

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

SUZANNE IRENE ROUGH,

Plaintiff,

CASE NO. 15-00402-NI

v

HON. DENNIS B. LEIBER

ROGER GRAHAM TRUCKING, LLC,
and PHILIP LEE GRAHAM

ORDER

Defendant.

_____ /

Plaintiff Suzanne Rough and Defendants Roger Graham Trucking, LLC and Philip Graham bring respective Motions to Compel on separate discovery issues. Plaintiff's Motion requests that the Court order Defendants to provide supplemental, adequate responses to interrogatory nos. 28 and 38 and to provide responses to Plaintiff's second request for production of documents. Defendants' Motion requests that the Court order Plaintiff to provide Defendants with full access to her social media profiles.

I. PLAINTIFF'S MOTION

Based on Defendants' Response to Plaintiff's Motion, it appears that the issues involving interrogatory no. 28 and Plaintiff's second request for production of documents have both been resolved. Therefore, those issues are moot, and the only outstanding dispute, as far as this Motion is concerned, is over interrogatory no. 38.

Based on the clear language of MCR 2.302(3)(a), any surveillance videos or photos would fall under the work-product doctrine because they were prepared for Defendants in anticipation of trial. Plaintiff has shown that she cannot obtain the substantial equivalent of those

surveillance materials because they were “taken at a particular time and place that can never be replicated.” *Evan v Estell*, 203 FRD 172, 173 (MD Pa, 2001). However, Plaintiff cannot show a substantial need for any surveillance materials at this time since Defendants maintain that they have no current plans to introduce any surveillance materials at trial. Therefore, any surveillance videos and photos do not currently fall under the exception in MCR 2.302(3)(a).

If Defendants do decide to introduce any surveillance materials at trial, Defendants must provide those surveillance materials to Plaintiff at least 28 days before the case evaluation hearing. *Any surveillance materials not provided to Plaintiff by that deadline will not be allowed as evidence at trial—even as impeachment evidence.*

II. DEFENDANTS’ MOTION

Defendants’ Motion maintains that Plaintiff’s private social media profiles, namely Facebook, “likely contains restricted information that has only been shared with her ‘friends’ that contains information relevant to the issues of this case.”

Defendants’ request for full access to Plaintiff’s social media profiles relies primarily on *Tompkins v Detroit Metro Airport*, 278 FRD 387 (ED Mich, 2012). However, the *Tompkins* decision actually undermines Defendants’ argument. The *Tompkins* Court held that in order to be entitled to unfettered access to an opposing party’s social media profile, “there must be a threshold showing that the requested information is reasonably calculated to lead to the discovery of admissible evidence.” *Id.* at 388.

Here, Defendants note that Plaintiff’s public Facebook page shows pictures of her wedding and a visit to the Grand Canyon, as well as a statement that she can no longer ride her motorcycle due to the injuries she sustained in the crash at issue. However, none of these photos

or comments are inconsistent with her alleged injuries. Just as the plaintiff in *Tompkins*, Ms. Rough “does not claim that she is bedridden, or that she is incapable of leaving her house or participating in modest social activities.” *Id.* at 389. Consequently, Defendants have failed to make a threshold showing that access to Plaintiff’s private social media pages will likely lead to the discovery of admissible evidence, so their request is akin to the “fishing expedition” discussed in *Tompkins*. *Id.* at 388.

THEREFORE, IT IS HEREBY ORDERED that Plaintiff’s Motion to Compel is DENIED.

IT IS FURTHER ORDERED that Defendants shall disclose any surveillance materials to Plaintiff at least 28 days before the case evaluation hearing if Defendants intend to introduce those surveillance materials at trial.

IT IS FURTHER ORDERED that Defendants’ Motion to Compel is DENIED.

Dated this 11th day of September, 2015
at Grand Rapids, Michigan.

Honorable Dennis B. Leiber

ATTEST: A TRUE COPY

Deputy County Clerk