

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

DAVID DEICHER and
MARY A. MEZERA,

Plaintiffs,

v.

MEMORANDUM and ORDER
06-C-356-S

CITY OF EVANSVILLE, WISCONSIN,
CHRISTOPHER JONES and COMMUNITY
INSURANCE CORPORATION,

Defendants.

Plaintiffs David Deicher and Mary A. Mezera commenced this action under the Drivers Privacy Protection Act, 18 U.S.C. § 2721, et seq. (DPPA). They allege that defendant Christopher Jones obtained plaintiffs' address from the state motor vehicle records and provided it to plaintiff Mezera's former husband.

On November 14, 2006 plaintiffs moved for partial summary judgment on liability pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavits and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter

of law. Rule 56, Federal Rules of Civil Procedure. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding the motions for summary judgment the Court finds that there is no genuine dispute as to the following material facts.

Plaintiffs David Deicher and Mary A. Mezera are husband and wife and reside in Beaver Dam, Wisconsin. Defendant City of Evansville is a Wisconsin municipal corporation. Defendant Christopher Jones is a police officer employed by the City of Evansville. Defendant Community Insurance Corporation provided liability insurance coverage to the City of Evansville.

At one time plaintiff Mary Mezera was married to Jimmy Reiners who was abusive to her. She filed for divorce in 1997 and obtained a restraining order against him in 1998 which was in effect until 2000. The divorce was final in January 2001.

Plaintiff Mary Mezera married plaintiff David Deicher in 2003. Reiners continued his harassment of plaintiff Mezera. Plaintiffs moved to Beaver Dam, Wisconsin in 2005 to escape from Reiners harassment. They kept their new location a secret.

On February 2, 2006 Reiners called Evansville Police Department and spoke to defendant Jones. Reiners told Jones that he and Mezera were divorced and that he needed her signature on paperwork to complete the sale of a house. Jones accessed the Department of Motor Vehicles records and obtained Mezera's address. Jones provided this address to Reiners. Reiners used this information to harass Mezera.

It is disputed whether defendant Jones provided the address because he believed that Reiners needed to serve process on plaintiff concerning the sale of a house relating to a divorce.

MEMORANDUM

Unless one of its exceptions applies the Drivers Privacy Protection Act (DDPA) forbids state officials from "knowingly disclosing or otherwise making available to any person or entity...personal information, from a motor vehicle record." The

Act provides that an individual may bring a civil action under this Act. 18 U.S.C. 2724.

An exception to this act is that the information may be provided for use in connection with any civil, criminal or administrative or arbitral proceeding in any Federal, State, or local court or agency or before any regulatory body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State or local court. 18 U.S.C. §2721(b)(4). See Pichler v. UNITE, 339 F. Supp. 2d 665, 667 (E.D. Pa. 2004) (Pichler I) and Pichler v. UNITE, 446 F. Supp. 2d 353, 370 (E.D. Pa 2006). (Pichler II).

In Pichler I the Court denied the defendant Union's motion to dismiss plaintiff's claim under the DPPA because it could not determine the applicability of the litigation exception to the Act. In Pichler II the Court found that the defendant Union had violated the DPPA because the litigation exception did not apply to the defendant Union's activities obtaining information regarding employee litigation useful in its organizing efforts.

In this case it is undisputed that defendant Christopher Jones provided information from the Department of Motor Vehicles to plaintiff Mezera's former husband. It is disputed why he provided this information. He testified in his deposition that he believed that the information was going to be used for service of process.

Plaintiff argues that this is not the reason Reiners requested the information. A genuine dispute of fact remains as to whether defendant Jones violated the DPPA when he provided the information. It is possible that the litigation exception of the Act applied to the disclosure of this information. Accordingly, plaintiffs' motion for partial summary judgment will be denied.

ORDER

IT IS ORDERED that plaintiffs' motion for partial summary judgment is DENIED.

Entered this 18th day of December, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge