Stevenson v. Stevenson

Discovery order (2021)

Minnesota District Court, Otter Tail County, Seventh Judicial District

Court File No. 56-CV-20-2928, Doc. 154 (Dec. 21, 2021)

IN THIS EDITION

Complete court order and memorandum

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Independent edition prepared October 29, 2026

Source PDF page 1

STATE OF MINNESOTA IN DISTRICT COURT
COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Craig Stevenson and Marie Stevenson,
Plaintiffs,
vs.
Sean Christopher Stevenson, Renee Stevenson, and Lisa Stevenson-Allen,
Defendants.

ORDER DENYING PLAINTIFFS' MOTIONS TO COMPEL DISCOVERY FROM DEFENDANTS
Court File No. 56-CV-20-2928

On September 24, 2021, above-entitled matter came before the Honorable Kevin M. Miller at the Otter Tail County Courthouse in Fergus Falls, Minnesota, pursuant to Plaintiffs' Motions to Compel Discovery from Defendants. Plaintiffs filed three (3) separate Motions to Compel, one for each Defendant involved in this matter in September of 2021, along with three (3) Memorandums of Law in Support of their Motions to Compel. Defendant Sean Stevenson (hereinafter "Defendant Sean"), Defendant Renee Stevenson (hereinafter "Defendant Renee"), and Defendant Lisa Stevenson-Allen (hereinafter "Defendant Lisa") each filed Responses to Plaintiffs' Motions to Compel on September 20, 2021. These Responses were accompanied by Affidavit of Attorney Ross N. Tentinger.

Plaintiffs are represented by attorney Matthew J. Schaap. Defendants are represented by attorney Ross Tentinger and attorney Kirsten Hansen. The Court, having reviewed the file, motion, and applicable law; having heard and considered the arguments of counsel; and thereafter being fully advised in the matter, now makes the following:

Source PDF page 2

ORDER

1. Plaintiffs' Motion to Compel Discovery from Defendant Sean Stevenson is hereby **DENIED.**

2. Plaintiffs' Motion to Compel Discovery from Defendant Renee Stevenson is hereby **DENIED.**

3. Plaintiffs' Motion to Compel Discovery from Defendant Lisa Stevenson-Allen is hereby **DENIED.**

4. The attached **Findings of Fact and Conclusions of Law** are hereby incorporated by reference herein.

Dated: 21st of December, 2021 BY THE COURT:

Court File No. 56-CV-20-2928 Kevin M. Miller

Judge of District Court

Source PDF page 3

Findings of Fact and Conclusions of Law

1. On September 3, 2021, Plaintiff filed three (3) separate Motions to Compel Discovery on Defendants. Plaintiffs' requests in each Motion to Compel are set out below.

a. Plaintiffs' Motion to Compel Discovery from Defendant Sean included the following requests:

i. "To compel Defendant Sean [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Sean [] (Set I)," specifically regarding:

1. Interrogatory Numbers 4, 5, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 35, 37, 38, 39, and 40; and

2. Document Request Numbers 5, 6, 13, 16, 17, 22, 30, 31, and 34.

ii. "To compel Defendant Sean [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Sean Christopher Stevenson (Set II)," specifically regarding:

1. Interrogatory Numbers 5, 6, 7, and 8.

iii. "To preclude Defendants from conducting further depositions in this case until the foregoing discovery responses and documents are provided to Plaintiffs."

iv. "To require Defendant Sean [] to amend his privilege log to comply with Minn. R. Civ. P. 26.01(f)[.]"

Source PDF page 4 v. "To award sanctions against Defendant Sean [] as allowed under Minn. R. Civ. P. 37.01(d)[.]"

vi. "To award Plaintiffs their attorneys' fees for bringing this motion[.]"

b. Plaintiffs' Motion to Compel Discovery from Defendant Renee included the following requests:

i. "To compel Defendant Renee [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Renee [] (Set I)," specifically regarding:

1. Interrogatory Numbers 4, 5, 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, and 29; and

2. Document Request Numbers 5, 6, 8, 13, 16, 17, 22, 23, 24, 26, 28, 29, 30, 31, and 34.

ii. "To compel Defendant Renee [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Renee [] (Set II)," specifically regarding:

1. Interrogatory Numbers 1, 2, 3, 4, and 5.

iii. "To preclude Defendants from conducting further depositions in this case until the foregoing discovery responses and documents are provided to Plaintiffs."

iv. "To require Defendant Renee [] to amend her privilege log to comply with Minn. R. Civ. P. 26.01(f)[.]"

v. "To award sanctions against Defendant Renee [] as allowed under Minn. R. Civ. P. 37.01(d)[.]"

Source PDF page 5 vi. "To award Plaintiffs their attorneys' fees for bringing this motion[.]"

c. Plaintiffs' Motion to Compel Discovery from Defendant Lisa included the following requests:

i. "To compel Defendant Lisa [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Lisa [] (Set I)," specifically regarding:

1. Interrogatory Numbers 4, 5, 6, 10, 11, 12, 13, 16, 17, 20, 21, and 23; and

2. Document Request Numbers 5, 6, 8, 13, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34.

ii. "To compel Defendant Lisa [] to resolve the 16 extensive discovery deficiencies outlined in Plaintiffs' memorandum of law[.]"

iii. "To compel Defendant Lisa [] to provide full and complete answers and documents responsive to Plaintiffs' discovery requests to Defendant Lisa [] (Set II), specifically regarding:

1. Interrogatory Numbers 2, 3, and 4.

iv. "To preclude Defendants from conducting further depositions in this case until the foregoing discovery responses and documents are provided to Plaintiffs."

v. "To require Defendant Lisa [] to amend her privilege log to comply with Minn. R. Civ. P. 26.01(f)[.]"

vi. "To award sanctions against Defendant Lisa [] as allowed under Minn. R. Civ. P. 37.01(d)[.]"

Source PDF page 6 vii. "To award Plaintiffs their attorneys' fees for bringing this motion[.]"

2. Plaintiffs also filed three (3) Memorandums of Law in Support of Their Motions to Compel Discovery from Defendants on September 3, 2021. These Memorandums included the following relevant information:

a. Plaintiffs assert that they present these motions to compel after "significant efforts to resolve a discovery dispute without the need for court involvement."

b. Plaintiffs characterize the discovery dispute between the parties as "a disparate view of the duties placed on [the parties] by Minnesota's discovery rules."

c. Plaintiffs cite Minnesota's broad discovery rules as the reason to compel all of their requested discovery.

d. Plaintiffs hold that Defendant Sean "repeatedly provided general or vague discovery responses to interrogatories specifically requesting detailed factual information"; that Defendant Sean gave "evasive answers" that "failed to provide any details" for the "alleged veracity for his defamatory statements"; that Defendant Sean "claimed that he never made the assertions or that none of those allegations had been made" when asked to give facts and evidence supporting the allegations regarding defamatory statements about Plaintiff Craig Stevenson (hereinafter "Plaintiff Craig"); and that Defendant Sean "completely failed or refused to answer two of Plaintiffs' Interrogatories."

e. Plaintiffs hold that Defendant Renee "repeatedly provided general or vague discovery responses to interrogatories specifically requesting detailed factual information"; that Defendant Renee gave "evasive answers" that "failed to Source PDF page 7 provide any details" for the "alleged veracity for her defamatory statements"; and that Defendant Renee "claimed that she never made the assertions, that none of those allegations had been made, or that no communications had taken place prior to the lawsuit" when asked to give facts and evidence supporting the allegations regarding defamatory statements about Plaintiff Craig.

f. Plaintiffs hold that Defendant Lisa "repeatedly provided general or vague discovery responses to interrogatories specifically requesting detailed factual information," and that Defendant Lisa "claimed that she never made the assertions, that none of those allegations had been made, or that had been no conversations about the allegations" when asked to give facts and evidence supporting the allegations regarding defamatory statements about Plaintiff Craig.

g. Plaintiffs further allege that Defendants are withholding many documents that "Plaintiffs know exist."

h. Plaintiffs hold that the common interest doctrine does not apply to this matter because "Minnesota does not recognize the 'Common Interest' doctrine." Plaintiffs further hold that "[r]ecent Minnesota appellate decisions have made this clear."

i. Plaintiffs allege bad faith regarding the conduct of Defendants in responding to Plaintiffs' discovery requests.

j. Plaintiffs assert that they have provided extensive discovery to Defendants, and Defendants must return the same extensive discovery in kind.

Source PDF page 8 3. On September 20, 2021, Defendants filed several documents in response to Plaintiffs' Motion to Compel. The information in these documents is delineated below:

a. Defendant Sean filed his Response to Plaintiffs' Motion to Compel (hereinafter "Defendant Sean's Response"). Defendant Sean's Response included the following assertions:

i. Under the common-interest doctrine, conversations among joint defendants are privileged and do not need to be disclosed in the discovery process.

ii. Defendant Sean has properly responded to Plaintiffs' interrogatories by answering Plaintiffs' interrogatories "very directly" and to the "level of specificity of the memories he actually has."

iii. Defendant Sean's privilege log has a sufficient amount of detail to meet the requirements outlined by Minn. R. Civ. P. 26.01(f), as the privilege log describes the "nature of the documents in a way that lets Plaintiffs know that they are, in fact, privileged."

iv. The discovery disputes involved in the Motion to Compel were in good faith, and Defendant Sean responded to Plaintiffs' discovery interrogatories to "the best of his ability."

b. Defendant Renee filed her Response to Plaintiffs' Motion to Compel (hereinafter "Defendant Renee's Response"). Defendant Renee's Response included the following assertions:

Source PDF page 9 i. The common-interest doctrine makes the conversations between the defendants privileged upon the initiation of litigation and need not be disclosed in discovery.

ii. Defendant Renee's answers to Plaintiffs' interrogatories provided "as much information and detail as possible, given how long it has been since the alleged conduct occurred."

iii. Defendant Renee is not required to provide "supporting documentation for her testimony if it does not exist."

iv. Plaintiffs' claims that the previous statements made by Defendant Renee "strongly imply" that Defendant Renee held certain beliefs or assertions about Plaintiff Craig Stevenson are Plaintiffs' own "subjective interpretation of previous statements made by [Defendant] Renee." Plaintiffs' beliefs that Defendant Renee implied certain things about Plaintiff Craig do not require Defendant Renee to amend her own answer to conform with Plaintiffs' beliefs.

v. Defendant Renee's answers to Plaintiffs' interrogatories have been sufficient and do not require Defendant Renee to provide amendments or further answers to Plaintiffs.

vi. Defendant Renee's privilege log has a sufficient amount of detail to meet the requirements outlined by Minn. R. Civ. P. 26.01(f), as the privilege log describes the "nature of the documents in a way that lets Plaintiffs know that they are, in fact, privileged."

Source PDF page 10 vii. The discovery disputes involved in the Motion to Compel were in good faith, and Defendant Renee responded to Plaintiffs' discovery interrogatories to "the best of her ability."

c. Defendant Lisa filed her Response to Plaintiffs' Motion to Compel (hereinafter "Defendant Lisa's Response"). Defendant Lisa's Response included the following assertions:

i. The "rhetoric in [Plaintiffs'] introduction would have the Court believe [Plaintiffs] moved mountains to resolve perceived discovery deficiencies, that [Plaintiffs] have been diligent in partaking in this discovery process, and only through [] the concerted efforts of Defendants to derail the discovery process that [Plaintiffs'] Motion to Compel became a necessity."

ii. A review of Plaintiffs' motion papers, discovery demands, and Defendant Lisa's answers show that Plaintiffs' argument "is pure sophistry."

iii. Defendant Lisa has responded and continues to respond to Plaintiffs' discovery requests "despite the abusive nature of many of the requests."

iv. Plaintiffs' Motion to Compel "lacks any substantive support and relied entirely on unfound[ed] assertions."

v. Plaintiffs' Motion to Compel is brought in bad faith with the purpose of "increasing costs of litigation" and "further delay[ing] the Source PDF page 11 progression of their sanctionable claims from meeting their rightful end at summary judgment."

vi. The common interest doctrine applies to this matter and makes conversations between defendants privileged following the beginning of the suit, thereby making these conversations undiscoverable.

vii. Defendant Lisa has properly responded to all of Plaintiffs' interrogatories with the knowledge that she personally has and does not have to amend her answers for alleged "deficiencies."

viii. Plaintiffs have not given the Court any reason as to why Defendant Lisa's responses are deficient, other than merely holding that her responses are "general or vague."

ix. The reason for the "dearth of evidence" regarding statements defined under Minn. R. Civ. P. 26.02 is because "Defendants have no statements."

x. Plaintiffs are not entitled to Defendants' work product, and have provided no Rule or case in support of their contentions.

xi. Defendant Lisa does not have to provide Plaintiffs with documents that have already been disclosed in the discovery process by Defendant Sean and Defendant Renee. Plaintiffs' Motions to Compel request many documents or information that Plaintiffs already possess from Defendants. Defendants do not have to reproduce documents or information that they as a group have already provided to Plaintiffs.

Source PDF page 12 xii. Plaintiffs' Motion to Compel "serves no legitimate purpose," and review of the "meandering pages of [Plaintiffs'] motion papers" demonstrates that Defendant Lisa has provided complete responses to Plaintiffs' interrogatories and other discovery requests.

d. Attorney Tentinger also filed an Affidavit regarding Plaintiffs' Motions to Compel along with his clients' responses to the Motions. Attached to this Affidavit were copies of these three articles relevant to the parties' discovery disputes:

i. Exhibit 1 – DEF 84;

ii. Exhibit 2 – Deposition Transcript of Lonna Olson (May 13, 20210; and

iii. Exhibit 3 – Partial Deposition Transcript of John Rachuy (June 11, 2021).

4. On September 23, 2021, Plaintiffs submitted three (3) Reply Memorandums of Law in Support of their Motions to Compel. These Reply Memorandums provided further support for the claims and legal analyses of Plaintiffs' Memorandums.

a. These Memorandums were accompanied by three (3) Affidavits of Plaintiff Craig. The Affidavits included substantive phone logs of Defendants communications and allegations regarding documents Plaintiffs requested in discovery.

5. On September 24, 2021, counsel for both parties appeared before the Court via Zoom to present their clients' positions on Plaintiffs' Motions to Compel.

Source PDF page 13 6. On September 27, 2021, the Court issued an Order that addressed Plaintiffs' requests to preclude Defendants from conducting further depositions until the Court resolved the discovery disputes outlined in Plaintiffs' Motions to Compel.

a. The relevant portion of this September 27, 2021 Order held that "The Court shall not preclude Defendants from conducting their depositions until Plaintiffs receive all contested discovery responses and documents they have requested."

7. After hearing the parties' arguments on these Motions to Compel and reading through the extensive records and documents involved in Plaintiffs' Motion and Defendants' Responses, the Court makes the following conclusions of law.

a. The Court's September 27, 2021 Order resolved Plaintiffs' request to preclude Defendants from conducting their depositions until Plaintiffs received all desired discovery responses and documents. That Order remains in effect.

b. The common interest doctrine does apply to this matter regarding co-parties, as recognized in *Schmitt v. Energy* and *In re Lawrence. Schmitt v. Energy,* N.W.2d 413, (Minn. 1942); and *In re Lawrence,* 954 N.W.2d 597, 604 (Minn. Ct. App. 2020), review denied (Mar. 16, 2021). The Court in *In re Lawrence* held that "Conversations amongst joint defendants are privileged and as such the subject of those conversations will not be disclosed," shielding co-parties conversations by means of the attorney-client privilege.

i. Therefore, the Court holds that Plaintiffs cannot seek privileged information protected by the common interest doctrine unless each Defendant waives that privilege.

Source PDF page 14 c. The Minnesota Rules of Civil Procedure provide for broad discovery, and are to be "liberally construed so as to serve the interests of justice and so as to discourage reliance on technicalities and form." Minn. R. Civ. P. 26.02(b); *Larson v. Independent School Dist. No. 314,* 233 N.W.2d 744, 747 (Minn. 1975).

d. District courts have broad discretion in managing the discovery process. *In re: Milk Indirect Purchaser Antitrust Litigation,* 588 N.W.2d 772, 776 (Minn. App. 1999).

e. After extensive review of all of the documents filed in support of Plaintiffs' Motion to Compel, in support of Defendants' Responses, and in the entire file, the Court finds that the Defendants have complied with the broad discovery process set out by Minnesota Rules of Civil Procedure and Minnesota case law.

i. While the rules of discovery are to be "liberally construed" to ensure that parties have access to relevant and important information to supporting their claims or mounting a defense to the opposing parties' claims, the Court holds that Plaintiffs have gone beyond the acceptable bounds of discovery in the State of Minnesota. *Larson,* 233 N.W.2d 744, 747.

f. The lengthy accusations levied by Plaintiffs' in their Motions to Compel do not demonstrate to the Court that Defendants have failed to comply with the Minnesota Rules of Civil Procedure or good faith dealing in the discovery process. Further, the Court feels that it needs to address Plaintiffs' representation of the discovery between the parties.

i. Plaintiffs characterize their acts of disclosing "broad medical authorizations," production of "thousands of pages of documents" and providing "many gigabytes of data" as being generous and cooperative Source PDF page 15 in the discovery process. In contrast, Plaintiffs assert that Defendants have "minimized their duties to produce, providing summary responses, few facts, and incomplete documents," collectively reflecting "little actual effort to be forthcoming."

ii. The Court does not believe Plaintiffs' representation of the discovery process to be accurate. The Court has reviewed hundreds of pages of documents in this matter to properly assess and rule on Plaintiffs' Motions to Compel, and after this lengthy and comprehensive review the Court believe that Plaintiffs' characterization of discovery between the parties to be lacking in candor.

iii. The Court wants to be clear that Plaintiffs' have put Plaintiff Marie Stevenson's (hereinafter "Plaintiff Marie") health at issue through their Intentional Infliction of Emotional Distress ("IIED") claim, requiring Plaintiffs to disclose relevant medical information regarding Plaintiff Marie.

iv. Plaintiffs' IIED claim alleges that Plaintiff Marie has experienced: adrenaline rushes; chest pain for several days; crying spells; dizziness; extreme fatigue; headache; heart palpitations for several days; hyperventilation; irregular heartbeat; loss of ability to

concentrate; loss of appetite; loss of sleep due to insomnia; menstrual cycle irregularities; nightmares or night terrors; pain on left side of chest when inhaling; painful, swollen lymph nodes; pallor; severe intestinal distress; shortness of breath; tingling all over; uncontrollable shaking Source PDF page 16 of hands; violent trembling; weight loss; and symptoms of Post-traumatic Stress Disorder ("PTSD"). The disclosure of extensive medical records regarding this detailed and extensive IIED claim does not force Defendants to disclose "thousands of pages of documents" and "many gigabytes of data" in return.

v. Further, while Plaintiffs seem to characterize this disclosure as generous, Defendants are not required to be overly generous with documents and data in return. Defendants are only required to abide by the Minnesota Rules of Civil Procedure, and Plaintiffs' Motions, Defendants' Responses, and the discovery materials in questions all demonstrate that Defendants have abided by the Minnesota Rules of Civil Procedure.

g. The Court holds that Plaintiffs' assertion that there simply must be more information or documentation that Defendants are withholding or hiding is based on nothing more than Plaintiffs' belief that there must be more information.

i. Plaintiffs have not provided the Court with any legitimate concerns regarding Defendants' responses to discovery requests, as evidenced by Defendants' individual Responses to Plaintiffs' Motion to Compel and the answers provided by Defendants in interrogatories and existing documents.

h. The Court is concerned that Plaintiffs have embarked on a "fishing expedition," where Plaintiffs' excessive and aggressive discovery requests Source PDF page 17 seem to be based on the hope that Defendants will concede to Plaintiffs' requests simply to avoid the immense effort required to adequately respond to these requests or to defend against them.

i. Plaintiffs' only evidence of Defendants' insufficient responses to discovery requests are Plaintiffs' own beliefs and assertions that there must be more information somewhere or that each Defendant need to provide Plaintiffs with information that Plaintiffs already have access to from other Defendants or third parties.

ii. The Court "should prevent discovery abuses by managing the scope of discovery when necessary to prevent fishing expeditions," and Plaintiffs have provided the Court with a clear example of discovery requests far beyond the bounds of liberal discovery. *Harberts v. Lussenhop,* No. 21-CV-18-56 (Minn.Dist.Ct. Nov. 26, 2018), citing *In re: Milk,* 588 N.W.2d 772, 776.

i. The Court finds that Defendants have responded to Plaintiffs' discovery requests in good faith by disclosing the proper information, answering interrogatories to the best of each Defendant's knowledge, and disputing discovery requests when Defendants believe that information is privileged or maintain that certain documentation simply does not exist.

j. The Court also finds that Plaintiffs cannot collect attorney's fees and costs, as Defendants have acted in good faith throughout the discovery process.

Source PDF page 18 k. The Court holds that further inappropriate requests for information that is either privileged or fictional may result in sanctions and/or attorney's fees and costs being imposed on Plaintiffs.

i. The Court understands that certain discovery disputes may be made in good faith, but that Plaintiffs need to seriously evaluate the legitimacy of their discovery requests before bringing them to Defendants or before the Court.

l. For all of the foregoing reasons, all three (3) of Plaintiffs' Motions to Compel must be **denied.**

K.M.M.