

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CANDICE MILLER COOK,)
)
 Plaintiff,)
)
 vs.) No. 04-2139-M1 V
)
 DAVID E. CAYWOOD and)
)
 DARRELL D. BLANTON)
)
 Defendants.)

ORDER GRANTING DAVID CAYWOOD'S MOTION FOR PROTECTIVE ORDER
AND DARRELL BLANTON'S MOTION FOR PROTECTIVE ORDER

Before the court is the November 30, 2004 motion of defendant, David Caywood, pursuant to Rule 26 of the Federal Rules of Civil Procedure, for a protective order relieving him from providing his tax returns for 1999, 2000, 2001, 2002, 2003, and his earnings to date for 2004 at his deposition scheduled for December 28, 2004. Also before the court is the December 9, 2004 motion of defendant, Darrell Blanton, pursuant to Rule 26 of the Federal Rules of Civil Procedure, for a protective order relieving him from providing his tax returns for 1999, 2000, 2001, 2002, 2003, and his earnings to date for 2004 at his deposition also scheduled for December 28, 2004. Both motions were referred to the United States Magistrate Judge for determination. For the following reasons, protective orders are granted.

Plaintiff, Candice Cook, alleges that her former attorneys, David Caywood and Darrell Blanton, committed fraud while representing her in a divorce matter. Cook contends that her former attorneys owe her money that she was to have received from her ex-husband as well as punitive damages in excess of two-million dollars.

Cook has noticed David Caywood and Darrell Blanton for depositions on December 28, 2004. Both Caywood and Blanton have been asked to provide their tax returns for 1999, 2000, 2001, 2002, 2003 and earnings to date for 2004. On November 30, 2004, Caywood filed a motion for a protective order asking that the court postpone the production of the requested documents until grounds for punitive damages have been shown. On December 9, 2004, Blanton likewise filed a motion for a protective order asking that the court postpone the production of the requested documents until grounds for punitive damages have been shown.

It is the position of Caywood and Blanton that the requests for their tax records are premature as no fraud has been proven, nor have any grounds for punitive damages been shown. Caywood and Blanton contend that production of these documents at this point in the litigation is burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Caywood and Blanton have not refused to produce these records, rather they ask the court to

postpone production until the proper time.

Cook contends that she is entitled to discovery of Caywood's tax returns immediately.¹ Cook claims that she is not required to prove grounds for punitive damages at this point in the litigation because the complaint alleges a factual basis upon which fraud can be found.

The scope of discovery is quite broad under the Federal Rules. The information sought through discovery need not be admissible in court to be relevant. Rather, information is discoverable if "relevant to the claim or defense of any party" or if it "appears reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1). See also *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978); *Lewis v. ACB Bus. Services, Inc.*, 135 F.3d 389, 402 (6th Cir. 1998).

Nevertheless, discovery does have "ultimate and necessary boundaries," *Oppenheimer Fund*, 437 U.S. at 351 (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)). "[I]t is well established that the scope of discovery is within the sound discretion of the trial court." *Coleman v. American Red Cross*, 23 F.3d 1091, 1096 (6th Cir. 1994) (quoting *United States v. Guy*, 978 F.2d 934, 938 (6th

¹ Cook has not yet responded to Blanton's motion, and the time for response has not expired. The court assumes, however, that Cook's response to Blanton's motion will be similar to her response to Caywood's motion since the same matters are at issue.

Cir. 1992)). The court need not compel discovery if it determines that the request is "unreasonably cumulative . . . [or] obtainable from some other source that is more convenient, less burdensome, or less expensive . . . [or] the party seeking discovery has had ample opportunity by discovery in the action to obtain the information . . . [or] the burden or expense of the proposed discovery outweighs its likely benefit." FED. R. CIV. P. 26(b)(2)(i)-(iii).

Punitive damages in Tennessee are available "only in the most egregious of cases," and only where "the defendant's intentional, fraudulent, malicious, or reckless conduct" is proven by "clear and convincing evidence." *Hodges v. S.C. Toof & Co.*, 833 S.W. 2d 896, 901 (Tenn. 1992). In Tennessee, punitive damages are calculated after damage liability is established. *Id.* Only then will a defendant's "financial affairs" and "financial condition" be relevant to assess punitive damages. Therefore, this court finds that income tax returns are not reasonably calculated to lead to admissible evidence regarding punitive damages at this stage in the proceedings. In *Breault v. Friedli*, 610 S.W.2d 134, 139 (Tenn. Ct. App. 1980), the court of appeals adopted the discovery procedure set forth in *Cobb v. Superior Court for Los Angeles County*, 99 Ca. App. 3d 543 (1980): parties must first take discovery on the merits, and, "if the plaintiff is unable to show through discovery that a factual basis for punitive damages exists, the trial court can prohibit discovery of the defendant's financial condition."

While the plaintiff's requests are proper with respect to Caywood and Blanton's potential liability for punitive damages, the court finds that discovery on punitive damages is unnecessary at this time. The burden and expense of producing these tax returns far outweighs its likely benefit at this stage in the litigation. If Caywood and Blanton's liability for fraud can be established or a factual basis for punitives can be shown, discovery on the issue of punitive damages may go forward and the plaintiff may renew her request for income tax returns at that time. Accordingly, Caywood and Blanton's motions for protective order are granted.

IT IS SO ORDERED this 15th day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE