

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

JOSEPH PETITO and
NICHOLE SCHMIDT,

Plaintiffs,

vs.

CASE NO. 2022 CA 001128 SC

CHRISTOPHER LAUNDRIE and
ROBERTA LAUNDRIE,

Defendants.

/

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

COME NOW, the Plaintiffs, JOSEPH PETITO and NICHOLE SCHMIDT (hereinafter the "Plaintiffs"), by and through their undersigned counsel, and respond to the Motion for Protective Order filed by the Defendants, CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE (hereinafter the "Laundries"), as follows:

1. On February 14, 2023, Plaintiffs served a Second Request for Production upon the Laundries **[DIN 94 and 95]**, with one request as follows:

Please produce a copy of a letter written by Roberta Laundrie to Brian Laundrie, which letter states, in part, that Roberta Laundrie would bring a shovel to help bury a body, and which letter was contained in an envelope which on said envelope stated, "Burn after reading." The original of said letter was delivered to Attorney Steven Bertolino by the FBI on June 24, 2022.

2. On March 6, 2023, the Laundries filed a Motion for Protective Order **[DIN 104]** which included an Affidavit from Roberta Laundrie **[DIN 105]** regarding the letter. It is important to note that at the outset Roberta Laundrie does not dispute that the letter was written, and that counsel for the Laundries has previously advised the Court that the letter is undated.

3. The first problem with the Laundries' Motion is that it is entirely premised upon Roberta Laundrie's Affidavit. It is no surprise that Roberta Laundrie has said that the letter has no relevancy to the underlying litigation. The affidavit is a self-serving document written by an adverse party, one with a bias and personal stake in the outcome, who seeks to withhold a key piece of evidence. The Court is being asked to believe Roberta Laundrie when she says that the letter was written prior to the time of Gabrielle Petito's murder and that it had nothing to do with the murder. The Plaintiffs have not had an opportunity to cross examine Roberta Laundrie on her allegations, and furthermore, it is a jury function to evaluate the credibility of any given witness. *Midtown Enters., Inc. v. Local Contrs., Inc.*, 785 So. 2d 578, 582 (2001). This Honorable Court cannot simply take Roberta Laundrie at her word as to the time when the letter was written.

4. The Laundries' argument is that Roberta Laundrie says that the letter was written prior to Gabrielle Petito's death, that it is not relevant, and therefore a protective order is appropriate. But none of the cases cited by the Laundries in support of their Motion address credibility issues. Each of them is factually distinct from the issues in this case.

5. Fla. R. Civ. P. 1.280 (c) provides "[u]pon motion by a party or by the person from who discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expenses that justice requires." (Emphasis added.)

6. The trial court possesses broad discretion in overseeing discovery and protecting the parties that come before it. The burden of demonstrating good cause for

the issuance of a protective order falls upon the parties seeking protection. *Cavey v. Wells*, 313 So. 3d 188 (Fla. 2nd DCA 2021).

7. A party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party. Fla. R. Civ. P. 1.280 (b)(1).

8. The Laundries' sole basis for seeking a protective order is that the letter is not relevant. Relevancy is not a proper ground for protective relief under Rule 1.280 (c). *Hepco Data, LLC v. Hepco Med., LLC*, 301 So. 3d 406, 413 (Fla. 2d DCA 2020). See also, *Dees v. Kidney Group, LLC*, 16 So. 3d 277, 279-80 (Fla. 2d DCA 2009) (upholding the circuit court's finding that the information sought to be protected is not related to any pending claim and it not reasonably calculated to lead to the discovery of admissible evidence is not sufficient to issue a protective order by the Rule 1.280 (c)). See also, *Kyker v. Lopez*, 718 So. 2d 957, 959 (Fla. 5th DCA 1998) (holding the argument that the information is not relevant to the issues in the lawsuit does not satisfy the moving party's burden to show that producing the requested information would subject him to "annoyance, embarrassment, oppression, or undue burden or expense.")

9. The Laundries cite numerous cases in their Motion which are factually distinct from the instant matters. In *Univ. of W. Fla. Bd. Of Trs. V. Habegger*, 125 So.3d 323 (Fla. 5th DCA 2013), plaintiff, who had been a professor at the University, and whose contract had been terminated, filed a claim of tortious interference with a business relationship against a party she alleged interfered with her business relationship. She further alleged that this individual had spoken with the president of the university and thus

she sought to take the deposition of the president. The university filed a motion for protective order that included an affidavit that the president had only one conversation with Mr. Dickey, four to five months prior to the time the contract was terminated, and that this had no impact on the decision to terminate the contract. Based upon the affidavit that was filed, the court found that there was good cause to preclude the deposition of the president. As an aside, the Apex doctrine set forth in the Fla.R.Civ.P.1.280(h) may preclude such deposition today.

10. In *Bank of N.Y. Mellon v. Figueroa*, 299 So.3d 430 (Fla. 3d DCA 2019), Figueroa requested documents and testimony related to 19 completely unrelated loans and lawsuits. In that case, the motion for protective order was granted. Pursuant to Florida Statute, the books and records requested were deemed to be confidential.

11. In *Kobi Karp Architecture & Interior Design, Inc. v Charms 63 Nobe, LLC*, 166 So.3d 916 (Fla. 3d DCA 2015), plaintiff filed a breach of contract action to determine whether Kobi Karp was required to provide Charms 63 “as built” drawings. Subpoenas were issued to customers of Kobi Karp listed on its website for their contracts with Kobi Karp, as well as drafts of all contracts and all pertinent information. The court ruled that the request was not reasonably calculated to lead to admissible evidence.

12. In *Publix Supermarkets, Inc. v. Santos*, 118 So .3d 317 (Fla. 3d DCA 2013), plaintiff, in a slip and fall case, sought to depose Publix and asked Publix to produce all incident reports relevant to any occurrence at kiosks located in Publix stores within the State of Florida. Publix sought a protective order contending that the burden of proof standard set forth in F.S. §768.0755 did not require it to produce the information Santos sought. The court concluded that the discovery requested was irrelevant with respect to

the burden of proof of Santos under the Statute.

13. In *Travelers Indem. Co. v. Salido*, 354 So. 2d 963 (Fla. 3d DCA 1978), plaintiff filed a claim to have her insurance company pay a \$50.00 orthopedic bill. She sought copies of all other bills paid for orthopedic care. The court ruled that the other orthopedic bills were not admissible or probative on issues of the reasonableness of the doctor's bills.

14. In *McCarty v. Estate of Schultz*, 372 So.2d 210 (Fla. 3d DCA 1979), McCarty was not a party to the underlying action, but was a private duty nurse for the decedent. Estate assets were unaccounted for, and the plaintiff believed that McCarty might have knowledge of missing assets and subpoenaed her tax returns. The court concluded that the tax returns of McCarty, a third party, were not relevant to the subject matter of the litigation.

15. In *Hoogland v. Dollar Land Corp*, 330 So. 2d 509 (Fla. 4th DCA 1976), the appellee sued Hoogland for rent due and sought an injunction to restrain Hoogland from destroying personal property within the premises. In discovery, the landlord noticed Hoogland for a deposition demanding him to bring *inter alia* inventory of assets located in the leased premises and other assets owned by him as well as his income tax returns and a host of other financial data. The court ruled that the financial information did not appear to be reasonably calculated to lead to relevant matters.

16. None of the cases relied upon by the Laundries bases the relevancy argument on the credibility of one of the parties who says the requested document is not relevant.

17. The Laundries argue that the letter was not published to the Plaintiffs and thus it could not have caused them emotional distress. They are absolutely correct. But that is not the reason why Plaintiffs seek the letter.

18. Plaintiffs' claim against the Defendants is based upon statements made by Attorney Bertolino on behalf of himself and the Laundries at a time when the Defendants knew that Gabrielle Petito was deceased. The letter in question, written by Roberta Landrie to Brian Landrie references bringing a shovel to help bury a body, and baking a cake with a shiv in it should Brian Landrie go to prison. A reasonable inference is that the letter was written at a time when Gabrielle Petito was as yet unburied, and Brian Landrie could go to jail for the crime of murder.

19. If the jury were to find that the letter was written after Gabrielle Petito's murder, it is further proof that the Laundries and Bertolino were aware that she was deceased at the time the statements in question were issued. If it was not written at a time when Roberta Landrie knew that her son had murdered Gabrielle Petito, it is at best an odd letter for a mother to write to a son, and Roberta Landrie's explanation for writing it is frankly unbelievable. It is within the province of the jury to decide whether Roberta Landrie is credible in her assertion as to when the letter was written, and to determine the relationship, if any, to Gabrielle Petito's death.

20. It is understandable that the Laundries would argue that the letter is embarrassing and most prejudicial to Roberta Landrie. Nevertheless, that does not mean that it is not discoverable.

21. The Laundries suggest that for the Court to enter an Order excusing Roberta Landrie from producing the letter, it would not prevent the Plaintiffs from

inquiring as to actions taken by the Defendants and public comments made by them, or on their behalf. But it certainly would preclude the Plaintiffs from obtaining a key piece of evidence and cross-examining Roberta Landrie about it.

22. Finally, Defendants suggest that the letter be produced to the Court *in camera*. Plaintiffs suggest that nothing will be gained by that, as Plaintiffs and their counsel have already seen the letter, and it is acknowledged that it is undated. There is no work product information, privileged material, private information such as financial or medical records or any trade secrets in the letter requiring an *in camera* review before the Court rules on the motion.

WHEREFORE, the Plaintiffs respectfully request this Honorable Court deny the request for a protective order as the Defendants have failed to show good cause for same.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been electronically filed on this 5th day of May, 2023, with the Clerk of the Court via the E-Filing Portal System which will simultaneously email the same to the following addressees by utilizing the Designation of Electronic Mail Addresses registered with the E-Filing Portal System:

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