

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

JAMIE SOLTYSIAK,

Plaintiff,

v

File No. 13-29575-NH
HON. PHILIP E. RODGERS, JR.

STEPHANIE M. MORREALE, D.O.,
PETER T. BUMP, M.D., DIANE L.
MYERS, M.D., NORTHWOOD
OBSTETRICS AND GYNECOLOGY,
P.C., and MUNSON MEDICAL CENTER,
jointly and severally,

Defendants.

Brian J. McKeen (P34123)
Andrew F. Kay (P73707)
Attorneys for Plaintiff

Steven C. Berry (P26398)
Attorney for Defendant Munson Medical Center

Gregory A. Elzinga (P30792)
Attorney for Defendants Stephanie Morreale,
Peter Bump, Diane Myers & Northwood

DECISION AND ORDER GRANTING MOTION TO
COMPEL PLAINTIFF TO ANSWER DEFENDANT MUNSON MEDICAL
CENTER'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

On June 5, 2013, Defendant Munson Medical Center (hereinafter "Defendant") filed a Motion to Compel Plaintiff to Answer Interrogatories and Requests for Production of Documents. Plaintiff filed her Response on June 11, 2013.

Defendant states that the First Set of Interrogatories and Requests for Production of Documents were provided to the Plaintiff on March 13, 2013. After receiving and reviewing the Defendant's Interrogatories and Requests for Production, Plaintiff objected to Interrogatory

Requests Nos. 50, 51, 52 and 53, and Request for Production No. 11 as irrelevant and non-discoverable.¹ Plaintiff maintains her objections to date and has refused to answer Interrogatory Requests Nos. 50, 51, 52 and 53, and will not produce the requested materials.

The Court has reviewed the Motions and Briefs provided by both parties and the relevant case law. It is well settled that Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case.² While Michigan Courts have not directly addressed discovery of a party's social media accounts, the Court of Appeals has clearly contemplated the issue and found case law from other states to be helpful. In an Order issued December 14, 2011, the Court of Appeals remanded the case of *Anderson v MG Trucking* back to the circuit court, directing the circuit court to address discovery of social media information in light of the opinion in *Offenback v LM Bowman, Inc.*³

In *Offenback*, the plaintiff was involved in an automobile accident and claimed that the physical injuries he suffered limited his mobility, affected his mental state, impaired his social life and prohibited him from working.⁴ The *Offenback* Court found that the plaintiff's Facebook page/account contained potentially relevant information, pertaining to the plaintiff's ability to travel and be physically active, that should be produced to the defense.⁵ The Court indicated that the scope of discovery into social media sites requires the application of basic discovery principles in a novel context and that the challenge is to define appropriately broad limits on the discovery ability of social communications.⁶

In this case the Plaintiff is alleging medical malpractice, claiming that the injuries she sustained have resulted in significant, permanent disability and further, loss of wage earning capacity. Specifically, Plaintiff states she has suffered damages including, but not limited to, medical and psychological expenses, loss of wages and wage earning capacity, and loss of enjoyment of life. Defendant theorizes that information posted on the public portion of

¹ Interrogatories 50 through 53 pertain to use of internet social media, related social media accounts and internet usage and activities.

² *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998).

³ *Anderson v MG Trucking*, Order of the Court of Appeals, issued December 14, 2011 (Docket No. 11-000165-NI); *Offenback v LM Bowman Inc*, 2011 WL 2491371 (M.D. PA 2011).

⁴ *Offenback*, at 1.

⁵ *Id.* at 2.

⁶ *Id.* citing *EEOC v Simply Storage Mgmt.*, 2010 WL 3446105 (S.D. Ind 2010).

Plaintiff's Facebook page suggests that the Plaintiff is exaggerating her injuries and falsely representing her inability to work. Defendant argues these defense theories may be corroborated through private posts and/or photos on the Plaintiff's Facebook page that are inaccessible to Defendant and "if such additional posts exist on the site, gaining access to that information will further the search for the truth or falsity of the Plaintiff's alleged claims of serious injury and disability." Further, Defendant suggests that any other social media sites which Plaintiff accesses may also show she is exaggerating her injuries.

Pursuant to the Court of Appeals Order in *Anderson v MG Trucking*, the opinion in *Offenback v LM Bowman, Inc*, and the arguments presented by the parties, the Court finds that the information contained on Plaintiff's Facebook page may be relevant to allegations of physical injuries and inability to work stated in her Complaint; and further finds the Defendant's Motion to Compel Plaintiff to Answer Interrogatories and Requests for Production of Documents should be granted. The Plaintiff is ordered to answer interrogatories 50 through 53 and to produce the documents requested within seven (7) days from the date of this Order. No sanctions will be assessed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge