

CASE NO. 2007-0377

07 - 0376

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IN THE SUPREME COURT OF OHIO

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**KENNETH C. HAGEMAN**

**Plaintiff-Appellant**

v.

**SOUTHWEST GENERAL HEALTH CENTER, et al.**

**Defendants-Appellees**

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**Appeal from the Eighth District Court of Appeals  
Case No. CA 06-8726**

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**DEFENDANT-APPELLEE JANICE GALEHOUSE-HAGEMAN'S  
MEMORANDUM OPPOSING JURISDICTION**

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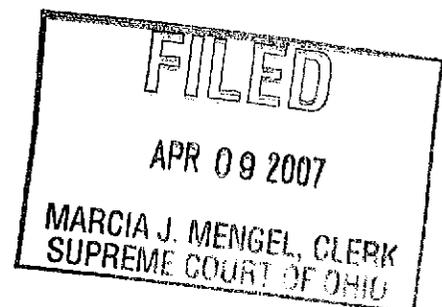
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**I. EXPLANATION OF WHY THERE IS NO PUBLIC OR GREAT GENERAL INTEREST IN ANY ISSUE RAISED BY THE APPEAL IN THIS CASE**

This is not a case of public or great general interest to the citizens of Ohio. Rather, this is a fact specific lawsuit arising from a contentious divorce in which appellant Kenneth C. Hageman (“Hageman”) is attempting to pursue claims against his ex-wife Janice Galehouse-Hageman (“Galehouse-Hageman”), his ex-wife’s former attorney, his treating psychiatrist, Thomas J. Thysseril, M.D. (“Dr. Thysseril”) the medical group in which the doctor practices and the hospital at which he practices for the disclosure or inducing the disclosure of, Hageman’s confidential medical information in connection with his divorce proceeding. The trial court appropriately applied the established law in this area and granted summary judgment to Galehouse-Hageman and this ruling was affirmed on appeal by the Eighth District Court of Appeals. The Court of Appeals held that Hageman waived his physician-patient privilege when he put his mental state at issue by seeking custody of his minor child.<sup>1</sup>

Section 2(B)(2)(e) of Article IV of the Ohio Constitution dictates that the Supreme Court of Ohio’s discretionary jurisdiction is preserved for “cases of public or great general interest.” Cases presenting questions and issues of public or great general interest are to be distinguished from cases where the outcome is primarily of interest to the parties in a particular case. *Williamson v. Rubich* (1960), 171 Ohio St. 253, 254. While undoubtedly important to the parties here, this appeal falls into the latter category of cases referenced in *Williamson* and that is why the Supreme Court of Ohio should decline to accept jurisdiction.

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<sup>1</sup> Hageman has appealed the decision of the Eighth District Court of Appeals affirming summary judgment in favor of defendants-appellees Southwest General Health Center, Oaktree Behavioral, Dr. Thysseril and Janice Galehouse-Hageman. Defendant-Appellant Barbara Belovich has appealed the order of the court of appeals reversing summary judgment in her favor.

## II. STATEMENT OF THE CASE

This appeal arises out of a lawsuit filed by Appellant Kenneth C. Hageman (“Hageman”) on October 12, 2004 in the Cuyahoga County Court of Common Pleas, Case No. 545116. In that action, Hageman sued his ex-wife Janice Galehouse-Hageman (“Galehouse-Hageman”), her former attorney Barbara A. Belovich, Esq. (“Belovich”), his treating psychiatrist Thomas J. Thysseril, M.D. (“Dr. Thysseril”), Oak Tree Behavioral (“Oak Tree”) and Southwest General Health Center (“SWGHC”) seeking to recover damages for the release of his allegedly confidential medical information during the course of his divorce from Galehouse. That case, *Janice Galehouse-Hageman v. Kenneth C. Hageman* is pending in the Cuyahoga County Court of Common Pleas, Domestic Relations Division, Case No. DR-03-291086.

Hageman alleged in his complaint that the defendants either improperly disclosed, or improperly induced the disclosure of, his confidential psychiatric records. All parties filed motions for summary judgment. Ms. Galehouse’s motion was filed on November 14, 2005. Plaintiff filed briefs in opposition to all motions. On February 3, 2006, the trial court granted all motions for summary judgment filed by the defendants.

Hageman timely appealed these rulings to the Eighth District Court of Appeals on February 28, 2006. In affirming summary judgment in favor of Galehouse-Hageman, SWGHC, Dr. Thysseril and Oak Tree, the court of appeals held that Hageman waived the doctor-patient privilege when he put his mental status in issue by seeking custody of his minor child in the divorce proceedings. The court reversed as to Belovich.

Belovich filed a Notice of Appeal on March 1, 2007. Hageman filed a Notice of Appeal on March 9, 2007 seeking to reverse the court of appeals decision affirming summary judgment in favor of Galehouse, Dr. Thysseril, Oak Tree and SWGHC.

### III. STATEMENT OF FACTS

This lawsuit arises from the divorce and custody proceedings of Kenneth C. Hageman and Janice Galehouse in *Janice Galehouse-Hageman v. Kenneth C. Hageman*, Cuyahoga County Court of Common Pleas, Domestic Relations Division, Case No. DR-291086. Prior to the filing of the divorce complaint, Hageman was a psychiatric patient of Dr. Thysseril at Oak Tree Behavioral Health. Hageman's first visit to Dr. Thysseril on January 10, 2003 was attended by his then wife Ms. Galehouse. (Hageman Depo., pp. 79-80) At that appointment, Dr. Thysseril diagnosed Hageman with Bipolar 1 Disorder and documented Hageman's "homicidal thoughts toward his wife." (Office Record of Dr. Thysseril, Ex. A. to Thysseril/Oak Tree Motion for Summary Judgment).

On February 19, 2003, Ms. Galehouse, through her attorney Barbara A. Belovich, filed a complaint for divorce and sought an *ex parte* restraining order against Hageman. The affidavit provided by Ms. Galehouse stated among other things, that her husband had been diagnosed with bipolar disorder with psychotic paranoid episodes, and that his behavior was threatening and frightening to Ms. Galehouse and her children. (Divorce Complaint with supporting affidavit of Janice Galehouse-Hageman). Ms. Galehouse sought and was granted an *ex parte* restraining order. (JE, vol. 4091, pgs. 0303-0304). On March 26, 2003, Hageman filed an answer to the complaint and a counterclaim in which he sought sole custody of the couple's minor child (Hageman Answer and Counterclaim).

On July 4, 2003, Hageman ran over his wife with his truck, severely injuring her (Hageman Depo. pg. 152; Petition for Domestic Violence and Civil Protection Order filed July 9, 2003). The couple's minor child was in the truck at the time. The court granted the Civil Protection Order (JE, vol. 4164, pg. 60-64) and prohibited Hageman from having any contact

with Ms. Galehouse and their minor child. As a further result of the incident with his wife, Hageman was charged with aggravated vehicular assault (*State v. Hageman*, Cuyahoga County Court of Common Pleas, Case No. CR-442569).

Up to this point, Hageman had been representing himself. On July 21, 2003, attorney James Boulas entered his appearance as counsel of record for Hageman in the domestic relations matter. Hageman requested that Dr. Thysseril provide a report regarding Hageman's treatment and prognosis for use in the divorce proceedings. A report dated July 29, 2003 was provided to the court which stated, in part that "[a]s long as [Mr. Hageman] remains compliant with treatment recommendations and follow up visits, his prognosis is good." (Thysseril correspondence dated July 29, 2003 attached as Ex. E to Thysseril/Oak Tree Motion for Summary Judgment).

On October 10, 2003, Attorney Belovich issued a subpoena *duces tecum* to Dr. Thysseril for him to appear at the hearing on the Civil Protection Order scheduled for October 17, 2003 with Hageman's medical records. In lieu of an appearance, Dr. Thysseril provided the medical records to Attorney Belovich (Deposition of Dr. Thysseril, p. 18).

No attempt was made by Hageman to quash the subpoena or prevent the disclosure of his medical records. On the date of the hearing, the parties stipulated to an agreed Order of Protection (JE, vol. 4217, pp. 0271-0272). Hageman was permitted supervised visitation with his minor daughter after that date (Hageman Depo. p. 136)

On December 18, 2003, the domestic relations court appointed Dominic Antonelli as guardian *ad litem* for Hageman's and Ms. Galehouse's minor child. Hageman authorized the release of his medical records to Mr. Antonelli (Hageman Authorization).

The domestic relations matter was resolved with a separation agreement entered into by Hageman and Ms. Galehouse on September 24, 2004 (JE, vol. 4386), pp. 100-133)<sup>2</sup>. On October 12, 2004, Hageman filed this lawsuit seeking to recover damages from the defendants for the unauthorized disclosure of his psychiatric information in connection with his domestic relations action.

#### **IV. ARGUMENTS IN RESPONSE TO APPELLANT'S PROPOSITION OF LAW**

##### **Appellant's Proposition of Law No. 1**

A waiver of the doctor-patient privilege does not extend to a civil domestic violence proceeding held pursuant to R.C. 1331.31.

The civil protection order granted by the domestic relations court was issued in the context of the divorce action. They were not two separate proceedings. By virtue of the civil protection order issued on July 9, 2003, Appellant was restrained from visitation and custody of his minor child.

O.R.C. §1331.31 confers jurisdiction on the domestic relations court to enter civil protections orders in cases of domestic violence. The court concluded that Hageman's actions in striking his wife with his truck constituted an act of domestic violence and issued the CPO.

O.R.C. § 1331.31 (E)(1)(d) provides:

(E)(1) After an ex parte or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members. The order or agreement may:

(d) Temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights...

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<sup>2</sup> The case remains pending on post-decree motions

In this case, the Cuyahoga County domestic relations court had jurisdiction over all issues related to Hageman's divorce, including the CPO. As a result of the issuance of the CPO, Hageman was prevented from having any contact with his minor child from July 2003 until October 2003, when he entered into a stipulated protection order.

In attempting to create a privilege where none exists, Hageman tries to distinguish between the "divorce proceedings" and the "civil protection order proceedings". This is a distinction without a difference. The CPO was issued in the context of the domestic relations action. O.R.C. §1331.31(E)(1)(d) specifically gives the court authority to temporarily allocate parental rights and responsibilities for the minor children. Hageman concedes that he provided his medical information for use during the divorce proceedings. In an effort to gain custody of his minor child, a report from Dr. Thysseril was presented to the court. Hageman claims that the same medical information, subpoenaed subsequently for the CPO hearing, should be privileged despite the information already being at issue in the divorce proceeding.

Hageman sets forth, at page 8 of his Memorandum in Support of Jurisdiction, the reasoning for his distinction between the "divorce proceedings" and the hearing on the domestic violence civil protection order. "The reasoning is that in a custody dispute, in which Appellant is participating voluntarily, Appellant could be deemed to have voluntarily waived his doctor-patient privilege. Certainly, this should not be the case in a proceeding under R.C. 1331.31 where appellant is an involuntary participant and where child custody was not at issue."

Despite Hageman's argument to the contrary, he was not a passive bystander in regard to the civil protective order. He committed an act of domestic violence against his wife by running her over with his truck. As a result, he put his mental state squarely at issue for the determination of custody and visitation, including the CPO.

In *Biddle v. Warren General Hospital*, 86 Ohio St. 3d 395; 1999 Ohio 115, the Ohio Supreme Court held that a third party can be held liable for inducing the unauthorized, unprivileged disclosure of nonpublic medical information that a physician or hospital has learned within a physician-patient privilege. In this case, there was no unauthorized, unprivileged disclosure of Hageman's medical information because he waived the physician-patient privilege.

In *Gill v. Gill*, 2003-Ohio-180, the court held that a parent's counterclaim seeking permanent custody constitutes a waiver of the physician-patient privilege. That case involved a custody dispute and the mother's medical condition was at issue. The guardian *ad litem* filed a motion to compel the mother to sign authorizations for the release of her medical records. The court granted the motion and the mother appealed. In affirming the trial court, the court of appeals stated:

"...Whenever custody of children is in dispute, the party seeking custodial authority subjects him or herself to extensive investigation of all factors relevant to the permanent custody award. Of major importance, as stated in R.C. 3109.04(F)(1)(e), is the mental and physical health of not only the child but also the parents. R.C. 3109.04 places the mental conditions of all family members squarely in issue.

We have also held that a party seeking custody of a child in a divorce action makes his or her mental and physical condition an issue to be considered by the court in awarding custody and that the physician-patient privilege does not apply. *Neftzer v. Neftzer* (2000), 140 Ohio App.3d 618, 748 N.E.2d 608.

In addition, Hageman himself put his psychiatric condition at issue, and waived the physician-patient privilege when he had Dr. Thysseril write a report relative to his diagnosis and prognosis for use in the domestic relations action. When he did that, Hageman's mental status became an issue in the domestic relations case, for all aspects of that action, including the CPO.

## Appellant's Proposition of Law No. 2

Proposition of Law No. II: An executed written authorization from the patient is required for the lawful release of medical records requested by a Civ. R. 45 subpoena, regardless of whether there is a statutory or common law waiver of the doctor-patient privilege.

Hageman argues that a written authorization for the release of medical records is required whenever a subpoena is issued for such records. He cites no case law or statutory basis for this assertion. In this case, Hageman waived any physician-patient privilege for purposes of all issues arising in his divorce case, including custody determinations and the issuance of the domestic violence civil protection order. *Gill v. Gill*, 2003-Ohio-180, ¶¶ 18-21; *Neftzer v. Neftzer*, 140 Ohio App. 3d 618. No authorization was needed.

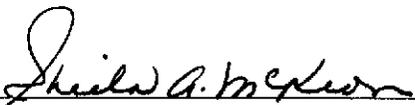
The law adequately protects parties from the improper disclosure of privileged medical information. Hageman did not object to the disclosure of his medical records pursuant to subpoena in the domestic relations matter and took no steps to quash the subpoena. Having already put his mental status at issue by his own actions, by seeking sole custody of his minor child and having his own doctor submit information about his mental state to the court, he waived the physician-patient privilege. Nothing further was needed for the release of his medical information.

## V. CONCLUSION

Hageman waived the physician-patient privilege when he filed a counterclaim for divorce and sought custody of his minor child. He thereafter had a letter from his treating psychiatrist presented to the domestic relations court in which the doctor opined as to Hageman's mental status and his fitness for child custody. As a result of these action, Hageman voluntarily and knowingly injected his mental status into the divorce proceedings.

Appellant presented no evidence in the lower courts to establish that Galehouse-Hageman improperly induced the disclosure of confidential medical information or that she disseminated it. As a result, the trial court properly granted summary judgment in Galehouse-Hageman's favor and the court of appeals properly affirmed that ruling. The courts appropriately applied existing case law to facts specific to the parties in this case. Therefore, Hageman has not raised an issue of public or great importance and this court should deny jurisdiction and dismiss the notice of appeal.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing *Defendant-Appellee, Janice Galehouse-Hageman's*

*Memorandum Opposing Jurisdiction* was served upon the following this 6 day of April, 2007

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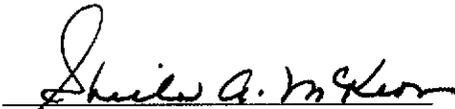
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