

AUG 15, 2022 11:38 AM

Sheila Butler
Sheila Butler, Clerk
Paulding County, Georgia

IN THE SUPERIOR COURT OF PAULDING COUNTY
STATE OF GEORGIA

_____)
_____)
_____)
_____)
Plaintiffs,)
_____)
v.)
_____)
CONNIE FEILD, as the legal guardian of,)
and on behalf of, ISABELLA FEILD, a)
minor,)
_____)
Defendants.)

Civil Action No: _____

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ EMERGENCY MOTION TO COMPEL
A FORENSIC CELL PHONE INSPECTION**

COMES NOW, CONNIE FEILD, as the legal guardian of, and on behalf of, ISABELLA FEILD, a minor, Defendants in the above captioned matter and responds to Plaintiffs’ Emergency Motion to Compel a Forensic Cell Phone Inspection (“Plaintiffs’ Motion”) showing this Honorable Court the following:

I. INTRODUCTION

As Plaintiffs’ note in their motion, the instant case arises from a January 11, 2022 incident in which _____ suddenly and without warning ran into the middle of the road, directly into the path of Defendant Isabella Feild’s vehicle. Isabella did not have time to avoid the sprinting _____, leading to the subject incident. According to the first call made to 911, as well as the timestamp on the video of the incident cited by Plaintiffs in their Emergency Motion to Compel, the incident occurred at 3:37 pm.

On June 8, 2022 the Plaintiffs served Defendants with a Request for Entry and Inspection pursuant to O.C.G.A. § 9-11-34(a)(2) to “inspect, photograph, and download information from

Isabela Feild's cell phone."¹ The Request also posits that in lieu of the inspection, Defendants could instead "arrange to have Isabella Feild's cell phone delivered to Sullivan Strickler at 2660 Peachtree Road NW #13A, Atlanta, Georgia 30305, to be downloaded." *Id.* This Request specifically asked for text messages from the cell phone in question from the day of the subject incident, January 11, 2022.

Counsel for Plaintiffs and Defendants then agreed upon certain parameters to obtain the requested download. To wit, Defendants agreed to use the mobile forensic examiner selected by Plaintiffs, Sullivan Strickler, to obtain the download of the requested material. Not only was data from the date in question provided – in an effort to transparently provide Plaintiffs with the requested material, the undersigned agreed to provide as complete a timeline as possible from the forensic data for both January 10 *and* 11, 2022. Defendant Connie Feild traveled from Athens, GA to Atlanta, GA to deliver the phone to Plaintiffs' selected vendor, and Defendant Isabella Feild was required to go without a cell phone for a day and night to allow Plaintiffs' selected vendor to perform the requested forensic download. The material was then provided to Plaintiffs; as the Court can tell from the timeline attached to Plaintiffs' Motion, the data did not reveal any messages, text or otherwise, being sent at the time of the subject collision.

Plaintiffs now, without proper foundation, attempt to force Defendants to go through the process of having her privacy violated again in an attempt to find any shred of evidence that supports their speculation that Isabella Feild was using her phone at the time of the collision. Given what Defendants have already done to ensure that Plaintiffs would be able to obtain a forensic download of the phone from Plaintiffs' selected vendor, the Court should not authorize Plaintiffs' latest fishing expedition by denying Plaintiffs' Motion.

¹ The Request is attached hereto as Exhibit "A."

II. ARGUMENT

a. **Plaintiffs failed to follow proper procedure for a Motion to Compel under the Civil Practice Act, and as such their Motion should be denied.**

Pursuant to the Uniform Superior Court Rule governing motions to compel, any motion to compel discovery under O.C.G.A. § 9-11-37 shall provide verbatim quotes or copies of the discovery sought. Ga. Unif. Super. Ct. R. 6.4(A). Plaintiffs have failed to allude to a single source upon which they base their Motion to Compel – though Defendants cite Plaintiffs’ June 13, 2022 Request for Inspection herein, Plaintiffs do not base their Motion upon said request. Rather, Plaintiffs merely note that “the parties consented to an initial inspection of Isabella’s cell phone.” *Plaintiffs’ Motion*, p. 5. Plaintiffs’ Motion cites law noting that the scope of discovery is broad, but the underlying assumption of a motion to compel is that there is outstanding discovery that a party petitions the Court to require the opposing party to answer. Therefore, it is incumbent upon the moving party to provide the Court and opposing parties with the specific request upon which a motion is based. As Plaintiffs failed to do so as required by Ga. Unif. Super. Ct. R. 6.4(A), their Motion should be denied.

b. **A second request is unduly burdensome on Defendants, and therefore Plaintiffs’ Motion should be denied**

Assuming, *arguendo*, that Plaintiffs’ motion is properly before the Court, it should still be denied. Simply put, Plaintiffs were provided the material they originally requested, by Plaintiffs’ selected vendor, and are unhappy the results of this request did not validate their current theory of the case. As such, they have launched a fishing expedition in hopes of finding anything that might distract from the fact that █████ sprinted across the road without first checking to make sure it

was safe to cross.² Up to this point, Defendants have bent over backward to accommodate Plaintiffs' request to inspect the cell phone. As noted above, upon receipt of Plaintiffs' Request for Inspection, the undersigned conferred with Plaintiffs' counsel in order to satisfactorily respond to Plaintiffs' Request. An agreement was reached to use Sullivan Strickler (the vendor identified by Plaintiffs as their choice to perform the forensic investigation) to perform a forensic download of Isabella's cell phone, an iPhone XS. Furthermore, Defendants offered to provide two days' worth of data, exceeding what was initially requested by Plaintiffs. This was specifically done to prevent what Plaintiffs now seek –for Isabella, who was a minor at the time, to again surrender her phone for an extended period to allow strangers to rummage through her private affairs.

The undersigned coordinated with Sullivan Strickler to arrange the download, which required providing the analysts with Isabella' Apple iCloud information in order to access her devices backups. Additionally, Isabella and Connie consented to physically provide the device in question to Sullivan Strickler even though physical collection was arguably unnecessary – however, in the interest of thoroughness and transparency, the Feilds turned over the cell phone to Sullivan Strickler to allow for a complete download of available data from the phone. Connie traveled from Athens, GA to Atlanta, GA on July 21, 2022 to drop the subject phone off at Sullivan Strickler, and was not able to retrieve it until the next day, when she again made the trip to Atlanta to retrieve the phone. Plaintiffs and Defendants agreed to split the costs for this collection.

As agreed, Plaintiffs' preferred forensic analysts performed a physical device collection from the iCloud/AppleID account, an iPhone backup collection, and an iMessage Repository collection. They produced a full Extraction Report for January 10 and 11, 2022. The information

² In their Motion, Plaintiffs provide a video of the collision to the Court without context. Plaintiffs did not provide a reason in their Motion why said video was relevant to the issues before the Court in the Motion. While the video has little bearing on the merits of Plaintiffs' motion (other than the timestamp in the video contradicting Plaintiffs' timeline of events surrounding the incident as outlined in their motion), Defendants are attaching a video of the subject collision from a camera located on another bus in order to provide the Court with a more comprehensive picture of the incident.

contained in the timeline plainly showed that Isabella was not using her device to send or receive text messages at the time of the collision. In fact, the records reflect that Isabella had last sent a message at 3:19 p.m., almost twenty minutes before the 3:37 collision.³ She last received a message at 3:29 p.m., over seven minutes before the collision. The Timeline Report does not indicate any activity on Isabella’s phone in the minutes immediately prior to the collision.

The implications of these findings are obviously adverse to Plaintiffs’ theory of the case. Unhappy with the results of their Request for Inspection, Plaintiffs have now retained yet another forensic analyst to claim that the first one performed at Plaintiffs’ request, using Plaintiffs’ preferred analysts, is insufficient as it was an “Advanced Logical acquisition” as opposed to a “Full File System acquisition.” If this type of forensic analysis is necessary, Plaintiffs were free to make sure they requested the correct material *in advance* of the forensic analysis, before Defendants agreed to split costs on the extraction and undertook the burden of arranging the forensic download, took multiple trips to Sullivan Strickler’s lab in Atlanta, and went without a cellular device for an entire day and night. Plaintiffs’ failure to confirm that the initial download comported with their shifting requirements is their own, and it would be inappropriate to place the burden on Defendants to go through the entire process again due to Plaintiffs’ disappointment that the data did not confirm their speculative theory as to how the incident occurred. Furthermore, Plaintiffs’ request – for a full file system extraction for everything that occurred on Isabella’s phone on January 11, 2022 – constitutes an invasion of privacy into matters that have absolutely no bearing on the subject collision. While the undersigned was willing to work with opposing

³ In an effort to make the material on the phone appear more relevant to the subject collision than it actually is, Plaintiffs present the time of the collision as uncertain. This is clearly done to make the receipt of a 3:41:25 text message relevant. However, in addition to the Paulding County 911 Call for Service Detail Report produced by Plaintiffs with their motion showing that the first emergency call was received at 3:37:32 p.m., the video gratuitously provided by Plaintiffs includes a timestamp on the recording camera showing the exact moment the impact occurred – 3:37:02 p.m., which would be consistent with a 911 call made 30 seconds later.

counsel in order to provide the cell phone data from January 10 and 11, Plaintiffs' actions in moving the Court for an emergency order requiring yet another extraction from the phone for all data on January 11 make it clear that Defendants cannot consent to provide a full day of data filled with almost entirely irrelevant private information just to enable Plaintiffs' fishing expedition.

While it is true that the scope of discovery is broad and the Court discretion in dealing with discovery matters is broad, a trial court's substantial discretion over the discovery process includes balancing competing interests related to a party's discovery requests. *Martin v. Fulton Cnty. Bd. of Registration & Elections*, 307 Ga. 193, 835 S.E.2d 245 (2019). This discretion must be based on sound legal analysis with an eye to promoting the purpose of discovery and limiting its abuse. *Int'l Harvester Co. v. Cunningham*, 245 Ga. App. 736, 538 S.E.2d 82 (2000). The relevance of the requested data is not the only factor a trial court must take into account when deciding discovery disputes – the Court also has wide discretion in entering orders to prevent the use of discovery which was unreasonably burdensome, unduly expensive, or directed to irrelevant or immaterial matter. *Mead Corp. v. Masterack*, 243 Ga. 213, 253 S.E.2d 164 (1979). Courts have long recognized that the competing interests in individual's right to privacy must be accommodated in discovery process, and in some circumstances the interest in gathering information must yield to the interest in protecting “a party or person from annoyance, embarrassment, oppression, or undue burden.” *Borenstein v. Blumenfeld*, 151 Ga. App. 420, 421, 260 S.E.2d 377, 378 (1979).

The facts of this case solidly tip the scales against allowing further discovery as requested by Plaintiffs in their Emergency Motion. Quite simply put, Defendants have already dealt with a substantial burden in both costs and time dealing with the phone extraction (not to mention not having a cellular device to use for July 21-22) to provide Plaintiffs with the data originally requested. Isabella should not be made to again surrender her phone to accommodate Plaintiffs' failure to seek the requested download from the outset.

Furthermore, Plaintiffs provide no rationale for why they need a “full system extraction” for the entire day of January 11. As Plaintiffs’ note in their motion, they have requested this to determine “whether Isabella was using her phone in any other way at the time of the collision.” *Plaintiff’s Motion*, p. 3. Therefore, any data other than whatever is available from the moment of the collision is wholly irrelevant to the case at hand, and the notion that an emergency order is necessary so Plaintiffs can investigate what Isabella was doing on her phone that morning is laughable. Therefore, though Plaintiffs’ motion should be denied in its entirety; however, if the Court is inclined to again require Isabella to surrender her personal cell phone for inspection, the renewed inspection should be limited to the time period encompassing the incident itself and the minutes immediately preceding the collision. As law enforcement call logs and the video of the incident provided by Plaintiff establish the collision occurring at 3:37 p.m., in the event the Court grants Plaintiffs’ Motion, the Court should restrict data obtained from the extraction from 3:30-3:40 p.m. on January 11, 2022.

III. CONCLUSION

Plaintiffs’ Emergency Motion does not meet the requirements of Uniform Superior Court Rule 6.4. Furthermore, Plaintiffs’ requests are unduly burdensome considering the measures already taken to accommodate Plaintiffs’ initial request. Lastly, almost all of the requested information is entirely irrelevant to the issues germane to this litigation. Therefore, Plaintiffs’ Motion should be denied. If Plaintiffs’ Motion is granted, the Court should limit any further forensic examinations of Isabella’s phone to 3:30-3:40 p.m. on January 11, 2022.

This 15th day of August, 2022.

[Signature Page to Follow]

RAHIMI, HUGHES & PADGETT, LLC

/s/ J. WESLEY PADGETT

J. WESLEY PADGETT

Georgia Bar No. 165007

JOHN A. HUBERT

Georgia Bar No. 122388

ATTORNEYS FOR DEFENDANTS

33 Bull Street, Suite 590
Savannah, Georgia 31401
(912) 421-9988
wpadgett@rhp-law.com
jhubert@rhp-law.com