STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(Filed: January 23, 2012)

NAYSHA BERRIOS, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF CASSANDRA BERRIOS,	:	
v.	:	**C.A. No. PC 2004-2390**
JEVIC TRANSPORTATION, INC.; CRAIG G. BENFIELD; FIRST STUDENT, INC.; ILBA BERRIOS, ALIAS; SAIA, INC.; SAIA MOTOR FREIGHT LINE, L.L.C., ALIAS; AND NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA	:	

DECISION

Gibney, P.J. In this wrongful death action, Defendant First Student, Inc. ("First Student") has filed two motions: a Motion for Clarification of the Court's Decision of December 6, 2010 and a Motion for a Protective Order with respect to Defendant Jevic Transportation, Inc.'s ("Jevic") notice of intent to depose three First Student employees. Berrios v. Jevic, PC-2004-2390, 2010 WL 5056132, at 3-8 (R.I. Super. Dec. 6, 2010). First Student asks this Court to bar Jevic and Plaintiff Naysha Berrios ("Plaintiff") from asking deposition questions regarding First Student's policy of permitting employees to bring their small children to work with them on First Student's buses. Jurisdiction is pursuant to Super. R. Civ. P. 26(c).

I

Facts and Travel[1]

The instant matter arose from an automobile accident that occurred on Route I-95 North on the morning of September 5, 2001. According to police reports and deposition testimony, prior to the accident, an eighteen wheel, tractor trailer owned and operated by Jevic was parked in the breakdown lane along I-95 North. Defendant Ilba Berrios was the driver of a First Student school bus and a First Student employee. Also on the First Student bus were Plaintiff and her infant daughter, Cassandra Berrios. Plaintiff was the bus monitor and a First Student employee. According to police reports and deposition testimony, Cassandra was improperly secured in a children's car seat that was fastened with a lap seatbelt.

The school bus was traveling in the right lane of I-95 North, crossed into the breakdown lane and struck the stationary Jevic truck which was operated by Defendant Craig Benfield. The infant, Cassandra, was severely injured and subsequently died. Ilba Berrios and Plaintiff were both injured but survived the accident. Plaintiff, individually and as administratrix of the estate of Cassandra Berrios, subsequently filed this lawsuit. Thereafter, Jevic and First Student filed Cross-Claims against each other.

Extensive discovery in the instant matter has been ongoing for over seven years. On September 1, 2010, Plaintiff filed a Motion in Limine pursuant to G.L. 1956 § 31-22-22 (2010) seeking to bar "First Student and Jevic from introducing any testimony or evidence that [Plaintiff] was comparatively negligent and that her award should be correspondingly reduced, because she allegedly did not properly secure her daughter

[1] For a more detailed summary of the tortured procedural history of this case, see the December 6 Decision. Berrios, PC-2004-2390, at 1-3.

Cassandra in a child safety seat." Berrios, PC-2004-2390, at 3. Plaintiff also asked this Court to exclude "any and all evidence that Defendants First Student and/or Jevic may proffer pertaining to the alleged use, non-use, or misuse of the 'child restraint system.'" Id. at 3-4.

In a Decision filed on December 6, 2010 ("the December 6 Decision"), this Court granted Plaintiff's Motion in Limine. Id. at 3-8. Drawing on the plain language of § 31-22-22 and the logic of our Supreme Court's decision in Swajian v. General Motors Corporation, 559 A.2d 1041, 1046 (R.I. 1989), this Court concluded that evidence of alleged use, nonuse, or "misuse of a child restraint system, a child safety seat, and other such devices is inadmissible" at trial. Berrios, PC-2004-2390, at 3-8. This Court reasoned that § 31-22-22(a)(2) unambiguously provides "that in 'no event shall the failure to wear a child restraint system or safety belt be considered as contributory or comparative negligence, nor shall the failure to wear a child restraint system, seat belt and/or shoulder harness be admissible as evidence in the trial of any civil action.'" Id. at 5 (quoting § 31-22-22(a)(2)). Further, this Court acknowledged the holding in Swajian that pursuant to § 31-22-22, "all evidence relating to safety-belt use or nonuse is irrelevant and inadmissible at trial." Id. (quoting Swajian, 559 A.2d at 1041). As such, this Court determined that "any and all evidence pertaining to the alleged use, non-use, or misuse of the 'child restraint system'" was inadmissible at trial and granted Plaintiff's Motion in Limine. Id. at 8.[2]

Since its filing, the December 6 Decision has impacted the course of discovery as it relates to First Student's alleged policy of permitting its employees to take their small

[2] For a complete discussion of the grounds underlying this Court's grant of Plaintiff's Motion in Limine, see the December 6 Decision. Berrios, PC-2004-2390, at 3-8.

children to work with them on First Student's buses. This Court first addressed the scope of the December 6 Decision in the context of First Student's resistance to proposed interrogatories from Jevic regarding First Student's policy. At a hearing on September 14, 2011 ("the September 14 Hearing"), Counsel for First Student acknowledged "that First Student permitted bus monitors . . . to bring children onto the school bus." Def. First Student's Mem. in Supp. of Mot. for Protective Order, Ex. B., Tr. of Hr'g, Sept. 14, 2011, 8:19–8:20 ("Sept. 14 Hr'g Tr."). Counsel argued, however, that—according to the December 6 Decision—any evidence as to "why the baby was allowed to be on the bus" was not discoverable because it is not "relevant evidence that could be admissible at trial . . . ." Sept. 14 Hr'g Tr., 8:25–9:6. This Court resolved the dispute in favor of Jevic. Ruling from the bench, this Court stated: "Any questions specifically dealing with the seat belt issue, or restraints, or car seats, shall not be visited again, to the extent that there are proposed additional interrogatories about policies and children. They are appropriate and they will be answered, and you [Jevic] are permitted to propound those interrogatories." Sept. 14 Hr'g Tr., 9:25–10:6.

On January 6, 2012, First Student filed the instant Motion for a Protective Order with respect to Jevic's notice of intent to depose various First Student employees and asked for additional clarification of the December 6 Decision. Thus, this Court shall again take up the December 6 Decision in the context of a discovery dispute.

II

Analysis

As First Student's Motion for a Protective Order seemingly arises from its confusion over the scope of the December 6 Decision, this Court shall further clarify the

December 6 Decision in the course of addressing First Student's Motion for a Protective Order.

Through discovery, Rhode Island litigants may obtain information "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action," unless "otherwise limited by order of the court." Super. R. Civ. P. 26(b). This is true whether the information sought "relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Id.

This Court "has broad discretion to regulate how and when discovery occurs." Shelter Harbor Conservation Soc., Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (quoting Giuliano v. Pastina, 793 A.2d 1035, 1037 (R.I. 2002)). Accordingly, this Court may issue a protective order preventing parties from proceeding with discovery requests "for good cause shown." Super. R. Civ. P. 26(c). The party objecting to discovery bears the burden of demonstrating "why a particular discovery request is improper" and must do so "with specificity." Sajda v. Brewton, 265 F.R.D. 334, 338 (N.D. Ind. 2009); see 1 Robert B. Kent et al., Rhode Island Civil and Appellate Procedure § 26:7 (West 2004 and supp.) (noting that the party moving for a protective order "must show good cause").[3] When discovery sought is neither relevant to the subject matter of the pending litigation, nor

[3] Our Supreme Court has "repeatedly stated that federal-court interpretations of a procedural rule that is substantially similar to one of our own state rules of civil procedure should serve as a guide to the construction of our own rule." See Hall v. Ins. Co. of N. Am., 727 A.2d 667, 669 (R.I. 1999) (citing Smith v. Johns-Manville Corp., 489 A.2d 336, 339 (R.I. 1985)). As our Rule 26 is patterned after its federal counterpart, this Court shall refer to federal precedent where appropriate. Smith, 489 A.2d at 339.

reasonably calculated to lead to the discovery of admissible evidence, a protective order may enter. See Super. R. Civ. P. 26(b). However, "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Id.

First Student asks this Court to "issue a protective order that prevents all parties from proceeding with depositions on the topic of First Student's Policy (allowing employees' children on buses [sic])" and argues that the December 6 Decision commands such a result. First Student maintains that any deposition questions concerning its policy of permitting employees to take their children on its buses would require it to respond with an explanation that must include a "discussion of child safety seats." First Student contends that such a discussion, even in the context of a deposition, is prohibited by the December 6 Decision. As such, it requests that this Court bar all parties to Jevic's proposed depositions from even raising questions about its policy.

First Student interprets the December 6 Decision too broadly. The December 6 Decision did not prohibit all deposition questions regarding First Student's policy of permitting its employees to bring their children with them to work. Rather, it excluded admission of "any and all evidence pertaining to the alleged use, non-use, or misuse of the child restraint system" at trial. Berrios, PC-2004-2390, at 8 (internal quotation marks omitted). Moreover, this Court previously rejected First Student's similarly broad reading of the December 6 Decision as it relates to interrogatories at the September 14 Hearing. There, this Court stated: "Any questions specifically dealing with the seat belt issue, or restraints, or car seats, shall not be visited again, to the extent that there are proposed additional interrogatories about policies and children. They are appropriate and

they will be answered, and you [Jevic] are permitted to propound those interrogatories." Sept. 14 Hr'g Tr., 9:25–10:6. The implication of this statement is that the December 6 Decision is not to obstruct attempts to acquire discoverable information, even if that information itself would be inadmissible at trial. See Berrios, PC-2004-2390, at 5-8; see also Super. R. Civ. P. 26(b) ("It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.").

This Court shall now make express what was implicit in its statements at the September 14 Hearing. The possibility that discovery requests might require First Student or another party to discuss the use, non-use, or misuse of a seat-belt, child restraint system, or car seat as part of their discovery responses does not mean that the requests violate the December 6 Decision. Berrios, PC-2004-2390, 5-8. Furthermore, such a possibility does not represent grounds justifying a protective order. Id.; see Super. R. Civ. P. 26(b) (stating that the fact that information sought may be inadmissible at trial does not represent grounds for opposing discovery). First Student's request for a protective order preventing all parties from "proceeding with depositions on the topic of First Student's Policy" rests, therefore, on an impermissibly broad reading of the December 6 Decision.

Today's ruling reflects the essential difference between discoverable information and evidence admissible at trial. See 8 Charles Alan Wright et al., Federal Practice & Procedure § 2007 (3d ed. 2010) ("[I]t should be kept in mind that a clear distinction is made between the right to obtain information by discovery and the right to use it at the trial."). Our state's rules of discovery provide that "[i]t is not a ground for objection that

the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Super. R. Civ. P. 26(b).[4] Therefore, a protective order may not issue simply because the information sought from First Student may be inadmissible at trial. Id. Rather, First Student must also show that the inadmissible information is also not reasonably calculated to lead to the discovery of admissible evidence. Id. First Student does not address this issue, and this Court will not make First Student's argument for it. Thus, First Student has failed to meet its burden to show entitlement to a protective order. Super. R. Civ. P. 26(c); see Sajda, 265 F.R.D. at 338 (acknowledging that the burden rests on the party objecting to discovery to show, with specificity, why a particular discovery request is improper). Accordingly, deposition questions regarding First Student's policy are appropriate.[5]

Conclusion

For the foregoing reasons, First Student's Motion for a Protective Order is denied. The December 6 Decision is not to be used to obstruct completion of discovery. Counsel shall submit an appropriate Order for entry.

[4] Although in its December 6 Decision the Court limited the scope of discovery, it did nothing to affect the rule that information, although inadmissible at trial, may nonetheless be discoverable. Super. R. Civ. P. 26(b).

[5] First Student argues that it will be unduly prejudiced if its Motion for a Protective Order is denied because it is "strictly forbidden . . . from defending [its policy] pursuant to the terms of" the December 6 Decision. Despite First Student's claims, however, the December 6 Decision did not prohibit First Student from defending itself or its policy. It simply held that evidence of alleged use, nonuse, or misuse of a child restraint system, a child safety seat, and other such devices is inadmissible at trial. Berrios, PC-2004-2390, at 5-8. Moreover, this is not a burden that First Student must bear alone. Jevic, Plaintiff, and all other parties to this litigation are similarly constrained in this regard. Id. None of them may present evidence of alleged use, nonuse, or misuse of a child restraint system either. This Court shall not speculate here, however, as to what specific questions or evidence the December 6 Decision might bar at trial, and nothing in today's Decision is to be interpreted as doing so.