

IN THE SIXTH JUDICIAL CIRCUIT IN AND FOR
PINELLAS COUNTY, FLORIDA
UCN#522003CA006649XXCICI
REF. # 03-6649-CI-13

MELVIN SEMBLER and
BETTY SEMBLER,

Plaintiffs,

vs.

RICHARD BRADBURY,

Defendant.

FILED
St. Petersburg Branch
2005 JAN -5 PM 3:36
Richard Bradbury
Clerk of Court
Pinellas County, Florida

**ORDER GRANTING DEFENDANTS MOTION TO COMPEL
INTERROGATORY ANSWERS**

This cause came before the court upon the Motion to Compel Answers to Defendants First Set of Interrogatories, after hearing argument of counsel, receiving written submissions and reviewing relevant law, the court now finds,

1. The Defendant, Richard Bradbury, served written interrogatories upon the Plaintiffs and thereafter Plaintiffs refused to answer certain questions.
2. Interrogatory #7 asked the Plaintiffs to identify all persons (other than doctors, nurses, lawyers and other persons with whom they have had privileged communications) to whom they disclosed the fact that Melvin Sembler was stricken with prostate cancer from the date he was stricken to the date of filing the complaint.
3. The Plaintiffs responded with an objection that the question was irrelevant and not calculated to lead to the discovery of admissible evidence.
4. The Defendant correctly notes the Plaintiffs' initial and amended complaints include counts asserting a claim based upon Invasion of Privacy by Public Disclosures of Private

Facts. The specific allegations indicate certain “photographs and information relating to Melvin Sembler’s use of a medical penile pump” are the private facts purportedly involved.

5. The Defendant asserts the interrogatory will show the Semblers public disclosure of medical information which is directly related to the device which forms the basis for their claims. It is argued that the Plaintiffs public disclosures about prostate cancer are relevant to a fact finders determination of the plaintiffs expectation of privacy and may perhaps even lead to the discovery of evidence the alleged “private facts” were publicly revealed by the Plaintiffs themselves.

6. The court finds that the language of the complaint asserting “information relating to” Mr. Semblers medical device could be inclusive of the condition which precipitated the need for the medical device. Public revelations by the Plaintiffs regarding Mr. Sembler’s prostate cancer may indeed be relevant to a determination of elements of the claim or damages.

7. The Defendant also included certain questions in the interrogatories which were designed to discover information regarding the Plaintiffs’ care or treatment attributed to the Defendant’s actions. Interrogatories #10 and #11 ask the Plaintiffs to reveal any mental or physical treatment (and providers thereof) which the Plaintiffs claim arose as a result of the actions of the Defendant as set forth in the complaint. The Plaintiffs objected asserting the interrogatories were irrelevant and not calculated to lead to the discovery of admissible evidence.

8. If the Plaintiffs received any treatment they claim was attributable to the Defendants acts of invasion of privacy or intentional infliction of emotional distress such treatment would clearly be relevant to the lawsuit. If they did not receive any treatment, the answer would have simply been no.

9. Several additional interrogatories relate to the Plaintiffs mental health counseling history and their use of medication for anxiety, depression or sleeping. Again, the Plaintiffs objected based upon relevance.

10. The Plaintiffs have included in their complaints against the Defendant. A court of Intentional Infliction of Emotional Distress. One of the elements a Plaintiff needs to prove by the greater weight of the evidence to prevail on such a claim is that the conduct caused emotional distress. Another element of the claim which must be established is that the emotional distress was severe.

11. Evidence regarding psychological or psychiatric care, treatment and medications which are claimed to arise from Defendants actions obviously are relevant to the issue of whether emotional distress existed and if it was severe. Thus interrogatories #10 and #11 are relevant to the proof of this claim. Similarly, the prior mental condition of a claimant is relevant to the issue of causation if it were to be established that there existed severe distress following Defendants acts. Therefore, interrogatories #12, #13 and #14 seeking discovery of this historical information are relevant.

12. The court agrees with the Plaintiffs' arguments that the interrogatory seeks information too remote in time when the questions ask for data going back to 1980. A reasonable inquire would include counseling and medication during the period of five years preceding the claimed tort up to the present date.

13. Although the plaintiffs objection to the temporal expansiveness of questions is sustained, the general relevancy objections are otherwise overruled. It must also be noted that the Plaintiffs included with their objections the assertion that the Defendant is a "stalker" and the information sought in the interrogatories should thus not be given to him. Even if evidence


demonstrated the Defendant is a stalker he has a right to defend himself in a civil lawsuit. Since the Plaintiffs have elected to pursue their claims against him the Defendant may engage in lawful discovery in conformity with the rules of civil procedure.

Finally, the Plaintiffs recently filed Second Amended Complaint does not eliminate the relevancy of the disputed interrogatories. Although the Plaintiffs apparently have abandoned any assertion that either the invasion of privacy or the intentional infliction of emotional distress caused any actual special damages, they now seek nominal and punitive damages. To get to either of such damages the Plaintiffs must still establish the basic elements of their claims and as the court has determined above the subject interrogatories have independent significance with respect to the elements of severe emotional distress.

Therefore, it is

ORDERED AND ADJUDGED that the interrogatories be answered within thirty (30) days of receipt of this Order.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 5th day of January, 2005.



ANTHONY RONDOLINO, Circuit Judge

Copy furnished to:
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