IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

D. W. D.,
Husband,

vs. **Case No. 00 DR 0000 N**
C. D.,
Wife,

ORDER DENYING FATHER'S AMENDED MOTION TO COMPEL

This matter having come before the court on 7/27/2011 on the father's "Amended Motion to Compel" filed 7/7/2011, it is ordered:

The motion is denied. Except in one particular, the father's "First" and "Second Notice to Produce to Wife" are over broad and unduly burdensome. These consist of boilerplate paragraphs that request "all documents" or "all records" within categories, such as, bank accounts, tax returns, financial statements, etc. These boilerplate paragraphs are written so that they ask for every conceivable financial record of the wife.

Therefore, they ask for many documents that are required to be disclosed under Rule 12.285. To the extent that they ask for a document that is covered by Rule 12.285 they are an abuse of the discovery rules, because a request to inspect a document under Rule 1.350 that must be disclosed under Rule 12.285 is redundant and duplicative. These duplications amount to unnecessary litigation. For instance, the "Second" request to produce asks the wife to produce "All federal and state income tax returns ... for the last (5) five years ..." Rule 12.285(d)(2) requires a party to disclose "All federal and state income tax returns ... for the past 3 years." A request to inspect the same documents twice is a duplication of effort, a waste of time, and needless litigation. Trial courts are obligated to reduce unnecessary litigation at every opportunity. *Wrona v. Wrona,* 592 So.2d 694 (Fla. 2d DCA 1991).

The response of husband's counsel that "All she has to do is file a response saying she has already disclosed some of these tax returns under Rule 12.285," begs the question, which is, why did the husband request these duplications in the first place? The court will not require a party to respond to duplicative and unnecessary discovery requests because that would encourage unnecessary litigation. On the other hand, if the wife has failed to comply with the disclosure requirements of Rule 12.285, then the husband should have brought a motion to compel under Rule 12.285(f), but there is no issue today regarding her compliance with the disclosure requirements.

Further, Rule 12.285 requires the disclosure of certain financial documents and

information. The documents and information required by that Rule are a sufficient record for nearly every financial issue in this litigation. The relevance and materiality for further specific, designated documents is not presumed and must be demonstrated. The record here does not demonstrate the relevance and materiality of all of the documents sought in these requests.

These requests are also over broad and unduly burdensome. It is apparent that they are not tailor-made requests to inspect designated documents likely to exist and in the possession and control of the wife and within the scope of the pleadings and relevant to the scope of discovery. These requests are equivalent to a search warrant to secure every conceivable financial document that the wife might have just to see what might turn up.

However, Rules 1.350, Rule 1.351, and Rule 1.410 do not grant a party the right to a search warrant for everything a party or witness may have just to see what might be there. Such a request is not "discovery" of the opponent's relevant documents; rather, such a request is a "fishing expedition." The discovery rules do not permit "fishing expeditions." All of the requested documents are not related to a pending claim or issue or likely to lead to admissible evidence at trial, which is the proper scope of discovery. Some of them might be, but all of them cannot be. These discovery requests go beyond the scope of discovery allowed by law. Over broad discovery requests delay litigation and unreasonably and unnecessarily drive up fees and costs.

Just as a request for broad general categories of documents is not permitted by Rule 1.350 or Rule 1.351, it is also not permitted in a subpoena under Rule 1.410 or a request to a party to produce at trial under Rule 1.410(c). Requests under all of these rules must seek a document designated with sufficient particularity to suggest that it exists. A "fishing expedition," on the other hand, looks for nothing in particular and everything in general, which describes the requests at hand. A fishing expedition is a dragnet sweeping every fish into the net to see what might turn up. It is like a blindfolded hunter firing his shotgun into the sky to see if something falls down. It is not a rifle aimed at a known target or a fishing line baited and cast to hook a particular species of fish calculated to be where the bait is cast. *See, e.g., Devereux Florida Treatment Network, Inc., v McIntosh*, 940 So.2d 1202, 1204 - 1205 (Fla. 5th DCA 2006): "...McIntosh's broad subpoena was a 'fishing expedition.' In fact, McIntosh never even attempted to articulate why the subpoenaed documents were needed for trial. Instead, he argued that the documents might ultimately lead to the discovery of admissible evidence. ...Since McIntosh admitted that he could not even assess whether the documents would be relevant to any issue in the litigation unless they were first produced for review, he certainly could not demonstrate their necessity for trial."

Discovery requests must (1) be "related to any pending claim or defense", *Walter v. Page*, 638 So.2d 1030, 1031 (Fla. 2d DCA 1994), and **(2) must be "reasonably calculated to lead to the discovery of admissible evidence."** *American Honda Motor Company, Inc., v. Votour*, 435 So.2d 368 (Fla. 4th DCA 1983).

Further, requests for documents or papers **must be directed at specific documents that are likely to be in the possession of the other party**. General, sweeping requests are improper. As the Second District Court of Appeal said in *Walter v. Page*, 638 So.2d 1030 (Fla. 2d DCA 1994):

"We agree with the appellant that the subpoena duces tecum was too broad. The rule authorizing a subpoena duces tecum requires some degree of specificity, and *the documents or papers sought should be designated with sufficient particularity to suggest their existence and materiality*. *Palmer v. Servis*, 393 So.2d 653 (Fla. 5th DCA 1981); Fla.R.Civ.P. 1.350(a). ***The subpoena in the instant case was too broad in seeking virtually all of appellant's personal financial documents. The subpoena duces tecum is not the equivalent of a search warrant, and should not be used as a fishing expedition to require a witness to produce broad categories of documents which the party can search to find what may be wanted***. *Palmer*." *Id.* at 1031. (***Emphasis supplied***).

Here, the request also seeks "virtually all of [a party's] personal financial records." The appellate court's citation to Rule 1.350(a) is instructive, because it makes no difference whether the documents are sought by a subpoena duces tecum or a request to produce documents under Rule 1.350. The same standards apply.

The Second District gave further instruction in *Palmer v. Servis, supra*:

"The rule[3] authorizing a subpoena duces tecum provides that the subpoena may command the witness to produce books, papers, documents or tangible things designated" therein. *The word "designated" is also the qualifying word used to describe the documents a party can be required to produce*.[4] Petitioners are mere third persons subpoenaed as witnesses in this dissolution action. *Designation requires some degree of specification.*[5] *A blanket request for a general category is insufficient. The subpoena duces tecum should not become a search warrant, requiring a witness to produce broad categories of items which the party can search to find what may be wanted*. The desired documents, books or papers should be designated with sufficient particularity as to affirmatively suggest their existence and materiality and so describe them that any reasonable person can identify them.

[3] Fla.R.Civ.P. 1.410(b).
[4] Fla. R.Civ.P. 1.350(a).
[5] See Annotation: Necessity and sufficiency ... of "designation" of documents, etc., in applications or motions, 8 A.L.R.2d 1134 (1949). "

Id. at 654, 655. (*Emphasis supplied.*)

That ruling by the appellate court bears repeating: **"A blanket request for a general category is insufficient. The subpoena duces tecum should not become a search warrant, requiring a witness to produce broad categories of items which the party can search to find what may be wanted. The desired documents, books or papers should be designated with sufficient particularity as to affirmatively suggest their existence and materiality and so**

describe them that any reasonable person can identify them."

The request at issue violates this limitation on discovery. A request for all conceivable financial records that a party may possess is not permitted by Rule 1.350 or Rule 1.351 or Rule 1.410. These rules do not grant a party a search warrant for everything a party or witness may have. All of the documents requested are not related to a pending claim or issue or likely to lead to admissible evidence at trial, which is the proper scope of discovery. Some of them might be, but all of them cannot be. Therefore, these requests are over broad.

Further, there is no rule or case law requiring a party to make copies of requested documents, even if that is a local custom for the convenience of the lawyers and their experts. Rule 1.350(a)(1) allows a party "*to inspect and copy any designated documents*..." (*Emphasis supplied.*) The rule does not require the recipient of the request to make copies of the documents. *See, e.g., Grinnell Corp. v. Palms 2100 Ocean Blvd., Ltd.*, 924 So.2d 887 (Fla. 4th DCA 2006), in which the court said: "Florida Rule of Civil Procedure 1.350(b) requires that a response under the rule only produce items 'as they are kept in the usual course of business or ... identify them to correspond with the categories in the request.' " *Id.* at 895. *Compare* Rule 1.410(e)(1): "... the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court..." So, inspection and copying by the requester is what these rules allow. And, the requester has to pay for any copies, at reasonable cost, if the recipient provides the copier at the place designated. If the recipient chooses to send copies in order to avoid an inspection, that is an effort that is not required by the rules.

A further question is whether any request is a reasonable and necessary expenditure of a lawyer's time and effort for which the lawyer may ask to be paid. There is a cost and benefit analysis in all litigation. There is also a law of diminishing returns when the object is to find income or assets and other financial information. The cost and the effort may far exceed the benefit and the return may diminish to nothing, which draws into question whether the effort was a worthwhile effort in the first place. The intelligent, thoughtful, and efficient use of the discovery rules to locate relevant and material evidence are what make a lawyer worth the fee. Anyone with a computer can turn out routine documents that accomplish little or nothing, a lawyer is not needed for this. Such an effort is not worth a fee.

Great effort and much time invested in proving some slight increase in income above that reported on a tax return or a financial affidavit, or proving some marginal enhancement in the value of an asset may not be worth the effort and the expense. The court may later find that a lawyer's time and effort spent on depositions or requests to produce that turn up little or nothing or the time and effort spent in sifting through volumes of records just to see what might turn up was all an unnecessary and unreasonable expenditure of the lawyer's time.

The document trail only goes so far and it soon bumps into a person and then the urge may be for discovery to proceed with the deposition of many witnesses who have very little to contribute. Depositions are very expensive. The search could conceivably extend far beyond the

known horizon, but the question is always whether the search was reasonable and necessary at every point. Pursuing every possible inquiry is not reasonable or necessary. Pursuing inquiries that are "related to any pending claim or defense" and "reasonably calculated to lead to the discovery of admissible evidence" are reasonable and may be necessary.

A motion to compel over broad discovery requests must be denied in order to reduce unnecessary litigation, *Wrona, supra*, and a motion for a "protective order should be granted when the pleadings indicate that the documents requested are not related to any pending claim or defense and are not reasonably calculated to lead to the discovery of admissible evidence." *Richard Mulholland and Associates v. Polverari,* 698 So.2d 1269 (Fla. 2d DCA 1997) at 1270.

For the foregoing reasons, the husband's "Amended Motion to Compel" is denied.

Nevertheless, at the hearing the wife's counsel said that he is assembling copies of documents to deliver to husband's counsel, some of which were requested in the husband's "First" and "Second" requests to produce. Her counsel represented she would do this within 20 days.

In the husband's "First" request to produce, he asked for a certain document that is within the scope of discovery and the issues framed by the pleadings. It is a request for a specific, designated document, that is, the published results of a certain test taken by the wife. The wife is ordered to produce that published result as required by Rule 1.350 within 20 days.

Some of the other documents requested by the husband in the "First" request to produce may be within the scope of the pleadings, but the wife's counsel said the wife is considering an amendment to her petition that would make them irrelevant. Therefore, at this time, the court denies the motion to compel as to those documents in the "First" request, without prejudice to renew the motion to compel if the wife does not amend her pleadings.

Done and ordered in Fort Myers, Lee County, Florida, this _____

R. Thomas Corbin, Circuit Judge

Copies provided to:
, Esq., and , Esq.