

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STEVEN MCLEOD)

Plaintiff,)

v.)

HUGHEY F. MCLEOD)

Defendant.)

C.A. No. N11C-03-111 MJB

Submitted: March 4, 2014

Decided: June 9, 2014

*Upon Plaintiff's Motion to Compel Production of Items in Response to Plaintiff's Second
Request for Production*

DENIED

OPINION

Steven A. McLeod, *pro se*, 1050 Big Joe Road, Monticello, Florida 32344

Cynthia H. Pruitt, Esq., Doroshow, Pasquale Krawitz & Bhaya, 1208 Kirkwood Highway,
Wilmington, DE 19805, *Attorney for Defendant*

Brady, J.

I. INTRODUCTION

This is a personal injury action based upon Steven A. McLeod's ("Plaintiff") allegations that the named defendant, Hughey McLeod ("Defendant"), sexually abused Plaintiff as a child.¹ Presently before the Court is a Motion to Compel, which was filed by Plaintiff on January 08, 2014. Defendant filed a Response on March 4, 2014. The Court did not hold a hearing, but decides this matter based on the written submissions.² For the reasons discussion below, Plaintiff's motion is **DENIED**.

II. FACTS

On April 29, 2011, Plaintiff, who is incarcerated at the Jefferson Correctional Institutional in Monticello, Florida, filed suit in this Court under 10 *Del. C.* § 8145. Plaintiff's Section 8145 lawsuit alleges that Defendant, his biological father, sexually abused him from approximately December 1967 through January 1972, while Plaintiff was a child.

Plaintiff filed a Second Request for Production on October 1, 2013. On October 18 2013 Defendant filed a Response, objecting to many of the discovery requests. Plaintiff sent Defendant a letter on October 28, 2013 clarifying some of his requests, and cautioned that if Defendant did not produce the requested evidence he would seek an Order from this Court compelling responses.

Plaintiff filed a Motion to Compel on January 08, 2014, through which Plaintiff seeks to compel (1) photos and videos of the house where the alleged sexual abuse happened, (2) documents from a previous litigation between Plaintiff and Defendant that was dismissed,³ and (3) letters from Plaintiff to Defendant and to Defendant's wife and daughter. Defendant

¹ Compl. at ¶¶8–12 (Apr. 29, 2011).

² As a result of Plaintiff's incarceration, which is discussed below, he is unable to attend any motion hearings. Therefore, this Court must enter written decisions for all motions brought in this matter.

³ *McLeod v. McLeod*, No. 93-CA-8715 Thirteenth Judicial Circuit in and for Hillsborough County, FL

filed a Response Plaintiff's Motion on March 4, 2014. The Response asserts that (1) the photos Plaintiff seeks have already been produced, and to the extent there remains additional photos, Defendant will produce them; (2) Defendant does not have any documents from a previous litigation in his possession, and Plaintiff has equal access to retrieving the documents; and (3) Defendant does not possess the requested letters, and Plaintiff has legal recourse for obtaining them from Defendant's wife and daughter.

III. DISCUSSION

It is well-settled in Delaware case law that parties may "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action ... [and which is] reasonably calculated to lead to the discovery of admissible evidence."⁴

Plaintiff first seeks to compel the production of photos and video of Plaintiff, Defendant, and the house where the sexual abuse allegedly occurred. Defendant responds that his wife has already sent Plaintiff a photo album and that he has a limited number of photographs remaining, and that he will copy and send those photographs to Plaintiff. Because Defendant is complying with Plaintiff's request, to the extent he has the requested information, the Court will consider this resolved.

The second items Plaintiff seeks to compel are any documents relating to the 1993 civil action between Plaintiff and Defendant.⁵ Defendant responds that he does not possess these documents. "[W]here a party [does not have] possession, custody or control"⁶ over what

⁴ *Continental Insurance Co. v. Ventresca*, No. 90C-JL-219 at 2 (Del. Super. Ct. Aug. 5, 1992) (Herlihy, J) (quoting Super. Ct. Civ. R. 26(b)(1))

⁵ *Id.* at 3

⁶ *Kaye v. Pantone, Inc.*, 1983 WL 18012, at *2 (Del. Ch. Mar. 28, 1983).

is sought, “[p]roduction cannot be required.”⁷ Moreover, Plaintiff has the same access to these documents as he was the plaintiff in that case. Defendant has no obligation to undertake the burden of securing and producing discovery that is equally accessible to Plaintiff.⁸

The final items Plaintiff seeks to compel are any letters written between Plaintiff and Defendant, as well letters between Plaintiff and Defendant’s wife and daughter. Defendant responds that he has already sent all documents he possesses that are responsive to this request.

Should Plaintiff not receive the requested photographs which Defendant represents he is sending to Plaintiff, he may renew this Motion as to the items which Defendant fails to produce. Plaintiff’s Motion to Compel is **DENIED**.

IV. CONCLUSION

For the reasons stated above, Plaintiff’s Motion to Compel Production is **DENIED**.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

⁷ *Id.*; see e.g., *Loft, Inc., v. Guth*, 191 A. 879, 883 (Del. Ch. 1937) (“[T]he right to discovery is founded in the justice of compelling one party to furnish to the other *information in his possession* which the other needs in sustaining his own case.”).

⁸ Super. Ct. Civ. R. 26(b)(i) (“The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the Court if it determines that: (i) The discovery sought . . . is obtainable from some other source that is . . . less burdensome.”); see also *Spanish Tiles, Ltd. v. Hensey*, 2007 WL 1152159 (Del. Super. Ct. Apr. 13, 2007).