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FEB 19 2018

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

41127-205
FEB 19 2018

CATHERINE KELTER,	:	NO. 286 CIVIL 2017
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
JOSEPH FLANAGAN,	:	DEFENDANT'S
	:	MOTION TO COMPEL
Defendant	:	

OPINION

This is a personal injury action following an automobile accident. Following the deposition of the Plaintiff, the Defendant filed a Motion to Compel. The Defendant seeks log-in information to the Plaintiff's Instagram Social Media Account. The Defendant believes there may be relevant information thereon concerning Plaintiff's injuries suffered in the accident. Plaintiff claims any such information was already obtained by the Defendant with no need to access Plaintiff's social media account.

Relevant information may be obtained in discovery unless it is privileged. Pa.R.C.P. 4003.1(b). Relevant evidence is evidence that has any tendency to make the existence of a fact more probable or less probable than it would be without such evidence. Pa.R.E. 401. Discovery requests are to be construed liberally. See In Re Thompson's Estate, 206 A.2d 21 (Pa. 1965).

Use of a party's social networking account in litigation is becoming a more regular issue, even though there is limited authority. However, as we have held before, social networking accounts can be discoverable, if it appears likely that they contain information that could be relevant. Various other Pennsylvania common pleas courts have agreed. (*See* the various citations set forth in Defendant's brief, incorporated herein). Arguably, there does not even appear to be an expectation of privacy on social media as it relates to litigation because the account holder is sharing information with others in a public or quasi-public domain. *See* Gallagher v. Urbanovich, No. 2010-33418 (Montgomery C.C.P., Feb. 27, 2012); Mazarella v. Mount Airy #1, LLC, No. 1798 CV 2009 (Monroe C.C.P., Nov. 7, 2012). However, setting that argument aside, we will examine the facts of this case for a showing of relevance in accessing the Plaintiff's Instagram account.

At deposition, the Plaintiff first testified she did not maintain a Facebook or other social media accounts. When confronted with proof to the contrary, Plaintiff admitted she maintained an Instagram account and had misunderstood the question. Defendant's counsel then showed posts (information from Plaintiff's Instagram account) from a time period shortly after the accident, that were available for public access on Plaintiff's Instagram account. The posts seemed to indicate that the Plaintiff was engaged in vigorous physical activity both before and after the accident. The posts included reference to shoveling snow and going to the gym after the accident, even though she claimed injuries that might preclude her from such activity. This is certainly relevant information about Plaintiff's injuries, the extent of such injuries, and her rehabilitation. Based upon this information, Defendant's counsel made a request for Plaintiff's Instagram account access information to see if there were other similar posts that the Defendant

had not found. Plaintiff declined to provide that information and this motion to compel followed.

The Plaintiff maintains that the information the Defendant had at time of deposition was all contained in a public access post on Instagram and that Plaintiff only maintained a public access account. In other words, Plaintiff contends that Defendant already had access to all of the information about Plaintiff's posts that existed. Plaintiff points out that Instagram only allows either all public access posts, or all private access posts. The difference being that all public allows anyone on Instagram to view another person's posts, and all private means only those Instagram users so authorized by an account holder can view that person's posts. Here, Plaintiff maintains all of her posts at the time period in which Defendant obtained the posts presented at her deposition were open to public access.

The problem with this, as noted by the Defendant, is that other time periods could contain private access posts, for which the Defendant would have no access. For instance, Plaintiff could elect at any time to switch to all private access posts, and information would no longer be available to the Defendant. The Defendant claims that is exactly what happened following Plaintiff's deposition of June 5, 2017, and counsel no longer has the ability to see posts of the Plaintiff on Instagram. The Defendant is also concerned that previously available public posts could be deleted. Also unanswered by either party, is whether or not Plaintiff had previously elected to have all private posts that were never made public. The Defendant believes there was enough information previously available in the public domain that questioned the extent of Plaintiff's injuries from the accident, that demonstrates enough relevance to seek information that is now held as private access by the Plaintiff. We agree.

The facts of this case show there may be other relevant information about the Plaintiff's injuries in her Instagram account. The fact that information was available on a public access basis for a period of time, does not eliminate the need for full access to the account by the Defendant. Plaintiff's own posts presented to her at her deposition call into question the extent of her injuries, making the information relevant. The fact that her account may have been public access only for a period of time does not mean there is no possibility of other relevant information. There may have been information the Defendant missed; and, as alleged, the account may have been converted to a private access only account. Plaintiff could still be posting on that account about her activities that could be relevant to the extent of her injuries. Plaintiff has chosen to interact and share her personal life with others through social media. If she disclosed other information similar to the posts Defendant obtained for her deposition, it would be relevant to this case. The fact that she changed her account to a private setting, rather than eliminate the account and her use of this social networking source, casts doubt on any assertion that there is nothing relevant in the account postings. Therefore, Plaintiff will be required to disclose her Instagram account log-in information to Defendant's counsel.