

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER SCHMIDT, D.O. : CIVIL ACTION
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J. CRAIG CURRIE, ESQ., et al. : NO. 04-4233

MEMORANDUM

Bartle, J.

August 19, 2005

This is a diversity action brought under the so-called Dragonetti Act for "wrongful use of civil proceedings." See Pa. Stat. Ann. tit. 42 §§ 8351-54. Plaintiff is Christopher Schmidt, D.O. and defendants are J. Craig Currie, Esquire, Irene M. McLafferty, Esquire, J. Craig Currie & Associates, Currie & McLafferty, Stanley Dietz, and Dolores Dietz. In an underlying action in the Court of Common Pleas of Philadelphia County, Stanley and Dolores Dietz had sued Dr. Schmidt for medical malpractice. Craig Currie, Irene McLafferty, J. Craig Currie & Associates, and Currie & McLafferty were counsel for the Dietzes, the plaintiffs in that state court action. Stanley and Dolores Dietz v. Christopher Schmidt, D.O., et al., Civ.A. No. 000503387 (C.P. Phila.) ("Dietz action"). Dr. Schmidt prevailed before a jury and judgment was then entered in his favor. Before the court is the motion of defendants in this action to compel certain discovery from Dr. Schmidt.

In essence, defendants here seek to require Dr. Schmidt to answer interrogatories and produce documents between him and

his attorneys in the Dietz action related to whether in his view and the opinion of his then attorneys the plaintiffs and their attorneys in the Deitz action had "probable cause," as defined under the Dragonetti Act, to initiate and litigate that lawsuit. Defendants here seek to learn whether Dr. Schmidt and his attorneys in the underlying case "reasonably believed" that facts upon which the Dietz action was based were "valid under the existing or developing law" and whether the Dietz action was intended merely to harass or maliciously injury Dr. Schmidt. In response, Dr. Schmidt maintains that the discovery being sought is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. See Fed. R. Civ. P. 26(b)(1). He also asserts attorney-client privilege and attorney work product.

Pa. Stat. Ann. tit. 42 § 8351(a) provides as follows:

Elements of action.-A person who takes part in the procurement, initiation or continuation of civil proceedings against another is subject to liability to the other for wrongful use of civil proceedings:

(1) He acts in a grossly negligent manner or without probable cause and primarily for a purpose other than that of securing the proper discovery, joinder of parties or adjudication of the claim in which the proceedings are based; and

(2) The proceedings have terminated in favor of the person against whom they are brought.

Section 8352 defines probable cause, § 8353 relates to damages, and § 8354 sets forth the burden of proof. The Superior

Court of Pennsylvania has characterized wrongful use of civil proceedings as "a tort which arises when a party institutes a lawsuit with a malicious motive and lacking probable cause." Werner v. Plater-Zyberk, 799 A.2d 776, 785 (Pa. Super. Ct. 2002).

We agree with Dr. Schmidt that the pending discovery motion is without merit. Whether or not he and his attorneys in the Dietz action considered that action to be in violation of the Dragonetti Act is totally irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The salient question before us in the present lawsuit is whether the acts of Mr. and Mrs. Dietz and their attorneys in Dietz constituted "wrongful use of civil proceedings." Section 8352 defining probable cause focuses on what "a person who takes part in the procurement, initiation, or continuation of civil proceedings against another" either "reasonably believes" or "believes" in certain particulars. In contrast, Dr. Schmidt was brought into the underlying action involuntarily as a defendant. What he and his defense attorneys thought about the Dietz action has no bearing under the provisions of the Dragonetti Act since it is concerned only with the conduct and beliefs of Stanley and Dolores Dietz and their attorneys, who were the ones using "civil proceedings."

Because we are denying the motion to compel on relevancy grounds, we need not delve into the thicket of attorney-client privilege and attorney work product.

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ORDER

AND NOW, this 19th day of August, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that the motion of defendants to compel discovery is DENIED.

BY THE COURT:

/s/ Harvey Bartle III

J.