

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY,
PENNSYLVANIA

BRITTNI SIMMS, : Civil Action: Law
Plaintiff, :
VS. :
: No. 11961 CD 2011
:
LEONARD LEWIS and/or :
JUSTIN BICKEL, :
Defendants. :

INDIANA COUNTY
PROthonotary AND
CLERK OF COURTS
2012 OCT 10 AM 8:52

OPINION AND ORDER OF COURT

Bianco, J.

This matter comes before the Court on defendant Leonard Lewis' Motion to Compel Production of Social Networking Information. For the reasons set forth in the Opinion below, said Motion is GRANTED in part and DENIED in part.

FACTS

On November 7, 2009, Plaintiff, Brittni Simms, was a passenger in a vehicle traveling northbound on State Route 210. At the same time, defendant Leonard Lewis and defendant Justin Bickel were operating separate vehicles northbound on State Route 210, behind Plaintiff. When Plaintiff's vehicle stopped to make a left hand turn, it was struck from

behind by defendant Lewis' vehicle. It was then struck by defendant Bickel's vehicle.

Plaintiff brought forth the instant action alleging that she sustained injuries to her head, neck, and mid and lower back as a result of the collision. Plaintiff claims all of these identified areas of her body were strained, and these injuries are or may be serious and permanent in nature. Plaintiff avers that as a result of these injuries, she has suffered mental and physical anguish, inconvenience, and deprivation of the ordinary pleasures of life.

Through Interrogatories and the deposition of Plaintiff, defendant Lewis has learned that Plaintiff has Facebook, myYearbook, and MySpace accounts, and that each account was active following the accident in question. In Paragraph 15 of his Motion, defendant Lewis states that the front page of Plaintiff's myYearbook account contains the following quote: "Chillin with my girl tonight. were gonna do some Zumba Fitness :) so excited!!! HTC :p,"

Lewis requested Plaintiff's username and passwords for these accounts in order to access the private portions/pages of the site, however, Plaintiff declined to provide that information. Defendant Lewis then filed the instant Motion.

DISCUSSION

"[A]s a general rule, discovery is liberally allowed with respect to any matter, not privileged, which is relevant to the cause being tried." George v. Schirra, 814 A.2d 202, 204 (Pa. Super. 2002). See generally, Pa.R.C.P. 4003.1.

To date, no Pennsylvania appellate court cases have addressed discovery requests for information contained within an individual's social networking account. However, this issue has been addressed by a number of trial courts, and this Court believes that it is appropriate to look to these cases for guidance.

The case of Zimmerman v. Weis Markets, Inc., 2011 WL 2065410, No. CV-09-153 (Northumberland C.P. May 19, 2011) is particularly analogous to the instant matter. The plaintiff in Zimmerman sought

damages for lost wages, lost future earning capacity, pain and suffering, and scarring and embarrassment as a result of injuries he sustained while operating a forklift. The plaintiff alleged that his ability to enjoy life's pleasures was decreased and his general health was impaired. Despite the allegations contained in the complaint, Plaintiff had a Facebook profile that indicated that he enjoyed "bike stunts," and contained photographs of the plaintiff wearing shorts with his scar clearly visible.

Given these facts, Judge Saylor of the Court of Common Pleas of Northumberland County ordered the plaintiff to provide the defendant with all login and password information for the account. Judge Saylor was careful to note, however, that defendants do not have a blanket entitlement to obtain all social networking information in all personal injury cases. Judge Saylor limited his holding to cases in which the party requesting discovery is able to articulate facts gleaned from public pages that indicate that private postings are likely to contain additional relevant information.

Just as the plaintiff in Zimmerman, Ms. Simms has placed her physical condition at issue. As a result, Mr. Lewis is entitled to conduct

discovery to obtain any relevant information related to the cause of action. In today's society, this may include access to social networking accounts. In Paragraph 15 of its Motion, Mr. Lewis states that on the front page of Plaintiff's myYearbook account, she references attending a Zumba Fitness class. Attending a fitness class is relevant, as it directly relates to Plaintiff's claim that she has suffered a severe injury and is deprived of the ordinary pleasures of life. Based upon the information contained in a post visible on her public page, it is reasonable to infer that the non-public portion of Plaintiff's account may contain additional relevant evidence.

Plaintiff contends that even if her account contains information relevant to this matter, her reasonable expectation of privacy would be violated if production of her social networking information is compelled. By definition, the purpose of social networking sites is to share information. The Court finds that Plaintiff cannot maintain a reasonable expectation of privacy when she created the account and voluntarily posted this information, knowing that the information could become publicly available.

Given the above, the Court finds that defendant Lewis has made the proper showing that access to Plaintiff's myYearbook account could lead to the discovery of relevant information. However, Mr. Lewis has failed to articulate the factual predicate necessary to meet his burden with regard to Plaintiff's Facebook and MySpace accounts. If Mr. Lewis can provide the Court with the factual predicate necessary for requesting non-public access to these accounts, the Court will compel the discovery of such information. For these reasons, this Court finds that defendant Lewis' Motion to Compel is GRANTED with respect to Plaintiff's myYearbook account and DENIED with respect to Plaintiff's Facebook and MySpace accounts.

WHEREFORE, the Court enters the following Order of Court.

IN THE COURT OF COMMON PLEAS OF INDIANA COUNTY,
PENNSYLVANIA

BRITTNI SIMMS,
Plaintiff,
VS.

: Civil Action: Law

:

:

: No. 11961 CD 2011

:

LEONARD LEWIS and/or
JUSTIN BICKEL,
Defendants.

:

:

:

ORDER OF COURT

AND NOW, this 10th day of October, 2012, this matter having

come before the Court on defendant Leonard Lewis' Motion to Compel

Production of Social Networking Information, it is hereby ORDERED,

ADJUDGED, AND DECREED that said Motion is GRANTED with respect to

Plaintiff's myYearbook account and DENIED with respect to Plaintiff's

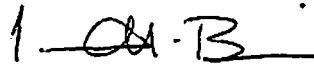
Facebook and MySpace accounts.

For purposes of complying with this Order, the parties will have
sixty (60) days from the date of this Order in which to coordinate an agreed

upon date, time, and location where Plaintiff will access her myYearbook account in the presence of counsel for Leonard Lewis.

It is further ORDERED that Plaintiff shall not alter or delete any existing photographs or information on her myYearbook account from the date of this Order until the date of access arranged pursuant to this Order.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. M. Bianco", written over a horizontal line.

Thomas M. Bianco, Judge