

IN THE CIRCUIT COURT FOR THE  
17TH JUDICIAL CIRCUIT IN AND FOR  
BROWARD COUNTY, FLORIDA

CASE NO: 07-020592 CACE (03)

SHELLY BESWICK and CHRIS  
BESWICK, individually and as parents and  
natural guardians of KACIE BESWICK,  
their minor daughter,  
Plaintiffs,

vs.

HON. MILY RODRIGUEZ POWELL.

NORTHWEST MEDICAL CENTER, INC.,  
d/b/a NORTHWEST MEDICAL CENTER, a  
Foreign corporations; DEBRA ALLEN, R.N.,  
LYNETTE M O'TOOLE, R.N.; FERN  
TAISENCHOY-BENT, M.D. and FERN  
TAISENCHOY-BENT, M.D., P.A.,  
Defendant.

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**ORDER ON DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' AMENDED  
ANSWERS TO SOCIAL MEDIA INTERROGATORIES NUMBERS 1 AND 2 AND TO  
COMPEL EXECUTION OF AUTHORIZATION FOR RELEASE OF RECORDS FROM  
FACEBOOK**

THIS CAUSE came before the Court on Defendants' Motion to Compel Plaintiffs' Amended Answers to Social Media Interrogatories Numbers 1 and 2 and to Compel Execution of Authorization for Release of Records from Facebook. The Court having considered same, having heard arguments of counsel and being otherwise duly advised in the premises, finds and decides as follows:

Plaintiffs commenced the current suit alleging, *inter alia*, medical negligence. Plaintiffs allege that the Defendants' committed medical negligence during and after the delivery of their minor daughter, Kacie Beswick ("Kacie"). More specifically, Plaintiffs allege that the Defendants' negligence caused Kacie permanent brain injuries. Plaintiffs seek, *inter alia*, noneconomic damages, including 1) mental pain and suffering; and 2) loss of Kacie's companionship, society, love, affection, and solace.

During discovery in this matter, Defendants have sought to discover the basis for such noneconomic damages claims by seeking information Plaintiff has shared on social networking websites, including, but not limited to, Facebook. Defendants have propounded to Plaintiffs sets of interrogatories concerning discovery of information contained on social networking websites. The two interrogatories at issue are:

1. For each Plaintiff, please identify any internet social media websites which you have used and/or maintain an account in the last five (5) years. "Internet social media websites" includes but is not limited to Facebook, Twitter, LinkedIn, XboxLive, Foursquare, Gowalla, MySpace, and Windows Live Spaces.
2. For each Plaintiff who has Internet social media website account(s), please provide your username and password, or, alternatively, under Rule 1.340(c), please provide a copy of all non-privileged content/data shared on the account in the last five (5) years. In the event that you contend there is a privilege to assert, please provide a privilege log.

Defendants' seek an Order 1) compelling Plaintiffs to respond to the above quoted interrogatories; and (2) compelling Shelly Beswick ("Shelly") to execute an authorization to obtain social media information from social media websites and permit service of the subpoena on Facebook.

Plaintiffs concede that Shelly has a Facebook account. However, Plaintiffs object to the discovery of her Facebook account on the grounds that such request is overbroad, burdensome, not reasonably related to the discovery of admissible evidence, and is otherwise violative of her privacy rights.

"Discovery in civil cases must be relevant to the subject matter of the case and must be admissible or reasonably calculated to lead to admissible evidence." *Allstate Ins. Comp. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). *See also Fla. R. Civ. P. 1.280 (b)* ("Parties 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.").

In the current matter, Defendants seek to discover content shared by Plaintiff on social media websites in order to properly defend against Plaintiffs noneconomic damages claims. Such information is clearly relevant to the subject matter of the current litigation and is reasonably calculated to lead to admissible evidence. Moreover, the interrogatories are not overbroad as they specifically delineate the information sought. Furthermore, the interrogatories are narrow in scope, as they include a time limitation of five years.

Plaintiffs further object to the Defendants' interrogatories on the basis that such discovery is violative of their privacy rights. "Court orders compelling discovery constitute state action that *may* impinge on constitutional rights, including the constitutional right of privacy." *Berkeley v. Eisen*, 699 So. 2d 789, 790 (Fla. 4th DCA 1997) (emphasis added).

Plaintiffs have not provided any case law to support their position that allowing access to their Facebook records violates their privacy rights. Moreover, the Court finds Plaintiffs' privacy argument to lack merit. Facebook allows individuals to "share information about their personal lives, including posting photographs and sharing information about what they are doing or thinking." *Romano v. Steelcase, Inc.*, 907 N.Y.S.2d 650, 653 (N.Y. Sup. Ct. 2010). Although Facebook allows its user to control with whom they share their information,

To permit a party claiming very substantial damages . . . to hide behind self-set privacy controls on a web-site, the primary purpose of which is to enable people to share information about how they lead their social lives, risks depriving the opposite party of access to material that may be relevant to ensuring a fair trial.

*Id.* at 655 (internal quotations omitted) (citation omitted).

As such, information that an individual shares through social networking web-sites like Facebook may be copied and disseminated by another, rendering any expectation of privacy meaningless. *See id.* ("[A]s neither Facebook nor MySpace guarantee complete privacy, Plaintiff has no legitimate reasonable expectation of privacy."). *See also Moreno v. Hanford*

*Sentinel, Inc.*, 91 Cal. Rptr. 3d 858, 862-63 (Cal. Ct. App. 5th Dist.) (finding no reasonable expectation of privacy where an individual posted information on MySpace).

The information sought by Defendants is clearly relevant based upon the nature of the asserted claims set forth in Plaintiffs' Amended Complaint. Moreover, such information is reasonably calculated to lead to admissible evidence. Furthermore, the Court does not find Defendants' discovery requests to be burdensome, overly broad, or violative of Plaintiffs' privacy rights. Therefore, Defendants' Motion to Compel must be granted.


Additionally, the Court notes that it has authority to require a party to execute an authorization for the release of records. *Rojas v. Ryder Truck Rental Inc.*, 641 So. 2d 855 (Fla. 1994). Therefore, Defendants' Motion to Compel Authorization for Release of Records From Facebook is also granted.

Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs Motion to Compel Plaintiffs' Amended Answers to Social Media Interrogatories Numbers 1 and 2 is hereby GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that, within 30 days from the date of this Order Plaintiff shall deliver to Counsel for Defendants a properly executed consent and authorization as may be required by the operators of Facebook, permitting the Defendants to gain access to Plaintiffs' Facebook records.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 3 day of November, 2011.

  
MILY RODRIGUEZ POWELL  
CIRCUIT COURT JUDGE

Copies to:

Christopher Hopkins, Esquire  
Allison S. Bernstein, Esquire  
Melissa S. Zinkil, Esquire  
Kenneth J. Miller, Esquire

MILY RODRIGUEZ POWELL

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A TRUE COPY

Eugene K. Pettis, Esquire  
Isabel d. Castillo, Esquire  
Samantha A. Flax  
Rosalyn S. Baker-Barnes, Esquire