

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

WENDY ALLISON NORA,

Appellant,

v.

RESIDENTIAL FUNDING COMPANY, LLC,

Respondent.

OPINION AND ORDER

10-cv-68-bbc

Appellant Wendy Allison Nora brought this appeal from an order entered in her bankruptcy proceeding. It was dismissed on July 12, 2010, after appellant failed to file a brief in support of her appeal, despite having been granted several extensions of time in which to do so. The dismissal was affirmed by the Court of Appeals for the Seventh Circuit in an unpublished opinion.

Now appellant has filed a motion, dkt. #45, in which she asks the court to find respondent, its counsel, David M. Potteiger, and the firm of Bass & Moglowsky, S.C. in contempt of court because Potteiger filed with the Office of Lawyer Regulation for the State of Wisconsin copies of two documents plaintiff had filed under seal in this case. Appellant alleges that Potteiger never sought permission from the court to lift the seal on the

documents and the record supports her allegation. She seeks monetary sanctions, attorney fees for defending herself before the Office of Lawyer Regulation and fees for bringing this motion. In a second motion, dkt. #46, titled an amended motion to show cause, she indicates she wants to file under seal Exhibits A-1, A-3 and A-4, which are docketed at dkts. ##46-47 and 49. In a third motion, dkt. #54, appellant asks the court to find Penny G. Gentges in contempt as well, alleging that Gentges was equally at fault in the misuse of the sealed documents. In the same motion, she asks the court to hold “all proceedings under this Motion under Seal in order to prevent the further disclosure of the sealed documents,” *id.* at 1.

Appellant’s motion to hold all proceedings under seal will be denied. To succeed on a motion to seal, a movant must overcome the presumption that court records are open to the public. Appellant has not shown any reason why the records relating to this motion should not be open. She makes a general claim that the Health Insurance Portability and Accountability Act protects her from revealing her medical records, but she does not cite any specific provision in the Act that would support her claim. Because appellant cited her medical and emotional problems as the reasons she could not comply with court orders, the public has a presumptive right to know what those are. How else can it determine whether the court acted properly in granting or denying her requests for special treatment? Appellant has offered nothing to overcome the presumption that her court filings are to be open to the

public.

Appellant has also asked for sealing of the exhibits contained in dkts.##47, 49 and 50. That motion will be denied in part and granted in part. It will be granted as to dkts. #47 and #50, which contain the grievance Petteiger filed with the Office of Lawyer Regulation. Under that agency's rules, a grievance is considered confidential when filed. It is proper to leave to that agency the decision whether and when to disclose the contents of a confidential grievance.

However, I will deny appellant's motion to seal dkt. #49, which includes the reports of appellant's providers, Drs. Huffer and Macdonald. (These reports are also filed as dkts. ##20-1, 21 and 27, with 27 being a duplicate of dkt. #21.) Appellant relied on these reports when seeking extensions of time and when appealing from the dismissal of her suit for failure to prosecute it and, as I have noted, she has failed to show why they should not be publicly available.

I turn then to appellant's main motion for a finding of contempt. The subjects of that motion have responded to it, arguing that appellant has not alleged facts sufficient to show that they violated a specific and definite order of the court. They point out that, although appellant filed the documents "under seal," she did not do so pursuant to a specific order of the court. In fact, she never asked the court to find that the documents in question warranted an order protecting their allegedly confidential contents.

In opposition, appellant argues that it is irrelevant whether the use of the sealed documents violated a specific order of the district court because the Court of Appeals for the Seventh Circuit approved their sealing when she appealed this court's adverse decision. She maintains that the subjects of her motion should be held in contempt because they disseminated sealed documents without court authorization and did so with the goal of causing her to become too incapacitated to practice law by exacerbating the post-traumatic stress disorder she is suffering. Also, she takes issue with certain "facts" stated by Potteiger, pointing out correctly that the facts are not supported by any evidence. I will not consider any of these facts in deciding appellant's motion.

Appellant's motion to hold defendant and its lawyers in contempt will be denied. Although appellant filed the documents at issue "under seal," she did not do so under a prior protective order. She did not move the court to have the documents sealed until she brought this motion for contempt. By contrast, she filed a "Motion to File ADA/ADAA [sic] HIPPA Initial Request for Disability Accommodations Under Seal," dkt. #7, that was granted by the court in the absence of any objections from respondent. (The request itself was filed as dkt. #11.) By not obtaining similar orders from the court in connection with later documents she thought should be kept from the public, appellant cannot claim the same protection.

When a party files a document "under seal," doing so will serve to keep the document from public view only temporarily. If the party wants to keep the document from public

view forever, in the absence of a subsequent ruling to the contrary, the party must file a specific motion to that effect. Appellant filed a specific motion for sealing in the court of appeals, which the court granted, but she never filed such a motion in this court, so she has no basis on which to ask this court to hold the subjects of her motion in contempt.

Respondent's counsel would have been well advised to seek advance permission from the court before disclosing to a third party documents filed "under seal," but his doing so is not an action that can be considered contemptuous of the court in the absence of a court order. This is particularly true in light of the fact that appellant herself has not taken the precautions she might have taken had she truly wanted to keep her physical and emotional ailments private. She has discussed her ailments at great length in many different documents that she has filed with the United States Bankruptcy Court, the Circuit Court for Dane County and in the case she filed in this court against the Dane County judge hearing a foreclosure case against her. Nora v. Colas, 10-cv-709-bbc. E.g., complaint filed in 10-cv-709, dkt. #1; M. for ext. of time, dkt. #29. She did the same in the brief she filed with the Court of Appeals for the Seventh Circuit when she appealed the dismissal of this action.

Moreover, as far as the record shows, respondent's counsel provided the documents to only one entity, the Office of Lawyer Regulation, and did so only in connection with a confidential grievance filed with that office. Respondent's counsel has advised the court that he took the action in the belief that he was carrying out his obligation as a lawyer to report

“a violation of the Rules of Professional Conduct [on plaintiff’s part] that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.” Wisconsin Supreme Court Rule 20:8.3. The record contains no reason to doubt his statement.

Given appellant’s pattern of litigation in this court, which includes a baseless suit brought against the state court judge presiding over a foreclosure action against her in the Circuit Court for Dane County, it was reasonable for counsel to be concerned about appellant’s honesty and her physical and emotional fitness. Appellant’s consistent pattern of avoiding deadlines in pending cases by pleading physical and mental inability suggested either that she was physically and mentally unfit to practice or that she was not being truthful about her physical and mental condition. Thus, the matter was a proper one for investigation by a regulatory body. For example, appellant told this court that she was asking the Dane County probate court to appoint a guardian ad litem for herself, to argue for her disability rights in the cases she was prosecuting on her own behalf. She said she needed a guardian to protect her because of her lack of “competence to perform the tasks” of responding to motions pending in this case, in her bankruptcy proceeding and in her state foreclosure case. Yet at the same time, she was holding herself out as competent to represent clients. *E.g.*, dkts. ##27, 29.

In summary, I am not persuaded that appellant has made the threshold showing

required before a court issues an order to show cause why certain persons should not be found in criminal contempt for their violation of a court order.

ORDER

IT IS ORDERED that appellant Wendy Allison Nora's motions, dkts. ##45, 46 and 54, to have the court issue an order to respondent, its counsel, David M. Potteiger, the firm of Bass & Moglowsky, S.C. and Penny G. Gentges, to show cause why they should not be held in criminal contempt of this court for their use of two documents filed under seal in this case and her motion, dkt. #47, to seal exhibit A-1 are DENIED.

FURTHER, IT IS ORDERED that the clerk of court unseal all of the documents in this case with the exception of dkts. ##11, 47 and 50.

Entered this 10th day of August, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge