

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL O'GRADY,

Plaintiff,

v.

SYNTHIA Y. O'GRADY and  
DANIEL A. KLINT,

Defendants.

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ORDER

10-cv-222-bbc

This court has allowed plaintiff to proceed against defendants on his state law claims of tortious interference with the custody of a child and intentional infliction of emotional distress.

Now before the court are defendants' two motions for protective orders regarding their depositions. Dkts. 35 and 45. On December 9, 2010, I granted defendants' motion to postpone the deposition of defendant Synthia O'Grady until after January 11, 2010.

In their motions, defendants ask that the court to limit plaintiff's questions at the depositions to the issues in this case. They also ask that he be prevented from questioning them on communications between them based upon spousal privilege and/or attorney-client privilege. The defendants requests are reasonable, but they do not need a court order to obtain the limits they seek on plaintiff's questioning. Pursuant to F.R. Civ. Pro. 26(b)(1), plaintiff only may ask questions designed to elicit nonprivileged information relevant to his claim or defendants' asserted defenses. This court has not granted plaintiff permission to seek discovery of any matter relevant to the subject matter involved in this action and given the nature of this lawsuit, it has no intention of doing so. Pursuant to Rule 26(c), plaintiff is not entitled unnecessarily to subject either defendant to annoyance or embarrassment. Pursuant to F.R. Ev. 501, defendants are

entitled to invoke the attorney-client privilege and the marital communication privilege when they actually apply, to protect against plaintiff's discovery of genuinely privileged information. *See, e.g., Rehling v. City of Chicago*, 207 F.3d 1009, 1019 (7<sup>th</sup> Cir. 2000) (glossing the attorney client privilege); *United States v. Darif*, 446 F.3d 701, 705-06 (7<sup>th</sup> Cir. 2006) (glossing the marital communications privilege).

Finally, defendants ask that they not be required to provide financial information requested by plaintiff. Since it is not entirely clear what financial information plaintiff will seek or why it is discoverable in this case, the court will require plaintiff to seek such information with a request for production of documents pursuant to Fed. R. Civ. P. 34, and he should accompany the request with an explanation to the defendants as to why the information he seeks is relevant and discoverable in this lawsuit. If the parties disagree about what actually is discoverable, then someone needs to file a discovery motion at that time.

#### ORDER

IT IS ORDERED that defendants' motions for protective orders, dkt. 35 and 45, are GRANTED IN PART and DENIED IN PART.

Entered this 30<sup>th</sup> day of December, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge