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State of Minnesota
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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

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Craig Stevenson, Marie Stevenson,
Plaintiffs, File No. 56-CV-20-2928

vs. Transcript of Proceedings

Sean Stevenson, Renee Stevenson,
Lisa Stevenson-Allen, Ashley Anderson,

Defendants.

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MOTION

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The above-entitled matter came before the Honorable Kevin M. Miller, Judge of District Court, at the Otter Tail County Courthouse, via Zoom technology, Fergus Falls, Minnesota, on November 7, 2022.

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APPEARANCES

For the Plaintiffs:	Matthew Schaap and Cassandra Wolfgram 14985 Glazier Ave, Suite 525 Apple Valley, MN 55124 Petitioners also appeared.
For Defendants: Ashley Anderson and Lisa Stevenson-Allen	Ross Tentinger 14665 Galaxie Ave, Suite 140 Apple Valley, MN 55124
For Defendants: Renee Stevenson and Sean Stevenson	Kirsten Hansen France Place 3601 Minnesota Dr, Suite 450 Minneapolis, MN 55435

Dana Eifert
Official Court Reporter

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(Proceedings commenced.)

THE COURT: All right. At this time the Court is going to call Craig Stevenson, Marie Stevenson versus Sean Stevenson, et al. 56-CV-22 -- or I'm sorry. 56-CV-20-2928.

I have Mr. Schaap and Ms. Wolfgram here on behalf of the plaintiffs, who are also present on the screen. I have Mr. Tentinger and Ms. Hansen present on behalf of the defendants.

We've had multiple motions here today. So, I'm going to first turn to Mr. Schaap. And Mr. Schaap, let's start with your motion for spoliation, please.

MR. SCHAAP: Thank you, Your Honor. I want to take these one at a time, in that I'd like to address the ones relating to Renee and Lisa first. So, what we have over the course of the last couple of years is discovery was kicked off in 2021. At that time, as the Court is aware, there was some motion practice around whether there was a sufficient response by all of the defendants but in particular by Lisa. There was a discussion at that time about whether Lisa needed to produce independently from the other defendants, documents that she had in her possession. We argued that because Lisa had not produced any documents at that time and was essentially relying on other emails from other -- and

other communications -- from other defendants that she should be ordered to produce her own documents, her own text messages to the plaintiffs in this case. The Court denied our motion to compel in 2021 and that had -- that led to some further discussions by the parties and some, I think, some chilling effect on the discovery in this case.

So, as it relates to Lisa and Renee, as the Court is aware from the submissions, there were two forensic evaluations conducted by Computer Forensic Services at our request. Those occurred after significant discovery, in this case, revealed, primarily through third-party subpoenas to the phone carriers for Lisa and Renee's cellphones that many of the text messages that they had sent and received, particularly among the defendants, in this case, had been deleted and were not -- had not been produced in the case. This obviously led to questions about why these text messages had not been produced. And it's -- you know, there's a lot of discussion in the motion papers about, well gas and milk prices and you know just irrelevant and extraneous text messages. That's not what we're talking about here.

I think it's an easy argument to make when you're talking about family members. They're going to have communications about things that don't relate to the

case. But what we see when we graph out the text messages, in this case, that relate to the case, that if you look at specific dates in this case where an email is sent you can see from the third-party subpoenas that their phone calls, specifically conference calls involving all of the defendants where they're essentially conspiring about how to craft an email. How to send the email for maximum effect. And how to, essentially, cause emotional distress and defamation to the plaintiffs in this case.

And what we see around those dates of those phone calls, which can't be denied, I mean the phone call happened, but we can also see the text messages happening. The text messages are going back and forth and then we see these phone calls happening. And what we don't have is, we don't have the text messages being produced in full. They say, well they're not relevant or maybe they are relevant, we don't know. But when you see the spike in communications not just the verbal communications by phone but also these -- this spike in text communications, that's where the high probability exists that these text messages were about the plaintiffs and that they were destroyed in a coordinated effort to stop the plaintiffs from obtaining the text messages.

I also want to highlight a few points that are

raised in the papers that were presented by -- in opposition to these motions. Specifically, relating to Lisa and Renee. There's a suggestion that prejudice has to be shown. And there's lots of citation to federal law. As a Court can glean from Rule 37.05, prejudice is only part of the analysis. There is an "or" in the second part of Rule 37.05. The first part requires a showing of prejudice. The second part does not. And so, all of the citation to *Zubulake* and the progeny of, you know, the federal cases that all come down with, you know, this sort of framework for how do we deal with spoliation, you know, now that we have electronically stored information. Some of which is deleted routinely by systems that are on autopilot. That's not what we have here. We have an allegation and even an admission by one of the defendants that text messages were deleted.

Now, we have other testimony from, for example, Renee where she's saying I deleted text messages. I routinely delete text messages, and that's without regard for whether the text messages are relevant, relating to the case or not. He's on record, and what we have is, we have this cavalier behavior by all of the defendants really about whether they needed to preserve evidence relating to this case.

From the beginning, with Lisa, we received

essentially the claim that she didn't need to produce anything that someone else in the case had produced. And that was actually a position taken with this Court, in the presence of this Court, last year in opposition to our motion to compel. I thought it was very unusual for anyone to argue that at the time. But essentially that is the mentality that the defendants have had throughout this case. Up until the point where we start to realize text messages around key events, in this case, have been deleted and now we know because we have third-party subpoenas and now, we know even more because we have the reports from Computer Forensic Services.

This case and these motions are not just about the spoliation of evidence. They're about these Computer Forensic Services reports that show, not just that texts are gone because they've deleted, -- they've been deleted but we know now that from these reports that texts that were responsive to requests, in this case, were not produced until the reports revealed them. These were not deleted texts. These were just not produced because the parties didn't look at their own phones and didn't go back and actually provide the information.

The spoliation issue and I want to specifically speak to the question of relevance. I mean it would be really convenient if a party could delete messages and

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State of Minnesota
12/6/2022 9:41 AM

then say that the other side can't prove those messages were relevant because the other side is essentially deprived of even seeing the messages in the first place. And that's a problem here. And I think the Court can get to the point where you're looking at the relevance of the text messages around key dates in the case. Do all -- did they produce all the text messages around the key dates in this case? Or are we looking at a significant number of deletions around key events in this case? The context for this, Your Honor, is that Sean Stevenson and the other defendants knew before the case was commenced that they might need a lawyer. They also knew that the activities they had engaged in. This is not a spoliation case where you have some third-party employee who doesn't really know whether they should maintain their emails in their inbox long-term because they have no idea litigation is coming down the pipe. These are people that engaged in behavior in the summer of 2020, where they should have had an expectation that litigation could be coming based on the behavior, they were engaged in. The behaviors outlined in the complaint, it was -- it's, it's, it's clear from the facts alleged in the complaint if they are true, and a lot of the facts are coming into focus as discovery has continued. That they should have had an expectation that there was going to be a problem

and what we see is missing text messages from that period of time that relate to this case.

We also see there's an argument that's made in this, in this instance that some of the text messages that are referred to are unrelated or innocuous. They don't relate specifically to a claim. But what they do relate to is motivation. The defendants have claimed, in this case, that they were motivated to protect Marie from Craig. That's why they reached out to Marie's father. That's why they reached out to the daughters. They claim that they had Marie's best interest at heart. And that's inconsistent with a lot of the evidence, but that's the claim.

When you look at the text messages behind the scenes, they might look innocuous on their face but what they show is an intentional effort to harass the Stevensons in their home and to harass their daughters without regard to whether Marie was going to be harmed by it, harassed by it, or suffer emotional distress as a result of it. So, these text messages about engaging in behaviors with the Stevensons show behind the scenes that they didn't care. They weren't concerned about Marie. They weren't concerned about Craig and to the contrary, what they were concerned with is they wanted to harass. And that's what we see in these text messages behind the

scenes.

As it relates to some of the other arguments, I'd like to address just briefly the request for fees. The request under Rule 37. As we've articulated in our reply memo, this is not a motion to compel. This is a motion for spoliation sanctions. I think it was only in Lisa's and Renee's memoranda where they actually argue that there was no meaningful effort to meet and confer. I think that's absurd. I mean we're accused of sending twenty-one deficiency letters in an effort to get discovery that was hidden and obscured. We asked over and over, we send letters that are not responded to, and then they have the gumption to say in response to the motion that we filed, that we didn't attempt to meet and confer. We sent letters. They're in the record. September 20 -- September 14th, we sent a letter specifically addressing a series of issues. Generally, the letter was ignored. We sent specific things like we are writing to inquire as to whether defendants plan to re-depose Renee based on false statements she made during her deposition that she did not delete text relevant to this lawsuit. We want -- we went on to describe those texts in details, ah, detail and included and indicated that they included at least one relevant text recovered by CFS. The letter addressed a number of issues and

offered to have a phone conference the week of September 26 to address outstanding items. And how did the defendants respond? They didn't respond. They didn't call me. They didn't say, yes, let's have a phone call. They didn't respond. They essentially ignored the letter, and we followed up on September 26 with another letter. We wrote again, or I'm sorry, September 28, we wrote again, specifically citing Rule 37.01(b) and explained why Renee's answers to plaintiff's interrogatory set five were deficient. In that letter, we went through a litany of discussion about missing text messages. So, to suggest for Renee or for Lisa -- Lisa's issues were addressed in the September 14 letter, in detail -- to suggest that we didn't attempt to meet and confer is really without basis in the record.

I would note that this reference to Rule 115.10, the certification. They say, well we didn't include a certification in our motion. They didn't include a certification in their motion either. None of the parties have, up to this point, included that certification in any of the motions. And in any motion practice, the assumption is, by the Court, that the parties have attempted to meet and confer in good faith because if you're appearing before the Court, you better have reached out and tried to resolve it before the

hearing. And we have and we haven't been able to resolve this issue. And so, with that, that topic that is not something the Court should base the decision on. This decision should be based on substance and not a formal re-function argument about meeting and conferring.

I also note that you know, if we're talking about certifications and acknowledgments, the motion filed by the plaintiffs or the defendants doesn't even include a section 549.211 acknowledgment, which is one of the most basic acknowledgments that a motion and memo are supposed to include.

I just want to check my notes as to those specific litigants.

THE COURT: Yep. No problem.

(Brief pause in the proceedings.)

MR. SCHAAP: And I can go on with Sean unless the Court would like to hear the specific response to the Renee and Lisa motions at this point.

THE COURT: Why don't you go to Sean, and then I'll just hear from the other counsel that way.

MR. SCHAAP: Okay.

THE COURT: Thank you.

MR. SCHAAP: With regard to Sean Stevenson, what we have at this point is evidence that Mr. Stevenson perjured himself during his deposition. He was asked

questions about whether he deleted text messages. He lied during his first deposition about that. He subsequently disclosed to his attorney that he had lied. His attorney then took steps, I believe, behind the scenes to try to mitigate the lies. Essentially, mitigate the deletion of the evidence that Sean had done.

What we have here is an admission, not just that the text messages were deleted, but that text messages were relevant. What Sean indicates is that he tried to delete after the case was served, after the discovery was served, he tried to delete evidence that he thought would be twisted. He acknowledged during his deposition that that's what he thought the relevant evidence was. At that point in his mind, he wasn't deleting every bit of relevant evidence because he didn't fully understand what relevance was. But essentially, what Sean was saying is, I deleted the smoking guns. I deleted the things that I thought would be the most harmful to my case.

And what we have here is very little mention in the opposition documents to suggest that those text messages are still available. What we hear is ten to fifteen text messages were deleted, at least that's what he admits to deleting. That he deleted them after the case started. That those text message were not -- messages were not all recovered. That some of the texts that were recovered

clearly are relevant to the case. And within the scope of discovery. And what we don't know and what we may never know is what the rest of those text messages said.

He characterizes the rest of them by the only one that he can remember, and he says it was something to the effect that Craig lacked passion. Lacked compassion. What we don't know is what the other text messages that we know are relevant, that were deleted after the case started and after discovery was served, what those text messages say. So, we have relevant messages that were deleted.

We're asking for an instruction to the jury. We've specified a very narrow instruction, and it's not a "shall", it's a "may". It's a reasonable instruction under the circumstances. And we ask for a sanction. It's not -- it is very unusual that a party deletes evidence. It's even more unusual that they lie about it in a deposition. Even more unusual that they later admit it, and go on record, essentially, providing a record of perjury.

So, under the circumstances, Your Honor, we ask that the motion as it relates to Sean be granted. There's no question that they had communications in their possession that were deleted. But I don't want to miss either, Your Honor, the fact the reason we even get here to this

hearing is not just because there were deleted messages. It's that there were deleted messages, some of which were recovered, some of which were not, but during the process of figuring out what was recoverable, the messages that were deleted but that were hidden kind of in the memory of the phone, what we end up with is a report from Computer Forensic Services company and from Carney Forensic Services, that show that relevant messages that were actually on the phone and were never deleted, were not produced in the case.

So, sort of we fall backward into this discovery of the fact that relevant messages about the case, about the parties, about the motivations of the defendants, their good faith or their bad faith and how they acted, those messages were not actually produced even though they weren't deleted. And so, that is part of Sean's motion. It's part of Renee's. It's part of Lisa's, and it's a key reason why this is a big problem. When we figure this stuff out late in the case, essentially as we close in on the end of discovery in the case and find out for the first time there were text messages on these phones that were not even deleted but they weren't produced. That's a problem and it justifies the relief we're requesting here.

THE COURT: Mr. Schaap do you have a status of

the transcript for Sean's second deposition?

MR. SCHAAP: Yes, we do have the transcript --

THE COURT: Okay.

MR. SCHAAP: -- in possession.

THE COURT: All right. Thank you.

All right. Mr. Tentinger, one question just kind of off the -- just so I'm clear. There's been two forensic examinations of -- has been also of Lisa and Renee's phones?

MR. TENTINGER: No, Your Honor, actually, that was a mistake in one of the briefs.

THE COURT: Okay.

MR. TENTINGER: For Renee's --

THE COURT: That's --

MR. TENTINGER: -- phone -- excuse me. For Renee's phone, we never had that examined. This is the result of having to file triplicate motions and five due in the same day. When I proofread those, that were prepared by another attorney, the argument for Lisa was copied over to Renee's. But Renee's phone has never been examined by Carney Forensics at all.

THE COURT: Okay. That was something --

MR. TENTINGER: And I can file, I saw that Friday evening as I was looking at this.

THE COURT: All right. Yeah. That was just a

point of clarification I wanted to have made. So, you may proceed Mr. Tentinger.

MR. TENTINGER: Okay. Thank you.

You know, I guess, it's hard to really respond. I understand, you know, plaintiff's argument, you know, they have to make the showing there's a civil conspiracy here and they tell you what -- if they were true, that they were correct and they have support for this -- what they said would be accurate. I just don't think there is any accuracy in what, what the factual history that you've been provided here.

The entire motion for Renee and Lisa with respect to spoliation requires this Court to set aside their testimony, which saying, hey, I didn't, you know, I just -- Renee says I always delete everything. She's gone through a couple phones. She cleared them out because she's going to recycle them. So, a lot of that stuff was gone. Lisa routinely deletes messages for work. She had issues with her phone. A lot of that stuff was gone. They can contest it all they want at trial, but as we stand here today, that is their testimony. This Court's not in -- it's not just -- the role of the Court at this juncture to sit there and just cast their testimony aside.

On top of that, this idea that the plaintiff or

excuse me, the defendants were supposed to have, start preserving the evidence long before this case ever came into fruition is just, it's unsupported in law or fact. I mean Lisa wasn't even in the initial letters to Sean. They didn't even talk about a claim for Lisa. Lisa hasn't even sent an email or done any -- hasn't even been accused of committing defamation or the IIED claim for Marie. She's only listed here as a civil conspirator. So, the idea that she's going to be aware that she's subject to this lawsuit months or years prior to it beginning is just ridiculous.

Then on top of that, once notice was received, any text messages that had been gone to that point have now since been recovered. And I just copy-pasted those summaries into our brief. And you can see a review of that is largely, completely, family communications and/or oh, it looks like we're getting sued, what do we do? None of that stuff is directly related to any of the claims. It's not going to help a jury decide whether, you know, this email from two years ago regarding Craig and Marie's marriage from the '80s you know whether it was bad or not.

Ultimately, I think these motions for Renee and Lisa are just bootstrapped on the one from Sean and I think they're entirely inappropriate given the evidence at hand

here. As for that, I guess, I can just rest on the papers for the remaining arguments.

THE COURT: Ms. Hansen.

MS. HANSEN: Thank you, Your Honor. This is in response to Sean's. Now, I want to clarify something that I think -- I don't want this to be hidden. He did. He deleted at least ten to fifteen text messages, and he lied about it in his first deposition. We're not disagreeing. Half of those texts were recovered, and half of them were not. And the real issue is, I think plaintiffs are saying it doesn't have to be a material fact for spoliation and I think that is something you do have to show. What Sean testified to was that there was a series of texts, basically describing how unhappy he was with his father. It doesn't have anything to do with defamation. It doesn't have anything to do with IIED, and it has nothing to do with conspiracy.

Now, what the plaintiffs are arguing is essentially he's promoted my client to the position of a lawyer. My client should have known the rules of relevance and should have known that these particular texts might be relevant because they merely mentioned Craig's name. That is not the standard for relevance. Now, certainly, I do think, and I think Mr. Schaap has an absolute right to argue to Sean in front of a jury that, you know, you

deleted these texts, why you deleted them. Absolutely. The question here is whether or not he should be sanctioned for spoliation. And the sanctions that they're looking for, they simply don't point out how they've been harmed.

We did, in fact, and this is the first time I've had to do it because of the relentless theories behind plaintiff that basically all my clients have ever done is sat around talking about Craig and they must have never communicated with each other about anything else other than Craig. We've actually have had a complete examination of the phones of at least Sean and, I believe Lisa's the other one. We produced those. We didn't even -- I think the only we redacted was some kids' faces. We produced everything from goose poop to mail to milk prices. Now, they say, well you need to pay for us to have our own examination. Well, they can certainly choose to do so, but I don't think that that is necessarily a good sanction for a spoliation of ten to fifteen text messages, which we've already testified what they were about.

The other argument the plaintiffs are making is essentially, there are missing texts that couldn't be recovered that were sent prior to this matter beginning. And that's the real crux. They want this Court to

presume that those texts were relevant. They want the Court to presume that mine clients knew or should have known the standard of relevance and knew or should've known that they had some sort of obligation to preserve documents in the off chance that they're sued by their ex-husband, brother, or father for defamation per se and intentional infliction of emotional distress. Certainly, plaintiffs can make these arguments to the jury. But what they're asking this Court to do is to make that leap for the jury.

On this, I will, I think it's more clearly set out in the briefs, but I do want to tell you -- to point to the Court, that I do believe plaintiffs continue to stray from what this case is about. This case is not about, did they ever talk about Craig ever. The case is about intentional infliction of emotional distress, negligence per se, -- or sorry, not negligence per se -- defamation per se, and conspiracy which is a subset of those. They're not proving their claim. What they're claiming is essentially we're just going to make this as hard as possible for you. We're going to make this as expensive as possible, and we hope you just give up. That's not the purpose of discovery. They're asking this Court to make leaps that this Court should not, and they're asking for sanctions that this Court should not put forth based

on the effort -- based on the evidence in front of it.

With regard to the spoliation jury instruction, we are not at that phase, Your Honor. Jury instruction discussion happens right before the pre-trial. It's not the point, time, to even discuss jury instructions. So, we would ask that you deny plaintiff's motion with regard to Sean.

THE COURT: Mr. Schaap any further argument on this issue?

MR. SCHAAP: Yes, Your Honor.

So, another theme that I heard coming out of the argument just now is the Court shouldn't be weighing facts or it's too early to weigh facts in the case. This is not weighing facts. This Court weighs facts all the time. Did someone produce a document, or did they not produce a document? Did someone delete a text message, or did they not delete a text message? I don't understand the discussion in the briefing from the other side that the Court can't weigh facts or make determinations about management of its own case. This Court clearly can do that and should do that in this instance. Particularly, where a party has been documented -- parties have been documented to have deleted text messages around key dates in this case. So, that shouldn't be any hindrance or any hesitation on the

Court's part to rule on these issues.

I think, you know, based on the argument I just heard from counsel, we're not trying to make Sean a lawyer. He acknowledged himself that these essentially were deleted because they were the smoking gun. They were going to be twisted by the other side. He knew what was important and what the other side, us, would want to see. And that's what he deleted. He acknowledged that these were relevant, and the Court shouldn't second guess what he's admitted.

This is not a case about the plaintiffs trying to make it as difficult as possible for the defendants. The defendants have been very hesitant to produce. Hesitant to cooperate. And they've made it very difficult for the plaintiffs to gather the evidence they're entitled. And so, this discussion about the breadth and scope of discovery in this case. That's a two-way street. If you produce it the first time, if you don't delete text messages, if you provide forthcoming responses, there's not as much discovery needed.

As to the jury instructions being premature, they're not premature, Your Honor. We'll deal with other instructions at the time of the trial of course, but this is one that should be fixed. This is one that should be set well before the trial occurs because there's nothing

MINNESOTA JUDICIAL BRANCH

more that needs to happen at this point. We know the deletion occurred and the Court should give that instruction.

And finally, I just heard, again, in an argument by counsel a fact that is completely contrary to what I understand to be the case. And I think the Court had the same question. The -- the, there was just a claim that there was an exam of Lisa's phone that was produced to us in this case from John Carney. There was a reference to two forensic reports. One for Sean, one for Lisa. Just to be clear, we have never received a report for Lisa. And I heard discussion about sort of a misstatement in the briefing about Renee having a report. But there's still confusion on our part as to why we waited months for a report for Lisa's phone. We're told, hey it's coming. It's taking a little longer than we expected. Kept asking about it. We wrote letters about it. We sent emails about it. Where is this report? And eventually, we were told the report never -- was never completed. They never had a report. And now we've just been told that a report was produced to us, and that is not the case. I still have questions. I still don't understand what -- which way is up on this issue because we don't have the report. And there -- I mean, in the record that we've presented to the Court we've also

explained why there is such confusion because we have emails from counsel for the defendants saying the report was not completed and that's why we never got the report. I don't know what to think at this point.

THE COURT: All right. Mr. Tentinger.

And you're on mute.

MR. TENTINGER: Thank you, Your Honor.

That is correct regarding the report for Lisa. The phone was sent to Carney Forensics for an examination. We're going to get outside of my lane here, but I'll try to explain. Her phone is at 128 gigabytes of memory. His tools or apps or the devices he uses to conduct that examination essentially couldn't handle the amount of data cause her phone was like maxed out or something like that. So, he had to work with the people that create the apps or something like that, and so there was delays in that end. Ultimately, that's what counsels referring to.

As far as this idea that --

THE COURT: Did you --

MR. TENTINGER: -- the Court --

THE COURT: -- let me ask though, did you get a report?

MR. TENTINGER: A report for Lisa's phone --

THE COURT: Yes.

MR. TENTINGER: -- I do have one right now. I

have. I haven't produced it yet. I wasn't --

THE COURT: Why not?

MR. TENTINGER: I wasn't aware I had it until I was working with John last week.

THE COURT: Okay.

MR. TENTINGER: So, ultimately, he had sent it to my office. I didn't know it had come to our office. I switched paralegals. When working with John Carney last week in responding to their motions is when I learned I have it. I'm going through that right now to make sure it doesn't or to pull out the attorney stuff cause, it certainly includes text messages to my office in there. Then it's going to be produced.

With respect to the argument that this Court should set aside my client's testimony and just find that they purposely deleted text messages, that they did so after this lawsuit started, I don't think there's any support in the law to -- to support that claim. For the Court to find in favor for plaintiff, these motions, it would have to disregard Renee and Lisa's testimony. Which again, is a jury's -- which is what would be put to the jury ultimately, not what we decide here today.

THE COURT: All right. Ms. Hansen, anything further?

MS. HANSEN: Just one clarification.

Mr. Schaap had referred to deleted texts as the "smoking gun." You will, I assume, get Mr. or Sean's second deposition transcript and you can read through it. That is not how he describes them and that's certainly not what the texts are.

THE COURT: All right.

So, now we're going to move Mr. Schaap's the motion of reconsideration of the December 21st, '21 order of this Court. So, Mr. Schaap, you may proceed.

MR. SCHAAP: Thank you, Your Honor.

So, we have discovery rules that are broad. The Court -- the Minnesota Supreme Court has repeatedly reiterated that discovery into information about claims in a case is supposed to be produced early on. It's supposed to be liberal discovery. And here, you know, we have evidence that there was a motion brought last year, claims at that time, that everything was produced, and now we know subsequent to that that everything was not produced.

The framework of this motion is limited to the common interest doctrine. The common interest doctrine was recently clarified in Energy Policy Advocates, and it was -- there is a six-factor test. And I just want to cut to the chase. In the opposition we received from the defendants, in this case, there are a number of arguments

made. We've addressed those in our reply. But the argument that I did not see was an argument that there was a privileged communication or there's some kind of privilege analysis that's going on. When there is an objection during a deposition to a question that I ask about a conversation that occurred after commencement of this lawsuit and there's a blanket instruction not to respond, without regard to privilege, without regard to the factors in Energy Policy Advocates. And so, what we see is this shield that's put up. This case is unique in that the shield is now shielding parties that are known to have deleted messages. We just addressed it. We've spent time talking about it. And contrary to the claim that Renee and Lisa didn't continue to delete messages, there's evidence in the record that they did. And we've articulated that. So, I don't know where that's coming from.

But the issue, in this case, is that there's no analysis from the defendants as to why privilege attaches or why they can shield all communications post-commencement in this case. The briefing doesn't contain the analysis. And as someone asserting the privilege, they have the obligation in their duty to show that the privileged attached. That's one of the elements. If Energy Policy Advocates were as simple as the defendants

are construing it, it would not have included that last factor. It wouldn't have included the privilege factor. It would have just asked, are you represented by counsel, and is there a lawsuit? And then any communication among you, even if it doesn't involve counsel and even if it's about issues relating to the other side or about destruction of evidence or deleted evidence or questions like, did you delete text messages? Things of that nature. And they want to say, well that's not about a claim or a defense in this case. I think the Court is -- is capable of analyzing that specific argument.

My response on that is, is that if two parties conspire and talk about deleting evidence after a case begins, I can't really think of an argument as to why I shouldn't, as counsel for the other side, be able to inquire into those communications and those conversations. What they're essentially doing is, is making objections like this. And here's an example. I ask Lisa in a deposition, which I haven't done because I took her deposition before Sean admitted that he deleted messages and lied about it. I would ask Lisa: Lisa, did you talk to Sean after the commencement of this action about the fact that he deleted messages or that he was asking you to delete messages? And the response to that would be objection. I'm asserting common interest

privilege, don't respond to the question.

In that analysis, it just -- it's based on a date, and it's not based upon the existence of a privilege. They essentially took November 19, 2020, and they said anything after is off-limits. The suggestion that well we haven't asserted the common interest privilege in written discovery responses it doesn't -- it doesn't -- it's not consistent with what we see in the deposition practice.

So, they essentially stood in the way of categories of questioning in the deposition which now are even more interesting and relevant because we have des-- we have documented deletions. And we have one party admitting that he lied about the deletions. And now we have a new revelation in this hearing that Lisa's forensic exam, by her own forensic examiner, was completed. So, we have new discovery that we're finding out about live during this hearing that we still haven't seen, and we still haven't been able to compare with our own forensic expert's examination.

And would note, Your Honor when these forensic examiners examine these phones, they take an image. It's essentially a recording of what's on the phone in real time. The image in this case of Lisa's phone is much much earlier than the image that our forensic examiner

obtained. And this data, as you're using your phone, this data is being overwritten. So, the earlier examinations are more valuable than a later examination because there's less overwritten on that earlier examination. And so, under these circumstances, the relevance on the claims side is clearly present. Did they talk about what they did? Did they talk about how they did it? But also, the relevance as to the procedural problems that we see in discovery. I should be able to ask questions about discovery. What the Court will see, in this case, is that the defendants ask a lot of questions about discovery. They ask questions like, who did you talk to to prepare for this deposition? What did you talk about? What documents did you look at? What did you do to look for documents? They asked that of third parties. They asked that of our clients.

So, this argument that none of what we're seeking after the date this case commenced is relevant to a claim or defense is not really the right question. It's whether it's likely to lead to the discovery of relevant evidence, and that's the inquiry. Credibility, motivations, what people did, and when and why? Those are all areas that we should be able to inquire into, as to -- and that's why these topics should not be off limits under Energy Policy Advocates. I wanted to

address a couple of additional topics as to this, this specific request for reconsideration.

And just this Your Honor to close, that conversations without counsel present are generally not going to be privileged under Energy Policy Advocates. And so, there was no analysis in the opposition that I saw where they took a communication or an example of a communication and said this communication is privileged or there should be some blanket privilege that covers all of the post-commencement communications in this case. They have the burden. They didn't carry the burden and so, this Court should re-evaluate, reconsider, whether post-commencement communications are off-limits. They should not be off-limits. And if they're going to assert that specific communications are off-limits, they should articulate in a privilege log what those communications are. With sufficient details so that we can evaluate it and potentially present it to the Court. Thank you, Your Honor.

THE COURT: All right. I've got a hypothetical or two, Mr. Schaap. Just -- let's just say, A texts B and says I talked to our lawyer. He said that the plaintiffs is going to argue that you should have shoveled the snow from the driveway faster. And B text back to A, does that mean we can ask the plaintiff about

what kind of shoes he was wearing when he slipped and fell? A replies to B, I will ask him for you when I meet with him next week. And B responds to A, Okay. You can -- can you also mention that I still have a -- have the broken shovel I was trying to use. Is this conversation privileged or not?

MR. SCHAAP: Yes, I would say it is.

THE COURT: All right. And why is that?

MR. SCHAAP: Because it's talking about privileged communication. There's no way to, among co-defendants, to have a communication about a privilege communication without conveying it with words.

That's not what we're talking about here, and so if the Court wants to exclude or specifically provide an example like that, that's not what it appears is happening in these depositions. Where the only criteria for whether they're allowed to answer or not is whether it's after November 19, 2020.

So, I would say, Your Honor, this happens frequently in companies. We address this in depositions. You know, the company attorney says to the client, you gather these documents, and the client assigns someone to gather the documents. That communication as it goes inside of the client, even if it's outside of the control group, the litigation committee on the board, is going to -- gonna

have this privilege that attaches. And that argument has not, has not been made.

The general argument that they make is that anything they learned about the plaintiffs after the commencement of the action was from counsel, therefore everything is off-limits. But that doesn't cover communications that the parties had amongst themselves about the plaintiffs, about what they did with evidence, about what they were doing to look for evidence, or whether they deleted evidence. And we haven't even been able to access any of that information.

THE COURT: All right. And then just one more here. A text B, I talked to our lawyer. He said we are going to have to delay things because plaintiff is traveling next month. B responds to A, sure that's what plaintiff says, but I don't trust a word he says. A replies to B, yeah I hate that he is getting his way again. Is that conversation privileged or not?

MR. SCHAAP: I would say the portion that refers to the communication from the lawyer certainly would be.

THE COURT: All right. Mr. Tentinger, I'll hear from you.

MR. TENTINGER: Thank you, Your Honor. Act-- this brief was actually submitted by my co-counsel.

THE COURT: Oh.

MR. TENTINGER: So, I'll --

THE COURT: All right. I'll turn to Ms. Hansen. I'm sorry.

MR. TENTINGER: Okay. Thank you.

MS. HANSEN: No worries, Your Honor. And on this one, I'm going to just freely admit, I wasn't the one who wrote the brief. My colleague, Stephen Couillard did. So, he's the expert on it and unfortunately, we're having internet problems at the actual office, so he's not here with us.

But let's just discuss the common interest doctrine. This is the -- on a motion to reconsider. The complained of issues that Mr. Schaap is arguing about actually happened after we had the original ruling talking about that it was protected by the common interest doctrine. And as best as I understand, he now wants to re-open discovery because the law has changed or been clarified. And now he wants to ask my clients about communication they had after the litigation began about what they did for discovery. That's as best as I understand the argument here.

I think plaintiffs have acknowledged that anything that they've learned from their lawyers, you know, our theories about the case, that that would be privileged.

So, as best as I have understood this, what they want is they want to question all the defendants about what they did to look for discovery. They actually already have. They've asked each and every person, what did you do to answer the discovery. How did you look through your cellphone? What steps did you take to answer discovery? I guess, I'm at a loss Your Honor as to the benefit of this, other than they keep having this theory that deleted texts must therefore be relevant and this Court needs to find that they're relevant. I guess I'm not understanding where plaintiff is going with this particular argument.

Mr. Schaap is an excellent attorney. He's taken very, very, very detailed depositions for the entire time allowed. So, I'm not exactly certain what else could possibly happen in this case for -- in terms of the common interest doctrine. We have not withheld any documents based on the common interest doctrine. At best, it was brought up in depositions at the time where the caselaw was unsettled. And as best as I understand, he now wants to reopen discovery on those issues, and I think that's inappropriate at this point.

THE COURT: All right. Mr. Schaap, anything further on this issue?

MR. SCHAAP: No, Your Honor. I think the

record is pretty clear that we've been denied discovery up to this point in reliance on the Court's order last year. The Court should reconsider that order. Reopening discovery is kind of a misnomer here. It should be -- still be opened. We attempted to get that done through a stipulation and that's also the subject of a motion to extend here as well. So.

THE COURT: All right. And that's what I'm going to jump to now and I would assume that you want to add the fact that you just learned that there's a report regarding Lisa's phone that you now know exists and haven't received. I think that's fair to say, Mr. Schaap?

MR. SCHAAP: Yes, that's fair to say.

THE COURT: All right. And then I'll hear the balance of your motion with that, that the Court is obviously going to consider you didn't have that information until today. So. I'll note that that's why it would not be in your brief.

MR. SCHAAP: Yes, Your Honor. So, you know scheduling orders may be extended and amended for good cause shown. I think this case might be a poster child for why there would be good cause under the circumstances. We learned two days before the close of discovery from Sean Stevenson the extent of what had

happened with his deletion of text messages. We learned about this after we had already deposed almost everyone else in the case. This was the last deposition. It was a second deposition, obviously. And it's kind of a big fact when you take someone's deposition in February of this year, you're told one thing. You operate in discovery on a complete trajectory based on what you learned during that deposition. Only to find out many months later that what you were told and what you relied on was false. And that there was more to find and some of which will not be found.

And we also have very late-breaking disclosure of forensic reports. Forensic reports are very rare in normal, you know, defamation litigation. They just don't happen. You don't need them because you don't have the level of sort of non-disclosure and deletion that you see in this case. Can't remember the last time, I mean, I've done 'em over the years but it's not common in litigation to have these forensic reports. And when they turn up text messages about the case that are relevant to the case after party depositions are already done, you know, I, I, I get that people don't want to have discovery that continues on forever, but we've got a really unique situation here in that we've had some new facts that happen to be disclosed in the last few months. So,

MINNESOTA JUDICIAL BRANCH

that's a concern. That gives us good cause, I believe, to extend discovery for a reasonable period.

I also think this Court's order in this instance is, you know, what the Court does with this particular motion will have an impact on, not just this motion but the spoliation motion and a reconsideration motion. Will have an impact on discovery in and of itself. And so, that's also good cause I believe.

THE COURT: And Mr. Schaap, you said for -- words you used was a reasonable per-- "a reasonable period." How long do you think "a reasonable period" would be?

MR. SCHAAP: I would say three months. I know the Court has 90 days to make a decision. We did include a footnote that the Court could ignore, obviously --

THE COURT: Well, I saw it and I would put it -- I'm realizing where we're at as much as I can slide it up the priority scheme, that's what I -- that's my intent.

MR. SCHAAP: I was a law clerk, so I know how those things work but. I think that having that decision would be good early on and in your process.

THE COURT: All right. And so, let's say I extend it for whatever period is, how long after that as far as setting a time for summary judgment motions after

that?

MR. SCHAAP: I think if summary judgment were heard within a month or two from when the close of discovery occurred. I think that would be sufficient time if I were going to make a motion for summary judgment. I'd also want the non-dispositive motion deadlines to extend consistent with the extension of discovery.

THE COURT: All right. Mr. Tentinger.

MR. TENTINGER: Thank you, Your Honor.

I want to make one thing -- I wanted to make sure I wasn't mute first -- I want to make one thing clear here. The only person that deleted messages after the fact is Sean Stevenson. There was a report provided to plaintiffs, off the cuff, I believe back in early May. It was provided in two subparts back in May of 2022. Lisa and Renee have already testified that they didn't delete any messages that were relevant to this case after it started.

The idea now that we're going to keep deposition or keep discovery open again so that they can re-depose these people is certainly unusual. I mean, plaintiffs for example on the eve of the close of discovery produced, I think, twenty-three or thirty more videos that were relevant to this case. We just found out a

week and a half before discovery closes of Marie's new diagnosis. That is certainly material to her IIED claims and her ongoing medical concerns.

It's the nature of litigation that you're always going to be learning new things as you go. If we keep this open again, I mean, it would be kind of an endless cycle of discovery. I mean, certainly, I think there's an argument to be made here that a new IME is necessary. There's certainly, there's a new argument to inquire how this new diagnosis for Marie has impacted her emotional well-being versus what we knew back in February or May when we, excuse me, March when we took her deposition. Nothing that was learned through Sean's deposition is gonna impact Lisa or Renee's prior testimony. The spoliation or excuse me the deleted messages is limited to Sean. And now there's a lot of testimony or excuse me a lot of argument that it goes widespread beyond that, but that's simply not the case. It's just not in the record.

And this comes back then, circles back to the proportionality of this lawsuit. I mean, we're probably at over half-million in fees. So, to sit here and argue that we should continue this, just keep kicking this can down the road, it's just not proportional to the actual underlying claims here. I mean the defamation that is

alleged to have occurred is published to, I believe, Makayla, Miranda, and then I believe one more letter to Marie's father. From a proportionality standpoint the amount of money that is being spent here, the amount of time and energy, it's just not proportional to the case and there's a tremendous amount of case law cited to in my memorandum that talks about this. At some point, this thing has to come to a head. And I get it, you know, that Sean's thing certainly threw us for a loop, but that doesn't impact Lisa and Renee's testimony. Nothing's being changed here.

On top of that, if they wanted to bring a motion to re-depose them, they could have done so cause they had all the forensic reports, at least by September sometime. They could have brought a motion to re-depose them then. I mean, they're out of written discovery. I mean, we've -- I think there's, I want to say, I think Kit or Kirsten Hansen cited it, I think there's been over like 44 written discovery documents that we've responded to. Over the amount allowed even but it's just easier just to respond than to fight over whether, you know, to bring a motion for protective order on that aspect.

There's been over twenty depositions in this case. There's nothing else to have. Lisa and Renee are not going to do -- they essentially want to keep discovery

open so they can bring a motion to re-depose those two, despite the fact they've already had them testify for seven hours each or Renee over seven hours. It just -- I don't believe anything that we've learned recently has impacted their testimony whatsoever. Keeping this open any longer is just going to further delay this case being actually heard for summary judgment and further delay this Court or excuse me, these claims from seeing a jury. For those reasons, we would ask to this Court to deny this motion.

THE COURT: And let me ask if that motion or if this motion were denied, how soon after the issuance of that order should there be summary judgment and dispositive and non-dispositive motions for the timeframe after that?

MR. TENTINGER: I'm sorry, you -- you cut out there for a bit. You're asking about how much --

THE COURT: If the Court were to -- if the Court were to deny the motion, how soon after that order for dispositive and non-dispositive motions?

The same kind of month or two that was proposed by Mr. Schaap if I were to grant it?

MR. TENTINGER: Well, I guess, you -- the parties have entered into a stipulation when all these -- when these spoliations motions dropped right before our

pending summary judgment hearing date, I believe the parties have already stipulated that we will wait for the Court to decide the spoliation arguments before the summary judgment argument. I think quite frankly, defendants are ready to go. We were already prepared to have our motion filed already. So, I mean, I mean, we can get something scheduled, I mean, almost immediately after. But in honoring that stipulation, I think it would have to be following, sometime shortly after the spoliation motions were decided.

THE COURT: Thank you. Ms. Hansen.

MS. HANSEN: Your Honor, yes, we're good to go with the summary judgment motions. So, I would say just on to practicality maybe 45 days out for it to be -- just to give you a date, Your Honor, from -- you know, 45 days out from the decision.

THE COURT: All right.

Now, I think we move to defendant's motions. So, I'll turn, I believe those were yours Mr. Tentinger? My computer has, due to the number of files it just spins for a while here. So, I think this is yours, Mr. Tentinger.

MR. TENTINGER: Yes. Thank you, Your Honor.

I believe this is pretty well documented in our written submission, but I guess the high points are, we

don't have a clear understanding of what medical records are missing, what ones maybe don't exist, or anything. Plaintiff's responses to requests for records has been with objections noted. They've later supplied additional records, but we don't know if that's a complete record, if there's still being some withheld. We just simply don't know. If they aren't withholding any records, if they've all been provided, well then why are you objecting to providing them? It doesn't allow us to have a thorough understanding of what's going on.

This argument that it's a limited disclosure I think is inappropriate considering that the list of complaints by Marie is well over a page long. It ranges from almost anything you can think of is listed in it. So, the idea that you could somehow limit these disclosures to only some of (indiscernible) is just unreasonable and it's not practical. It's not enforceable. You couldn't do that.

On top of that, who's making the decisions on which ones are related or not? Plaintiffs are not in a position to decide what records are relevant and what ones are not. I mean, it would be up to our expert doctors to decide that.

On top of that, I guess, is the issue with this -- the video. July 9th, 2019, we know that Craig read this email that he believes to be defamatory to his daughter

Miranda. This is when the defamation claim, that he's now suing over, first came into fruition. As Miranda testified, she -- Craig filters her emails. She did not actually get that email herself. Her father printed it off and read it to her at the kitchen table the next morning. We know from her testimony, and we also know from prior -- other videos provided, that they had surveillance cameras in their kitchen at that time. According to Miranda, those videos are backed-up, be on additional server, and allowing her father to still have access to them.

Certainly, the reading, the publishing, of this defamatory email would be relevant. Plaintiffs have produced videos both before and after that timeframe. But they have not produced this July 9th one. They've talked about in April 2020, they replaced the server and wiped it. Which is another issue altogether but I'm not going to address it here. But, yet just two months ago they produced for the first-time new videos from prior to April 2020, when they wiped that server. So, they either had these videos for the past two and half years, they just never -- just never served them or produced them, or they still have access as Miranda testified to this old server and can still pull these videos.

For that reason, we are asking this Court to either

compel the production of that video, which they're claiming they don't have, or allow plaintiffs or excuse me, allow defendants to have the servers examined by their own expert to produce this video. Cause plaintiffs have been able to manage to produce almost any single video they wanted to as the case has gone on but this one. Which is the very instant that this claim arose for the defamation claim.

Similarly, no -- and Your Honor, I think I can rest on those. Those are the two high points. I'll get moving here.

THE COURT: Well and then we also have the issue of the book; correct?

MR. TENTINGER: Correct. I can -- So, the book was not part -- it was not listed in the original complaint. The book wasn't there at all. In the amended complaint, there's a discussion about this Christmas card. Sean had essentially did a satire photo of him holding a book titled "Sins of the Wife." And he sent it to his half-sisters. That claim is now in the lawsuit. That book is a parody or satire of a book that Marie told Lisa about twenty years ago. This was previously argued in the motion to amend the complaint. So, I didn't rehash it there. But we know this book existed. Marie told Lisa it existed, that's how defendants even know

about it in the first place. According to Marie, it included lists of her faults. Hence how Sean came up with that satire which is supposed to be a tongue-in-cheek joke, or I don't know what it was.

But anyways, this book has been the subject of written discovery requests. I think I've cited to every spot in the depositions where they've been asked about this. If they want to talk about this book, they want to include this in their complaint, or in their claims we should have at least have the benefit of the book available. It just wasn't just completely made up. This was an actual book that Sean knew about because Marie had told Lisa about it years ago. But if they're going to bring a claim on this book, we should at least have the benefit of the book in front of us.

Other than that, it just doesn't seem -- there's no reason it wouldn't be produced up to this point. The idea that it's covered by spousal privilege I think is already proven to be inaccurate considering that Makayla testified that she helped put it together. She's seen it all. Craig's emails themselves discuss how it's not intended to be just for Marie. It's intended to be for the family. If you want to continue to bring this book up and make it part of the lawsuit it should be produced and part of the lawsuit.

THE COURT: And let me ask you then, so, it's agreed that it's not in the complaint. Are you ask -- are you litigating this issue by consent or are you demanding it would be part of the complaint?

MR. TENTINGER: Excuse me and I can clear that up. The original complaint did not have anything -- it did not have any discussion of the Christmas card, which shows -- which includes that photo of Sean holding the parody book. The amended complaint that added that Christmas card, is part of their civil conspiracy claims. That Christmas card has Sean holding this parody book. At that point in time, if it was up to me, I wouldn't -- I wish we weren't litigating this. But since it's been added in there. Since it's been the subject of so much testimony already, it only stands to reason that it should be produced.

THE COURT: All right. And Ms. Hansen, do you have anything to add on this issue?

MS. HANSEN: No, Your Honor.

THE COURT: Okay. And Mr. Schaap.

MR. SCHAAP: Thank you, Your Honor.

As to the medical records, we've produced the medical records. There shouldn't be any real issue to address any further. Our clients actually reached out to Lake Region Medical -- Lake Region Healthcare, which has

MINNESOTA JUDICIAL BRANCH

been Marie's primary provider for the past twenty years. We've provided authorizations. Lots of authorizations. Repeated authorizations for some of the same medical providers because they've been requested multiple times. And so, we've provided them multiple times.

The issue is that you know and according to Marie's communications with Lake Region, the Tentinger Law Firm has never requested Marie's medical records from Lake Region in spite of having two authorization forms in their possession for the last approximately fourteen months. Ms. Hansen's firm only requested records from January 1, 2015, to the present which explains why only eleven pages were produced. They also failed to produce those eleven pages to us at this point from what we can tell. We produced 167 pages initially. And then after there were complaints that our client didn't produce any information about the cancer diagnosis from earlier this year, we produced an additional 97 pages of medical records.

This is the kind of motion that should be resolved by just lawyers talking to each other because the confusion expressed would not exist if we just had a conversation. This is one where a meet and confer would've made a lot of sense. I'm going to go through a number of issues with regard to this motion and just

explain why the motion is based upon confusion and not based on the lack of production.

So, with regard to medical records, there is no confusion and we've explained in detail in our papers why there shouldn't have been any in the first place. But that's -- that one is not justified.

Now, we have a number of videos. So, there's -- so there are questions about this blockbuster request. They want to come in and take basically all the computers. Almost like it's a search warrant, you know, type of breadth. It's not -- it wasn't limited in any respect. We objected. We objected in great detail as to why this was an improper request.

We have this July 9, 2019, video. We, you know, Miranda's testimony was about the surveillance system and her testimony is being misconstrued. So, July 19, 2019, *(sic)* there is no video from that date because that was on a prior server that was replaced in 2020, April of 2020. And just for the Court's timeline, April 2020 is when the server was replaced. And November of 2020 is when the case was commenced. So, long before the case was commenced the server was replaced, and long before the server was replaced in July 2019, you have this conversation that occurs, this video.

The video's gone. The video is overwritten. The

video is not available. We've told the other side that repeatedly. This is all long before the litigation started. The clients don't save every single minute of video. It's a huge amount of data. This was just overwritten. It doesn't exist. And that explanation doesn't seem to be acceptable to the other side because they say, well you have other videos from 2019, why don't you have that video?

Well, the other videos were saved in 2019 or saved around the time that they -- before they were overwritten, for whatever reason, they thought they might be interesting, they might be relevant, they were involved a party to the case. And so, they were not saving everything. They were not in of the mentality that this is going to be a lawsuit. This was just run-of-mill surveillance.

The reason there was surveillance is because they ran a business out of the home. They had a lot of valuable computer parts inside the home over the years. And so, there were a lot more cameras in the office area where parts were packaged. Where data was processed. And so, this specific video was just overwritten over the course of time.

They have not produced any evidence or any even credible argument that the video was not overwritten or

that the affidavits from our clients are not credible, and, in reality, our clients have gone way above and beyond when it comes it producing videos.

They now say, well some of the videos that you produced were from 2019. Why did you produce them so late? It was because they didn't request them specifically and because they testified in a way that was sort of -- it was inconsistent with what they -- what actually happened, and so the video was produced after the testimony came in that was inconsistent with the video to impeach the testimony. So, the reality is that this server isn't just available and sitting somewhere. This server was gone and replaced in 2020 before, months before, this lawsuit started.

The -- I'm also going to clarify, there is a suggestion that there was a video of a panic attack that was seen by Craig and Marie's daughters. And there's a suggestion that that video was the same video as occurred in 2019. May 17 -- May 27, 2019. Defendants didn't even respond to this in their reply. Our position on this was that that video of the panic attack that occurred in 2019 is a completely different video and that's, that's just the reality than the one that was shown to the daughters of the 2021 incident. The February 18, 2021, video. Two completely different videos. So, when they have a

daughter saying I saw a video of my mom having a panic attack, they're using the 2021 video to say it's been seen, but then they're making reference to the one from 2019 and saying privilege is waived as to that one. That is not reality. That's not consistent with the record and I just wanted to clarify on that specific point.

THE COURT: Let me ask something though. On that video with the conversation between Craig and Lisa, that had been a highly litigated phone call; correct? I mean at least some questions regarding it. Some allegations of what had taken place as far as whether it was a heated discussion and such, earlier in the litigation. Is that fair to say, Mr. Schaap?

MR. SCHAAP: That would be fair to say. Whether --

THE COURT: All right.

MR. SCHAAP: -- it was heated, what was, you know. And it related to the 2006 incident. The version of the events from 2006 that had been discussed by the parties over the years. Yeah.

THE COURT: All right. And that wasn't then the video of, of that phone discussion wasn't produced -- the video wasn't produced until after Lisa's deposition? Normally again, I don't use first names but because we have so many parties that's why I'm doing that. It

wasn't disclosed then until after that deposition; is that correct?

MR. SCHAAP: Correct.

THE COURT: Okay. All right. You may continue Mr. Schaap.

MR. SCHAAP: With regard to the "Daddy Hold You" -- I want to clarify. This is another, this is another topic that I think was not explored in the depositions of my clients in enough depth. And so, it's been sort of taken out of context and has kind of taken on a life of its own.

"Daddy Hold You" the quote-on-quote book or memoir is not a book. It's not a bound book. It's not a printed book. It would be whether -- what would be called, accurately referred to as a bunch of Word documents. So, these Word documents are topical about certain things. They are pictures of the family. Essentially pictures of events that the family attended. Outings they went on. It's a memoir, it's a journal.

So, when Makayla says, I helped to comply part -- portions of the book or I've read portions of the book, she's referring to the photo portions. The family stuff. She's not referring to the password-protected, Marie and Craig only, access version of what the defendants are trying to access or get access to now.

MINNESOTA JUDICIAL BRANCH

That version, that document has only ever been seen by Craig and only ever been seen by Marie. So, suggestions about the daughters saying, I read the book. They're not referring to the confidential portions of the book that are only between their parents. They're referring to the public version that are -- not public but the family-related versions which contain pictures, things like that.

To be clear, "Daddy Hold You" is not referenced in the complaint. This book or you know grouping of Word documents, is not referred to in the complaint. What's referred to in the complaint is a made-up book called "Sins of My Wife" that Sean created on a big poster board. Took a picture of and then put on a Christmas card and sent to the Stevenson home. And essentially, to harass the Stevensons. They didn't know whether that Christmas card had gone to sixty people, everyone on Sean's list, or whether it had only gone to their home. And when they asked, there was no response because that was how Sean behaved. So, this issue is relating to the card and not on this Word document that is only involving Craig and Marie.

There was no waiver of privilege to the fact that, if you say, I have written something about my wife, about, you know, and it contains documentation of what

happened between the two of us and only the two of us, and we've read it and we've talked about it, that is not the same as waiving privilege as to the content. And that's what they're arguing. They're essentially saying by talking about the existence or a topic of what's in this Word document, you waive the right to assert privilege as to the whole Word document regardless of the content and how private and protected it should be under spousal privilege.

So, Your Honor, for that reason that document is privilege. Privilege was asserted. It has been maintained and that document should not be disclosed. It should not be ordered or compelled to be disclosed. And again, I would say this is one of those categories where if they had asked the question, you know, what did Makayla have access to? What did Miranda have access to? They wouldn't be arguing at this point whether this was privileged or not privileged because we would have had that conversation and we would not be before the Court.

We'd ask the Court to deny the motion to compel in its entirety. It is not an appropriate motion. It's not based on an accurate recitation of the record. And it certainly should not be used to have this sort of blockbuster invasion of the personal privacy of the Stevensons, who have incredible amounts of data that

they've had to go through. They've spent countless hours reviewing data, trying to find specific dates. Specific conversations. It's not organized topically. It's not organized by conversations. It's not transcribed. They've had to go through and watch and watch, you know, countless hours of video in response to requests by the defense. So, we'd ask that the Court deny this overly broad request for a forensic examination of servers under the circumstances.

THE COURT: All right. Mr. Schaap, would you -- the title of the, of Sean's book or card, whatever we want to call it, was "Sins of My Wife." Do you believe that was a parody as to the book or "Daddy Hold Me" or "Daddy Hold You" whatever the exact title was of that? Do you believe that was that the Christmas card may have been a parody of the title of that book or…

MR. SCHAAP: It's not -- I wouldn't say it's a parody. I would say it's, Lisa and Marie, decades ago had a conversation, and Marie conveyed concerns that she had at that time about a journal that Craig was keeping. She didn't go into detail about what it included. She didn't say, you know it includes this list of things. She just expressed that concern. Confided in Lisa. Lisa then over the years has sort of made up this idea, this concept, that Craig is journalling about Marie.

Meanwhile, Craig and Marie, they're married for another twenty years. They moved on. It's over. They -- they're happy. They're -- they're a cute couple. I mean, just to put it frankly. You know, you see them interacting in deposition and they get along extremely well.

So, to mischaracterize the conversation about a Word document, twenty years ago, and to say that somehow is -- can be invaded because Sean wrote a book called, "Sins of My Wife" -- he testified in his deposition that not a single thing that was listed on the front of his book, you know, burning food, and a variety of other things that are listed there, were actually from "Daddy Hold You" or from the account of what he understood "Daddy Hold You" to be. So, he testified in his own deposition that it wasn't connected to "Daddy Hold You." It was essentially an attempt to terrorize, harass, and insult Craig and Marie. So, to require the production of a highly private Word document among spouses or between spouses would be improper and it would be unjustified based on the record before the Court.

THE COURT: All right. Are you alleging that that Christmas card then defamed Craig?

MR. SCHAAP: Yes. It defamed Craig to his daughters. It was also harassment, and it was further

evidence providing context that if you're stated goal is to protect Marie, you don't send a card that betrays Marie, harasses Craig, and causes the family to question whether this card has gone to sixty households, people that Craig and Marie know.

THE COURT: And let me ask, is that information in the complaint regarding that the Christmas card defamed Craig?

MR. SCHAAP: No, it's context for the motivations (indiscernible).

THE COURT: And let me ask then also, are you alleging that the Christmas card inflicted emotional distress on Marie?

MR. SCHAAP: I believe the emotional distress components, as alleged in the complaint, is primarily focused on the contacts with Melvin. So, this content is context for the motivations of the parties and why they acted in specific ways. So, when Sean says, he talked to Melvin out of the goodness of his heart because he was concerned about Marie, the card itself directly contravenes and contradicts that claim.

THE COURT: Okay. Mr. Tentinger, anything further?

MR. TENTINGER: Ah. Yeah. For a little bit of context here, the card was sent before there was any

contact with Marie's father. And then it also resulted from quite a considerable amount of emails that -- from Craig, that my client felt that caused them concerns, in addition to a whole wealth of things that are not before this Court, but that will be for summary judgment that led them to the conclusion that there might be concern for Marie. Not the least of which though, was the fact that twenty years ago we know that Marie told Lisa about this book. That's how we even know it even exists.

So, this book caused Marie enough concern that she told this to Lisa. Somebody who she was not that particularly close with. She said that Craig is keeping a book of all my faults. And these are Craig's words. These are in his emails that this Court has already ruled upon and said that these are substantially true. This is back at the amended complaint. This wasn't part of our briefing because now we're kind of going off on a tangent. But it is in the record, and I want to say December of 2021 when this Court ruled on it.

So, the idea that it is completely unrelated, well then why is it even in the complaint? It doesn't have any basis there. Sean testified, or excuse me, this is clearly a parody of the book that he learned about from Marie through Lisa. Or excuse me, from Lisa through Marie. There's been just a ridiculous amount of

testimony on this subject. The idea that it's not going to be now produced despite the fact that we can dance around it endlessly is unreasonable to me.

On top of that, I'd like to real quickly visit the video thing. You hit the nail on the head when you asked about that video of that phone call between Lisa and Craig. That video was absolutely should've been produced. They cited it in their original complaint. That phone call and whether Sean, or whether Lisa or Craig argued over who got to meet Sean back in 2006. That's what that phone call was about in 2019. That absolutely should have been produced. It was not produced until I had to send additional deficiency letters in September of 2022. Then September 14th, shortly before the end of discovery, we get produced about another thirty-four different videos. Many of which, were prior to that April 2020 server. So, they either had them in their possession the whole time. They would have been specifically preserved because Craig felt they were relevant and necessary, and they just never produced them up until September 14, 2022, or as Miranda testified, they still have access to those servers and pull these videos as they choose. One way or the other, these videos are still accessible to plaintiffs at least to some extent. And they just choose not to produce them

until almost the close of discovery. It's the same exact conduct that we're dealing with as far as the spoliation claims. Even with the respect to the fact that they wanted Lisa and Renee to be preserving text messages months before they even knew about this lawsuit. But then plaintiffs go ahead and wipe this server that has all these videos including relevant videos to this case a few months prior to starting this lawsuit.

With that being said, the request for the inspection is significantly narrower than what we had originally requested in our written discovery because as a result of that request, and a result of my deficiency letters, plaintiffs did produce about twenty to thirty more videos. That narrows the scope down considerably. Right now, the only thing we are concerned about is this July 9th, 2019, video. Clearly, plaintiffs have some video stored on some servers from around that time period because they just produced them. The inspection would be limited in scope to that video of when Craig is publishing that allegedly defamatory email to his daughter, which started this whole lawsuit then. That's what we're looking for with the inspection. Everything else that we've argued about has been provided up to this point.

Lastly, with respect to the medical records, if

they've truly all been produced simply remove their objections. It's these objections saying that they're not relevant. That they're overly broad. That they're unduly burdensome to produce these records that cause us to have to come here. In my letters and in another follow-up email that I'm looking at right now from September 12th that's a part of this record, I said, just please produce those records or remove your objections. If you truly have produced everything, simply say that. They still have not done that. In their responsive memorandum, they are arguing there's a limited disclosure here. Limited scope. So, the idea that they're producing everything, but then still arguing this, that it's limited, it -- it's untenable the idea for them to make that argument. Either they produced everything and that's it or they haven't. But if they're arguing limited disclosure, you're arguing that this stuff is not relevant, well then clearly there's some stuff that's not been provided that we have not been told about.

And that's all I have.

THE COURT: All right. I'm going to have -- I've got to put one back just in the waiting room quickly here at the facility then. All right.

Mr. Schaap, any response to that?

MR. SCHAAP: Yes, Your Honor --

THE COURT: And particularly -- particularly about the limited disclosure scope issue. And you may proceed, thank you.

MR. SCHAAP: The issue before the Court, this is a really misleading suggestion that a few months before the litigation starts that there is a wiping of a server. That is not accurate. It's not what's in the record. There's no evidence that this happened. The reality is that these videos, of surveillance video, were kept for a limited period of time. They were not wiped from a server when the server was replaced in April of 2020. And the new server contains a much more significant capacity for backup and for storage. And so, it was replaced to upgrade it, not to wipe it. And the reality is that a video recorded for thirty to sixty days as a backup was not even on the server in April of 2020, if it was relating to July 9, 2019. It was gone. It was not preserved. There was no reason to preserve it at that point. There's no evidence that this would be reasonable to allow this kind of invasive discovery here.

I would say too, that with regard to the book, the "Sins of My Wife" book, it's clear from Sean's testimony that when he put that together he did not have any facts that he was basing the exterior of that book on that related to the discovery they're seeking now. He didn't

base it on a specific statement about what was in the book because there was no discussion about what was in the book twenty years ago other than it was a list of faults.

And I would say too, Your Honor, just to clarify my earlier response to your question. Paragraph 108 of our complaint, upon information and belief on November 28, 2019, Sean, Ashley, Renee, and Lisa discussed how to use the "Sins of My Wife" picture to defame Craig and inflict emotional distress on Marie. This context continues on in our amended complaint, which the Court has approved. The Court -- it went through a motion practice. We sought to amend the pleading and it was amended. It was filed on January 1 of this year. Or January 4th this year.

So, it should not be stricken. There is actually no case law that they are citing in their briefing as to the extreme relief they are seeking in terms of striking a pleading. If the Court looks at the case law, the Courts going to see that this is the most extreme form of relief. And it's just short of default judgment where the Court has to make all kinds of findings before it can engage in this kind of extreme relief or permit this kind of extreme relief. The Court should avoid that. Avoid the appellate issues on that. Deny the motion because

it's not justified by the facts or the case law that the Court would have to apply.

THE COURT: All right. Thank you.

And before I had asked about Sean Stevenson's deposition, I do see now a partial was attached to Mr. Tentinger's filing -- I'm -- I'm just trying to --

MR. SCHAAP: I believe it was our filing, Your Honor.

THE COURT: Was it your filing?

MR. SCHAAP: Yes.

MR. TENTINGER: I don't believe I submitted anything from Sean's second deposition, Your Honor.

THE COURT: All right. All right. I'm sorry. And that's probably, I have so many documents opened, and my computer is bogging when I try to get into the MNCIS file because it has so many entries. All right. I apologize for that.

Mr. Schaap, is that -- does that contain what you would consider the relevant portions then of Sean Stevenson's deposition?

MR. SCHAAP: It does. We didn't produce the whole thing. We produced selected pages of what we believed were germane to the issues before the Court.

THE COURT: All right. Although, it does -- let's see here. It is, I do have one attached to your --

MINNESOTA JUDICIAL BRANCH

this does say Affidavit of Ross Tentinger filed 10-31 at 4:52, and you have marked on there -- all right. It's not listed as attached copy but it's there.

Let's see here.

(Brief pause in the proceedings.)

THE COURT: It looks like page -- starts at page thirty of a fifty-two-page document.

But, you're saying, Mr. Schaap, that you also attached relevant portions. So. All right.

MR. SCHAAP: Yes.

THE COURT: All right. Well, --

MR. SCHAAP: And we did.

THE COURT: -- at this time the -- oh. All right.

At this time, the Court is going to take this matter under advisement, as I noted before, I'm going to be moving it up the priority chain as far as recognizing that if it comes out on the 90th day, it really leaves folks in limbo for an extended period of time.

So, with that, anything further Mr. Schaap?

MR. SCHAAP: No, Your Honor.

THE COURT: Or Mr. Tentinger?

MR. TENTINGER: Real quickly. Your prior order awarding attorneys' fees from that clergy privilege motion, plaintiffs have provided the check. I had

requested it be drafted to my law firm. I believe Mr. Schaap said that he couldn't do that. He had to address it to all four defendants. That bank will not cash that check because they're not on a joint account. So, I'm hoping that we can have plaintiffs address the check directly to one defendant or my law firm and I can disburse it that way. But since we're here I'd like to at least get that resolved.

THE COURT: All right. Mr. Schaap, anything on that if there's any way to take care of that?

MR. SCHAAP: Your Honor, the Court's order was an order awarding fees to the defendants, plural. All four of the defendants. To comply with the order, we wrote the check to the defendants. But we split up the fees according to what Mr. Tentinger said that were his fees and sent Ms. Hansen a check for separate fees.

And so, we're just trying to comply with the Court's order. If the Court -- I think for purposes of appeal and money coming back at some point, I'm concerned that if it's written to a law firm, you know it's --

THE COURT: All right. I can, I can adjust my order if that would assist you, Mr. Schaap.

MR. SCHAAP: Just so -- and we'd like the check back if we're gonna -- I don't want two checks out there at the time.

THE COURT: Yep. I think that's, I think that's a reasonable request. I'll address it in a quick order on that.

MR. TENTINGER: Thank you, Your Honor.

THE COURT: Mr. Tentinger, anything further?

MR. TENTINGER: Nope. That's it. Thank you.

THE COURT: Or Ms. Hansen?

MS. HANSEN: No, thank you, Your Honor.

THE COURT: All right. That will conclude this matter at this time. The parties are free to leave. Thank you, everyone.

MR. TENTINGER: Thank you.

MS. HANSEN: Thank you.

MR. SCHAAP: Thank you.

(Proceedings concluded.)

MINNESOTA JUDICIAL BRANCH

Filed in District Court
State of Minnesota
12/6/2022 9:41 AM

STATE OF MINNESOTA IN THE DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

- -

Craig Stevenson, Marie Stevenson,

Plaintiffs, File No. 56-CV-20-2928

vs. REPORTER'S CERTIFICATE

Sean Stevenson, Renee Stevenson,

Lisa Stevenson-Allen, Ashley Anderson

- -

I, Dana Eifert, hereby certify that I am an official court reporter in the Seventh Judicial District of the State of Minnesota; that as such reporter I digitally recorded the proceedings in the above-entitled action; that I thereafter transcribed to typewriting the foregoing transcript from the digital recordings taken in Otter Tail County, Minnesota on November 7, 2022; and that the foregoing transcript consisting of 69 pages, constitutes a full, true, and accurate transcription of said proceeding.

Dated: December 5, 2022

/s/ Dana Eifert
Dana Eifert
Official Court Reporter
c/o Otter Tail County Courthouse
121 West Junius Avenue
Fergus Falls, MN 56537
Telephone: 218-560-7068