail.
21 They don't have any validity, Ms. Filas.

22 MS. FILAS: I understand. I just want to
23 know what they said.

24 THE COURT: This is useless.

25 MS. FILAS: I've never seen them. My

1 attorney gave them out without my permission.

2 THE COURT: All right, okay. I think that
3 takes care of everything. I'll see you Monday,
4 hopefully not. How come you didn't just bring
5 authorizations with you today knowing that --

6 MR. WRIGHT: Your Honor, I didn't know who
7 her treaters were until I got the interrogatories
8 this morning.

9 THE COURT: Okay.

10 MR. WRIGHT: So that's why I didn't.

11 THE COURT: All right. So you're going to
12 have -- and how many treaters are there?

13 MR. WRIGHT: About 27.

14 THE COURT: Okay, you're going to sign all
15 those authorizations, otherwise no case.

16 MS. FILAS: Can I fill out something that
17 says that the Protection Order's been vacated or that
18 it doesn't exist?

19 THE COURT: Fill out a blank order. It
20 doesn't exist. It wasn't even in this case.

21 MS. FILAS: I could never get a clear
22 answer from the other attorneys though whether it was
23 still in effect or not. I don't know, it would make
24 me feel better if I had it writing that it didn't
25 exist anymore just so there wasn't any further

1 argument and we don't have to go back looking at the
2 transcript.

3 THE COURT: Okay.

4 MS. McGRATH: Your Honor, for the record I
5 will add I have attached e-mails to our Responses and
6 all attorneys did reply back saying that we believe
7 there was no Protective Order in effect because that
8 was a different case. And we have filed the Response
9 asking for sanctions to attempt to stop frivolous
10 motions from being filed wasting judicial resources.

11 THE COURT: Well, however, I took care of
12 this motion today along with your motion.

13 MS. McGRATH: Yes, and we appreciate that.

14 THE COURT: So I'm not going to be awarding
15 any costs for frivolous motions at this point.

16 Okay, so fill out a blank order declaring
17 that this Protective Order is not in effect in this
18 case.

19 MS. McGRATH: Thank you, Your Honor.

20 THE COURT: Okay. And I will initial it
21 and somebody will E-File it, okay.

22 MR. WRIGHT: Thank you.

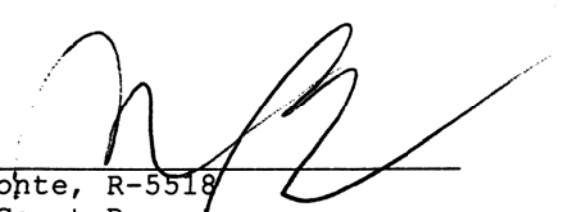
23 (Proceeding concluded - 11:20 a.m.)

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1 C E R T I F I C A T E

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3 STATE OF MICHIGAN)
4 COUNTY OF WAYNE) .ss

5
6 I do certify that this transcript
7 consisting of these pages are a complete, true, and correct
8 transcript of the proceeding taken in this case in the County
9 of Wayne, State of Michigan on Friday, June 21, 2013.
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