

CAUSE NO. 2015-69681

EVELYN KELLY, INDIVIDUALLY,
AND ON BEHALF OF THE ESTATE
OF DAVID CHRISTOPHER DUNN

v.

HOUSTON METHODIST HOSPITAL

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

189th JUDICIAL DISTRICT

PLAINTIFFS' MOTION TO QUASH AND FOR PROTECTION

Plaintiffs, Evelyn Kelly, individually, and on behalf of the Estate of David Christopher Dunn, file this Motion to Quash and for Protection pursuant to Rule 192 of the TEXAS RULES OF CIVIL PROCEDURE, and would respectfully show unto the Court as follows:

I.

Relief Requested

Plaintiffs respectfully request that this Court enter an order protecting them from discovery that is sought outside the discovery period as defined by this Court's Docket Control Order which is attached hereto and incorporated herein by reference as Exhibit "A." Additionally, should the Court grant Defendant's Motion for Continuance of the trial date, Plaintiffs request that this Court keep the current Docket Control Order in place.

II.

As agreed to by all parties, this Court's Docket Control Order set June 9, 2017 as the cut-off for discovery in this matter. Pursuant to the Docket Control Order, "[a]ll discovery must be conducted before the end of the discovery period... Incomplete discovery will not delay the trial." With full knowledge of this fact, Defendant, Methodist Hospital, had not sent a single

discovery request to Plaintiffs, albeit nearing two years of litigation. Then this week, a month after the discovery period ended, Defendant is committed to seeking a full discovery. Specifically, between the dates of July 11 and July 13, 2017, Defendant sent a (1) Subpoena and Notice of Intention to Take Oral and Videotaped Deposition of Evelyn Kelly; (2) its First Requests for Production to Plaintiff; (3) First Set of Interrogatories to Plaintiff; (4) Requests for Admission to Plaintiff; as well as the first (5) Requests for Disclosure to Plaintiff.¹

Plaintiffs' counsel has raised this matter with Defendant's counsel, however, Defendant persists in pursuing discovery outside of the discovery period. For this reason, Plaintiffs respectfully move to quash all received discovery requests. Plaintiffs further request that the Court enter an Order protecting Plaintiffs from further efforts to obtain discovery outside the discovery period without agreement and without leave of court. Plaintiffs would respectfully request any and all other relief, either at law or in equity, to which this Court finds Plaintiffs justly entitled.

III.

Conclusion

WHEREFORE, Plaintiffs respectfully request that the Court enter a Protective Order Quashing Defendant's Subpoena and Notice of Intention to Take Oral and Videotaped Deposition of Evelyn Kelly, First Requests for Production, First Set of Interrogatories, Requests for Admission, and Requests for Disclosure. Plaintiffs further request the Court enter an Order protecting Plaintiffs from further efforts to obtain discovery outside the discovery period without agreement and without leave of court. Should the court grant Defendant a trial continuance, Plaintiffs request the Court keep the existing Docket Control Order in place. Plaintiffs would

¹ See Exhibit B, Defendant's discovery requests.

respectfully request any and all other relief, either at law or in equity, to which this Court finds Plaintiffs justly entitled.

Respectfully submitted,

AKERMAN LLP

/s/ James E. Trainor, III

James E. "Trey" Trainor, III.

Texas State Bar No. 24042052

trey.trainor@akerman.com

700 Lavaca Street Suite 1400

Austin, Texas 78701

Telephone: (512) 623-6700

Facsimile: (512) 623-6701

Joseph M. Nixon

Texas State Bar No. 15244800

joe.nixon@akerman.com

Brooke A. Jimenez

Texas State Bar No. 24092580

brooke.jimenez@akerman.com

1300 Post Oak Blvd., Suite 2500

Houston, Texas 77056

Telephone: (713) 623-0887

Facsimile: (713) 960-1527

and

Emily Kebodeaux

Texas State Bar No. 24092613

ekebodeaux@texasrighttolife.com

9800 Centre Parkway, Suite 200

Houston, Texas 77036

Telephone: (713) 782-5433

Facsimile: (713) 952-2041

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF CONFERENCE

Attempts were made to confer concerning the subject matter of this Motion and an agreement could not be reached. It is therefore submitted to the Court for ruling.

/s/ Joseph M. Nixon

Joseph M. Nixon

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all counsel of record listed below in accordance Texas Rules of Civil Procedure 21a on July 14, 2017, via E-Filing and Serve system via email to:

Dwight W. Scott, Jr.
Carolyn Capoccia Smith
Scott Patton, PC
3939 Washington Avenue, Suite 203
Houston, Texas 77007

Via Email: dscott@scottpattonlaw.com

Via Email: csmith@scottpattonlaw.com

/s/ Joseph M. Nixon

Joseph M. Nixon

Unofficial Copy Office of Chris Daniel District Clerk