

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA and	)	
DR. RACHEL TUDOR,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CIV-15-324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY and	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
Defendants.	)	

ORDER

During the course of discovery in this matter, Defendants served a subpoena on Ms. Feleshia Porter seeking her deposition testimony and production of certain documents related to her visits with Plaintiff Tudor. Ms. Porter is a licensed psychotherapist whom Plaintiff Tudor saw twice in 2007. Defendants argue that Ms. Porter has knowledge which is relevant to Plaintiff's claims and her deposition is necessary to develop relevant facts. Plaintiff Tudor objects and has filed a Motion to Quash, asserting that any testimony of Ms. Porter is protected by the psychotherapist-patient privilege.* After consideration of the arguments raised by the parties in their respective briefs, the Court finds that the subpoena should be quashed. The Court finds Ms. Porter's information is shielded from discovery by the

* Plaintiff United States does not oppose Plaintiff Tudor's Motion.

psychotherapist-patient privilege. Moreover, the Court finds Defendants have failed to demonstrate that Ms. Porter has information that is relevant to the issues in this matter.

Plaintiff Tudor has established that any information held by Ms. Porter is covered by the psychotherapist-patient privilege. The privilege is recognized in federal court. Jaffee v. Redmond, 518 U.S. 1, 15 (1996). Defendants have failed to offer any valid argument to overcome the assertion of that privilege. To the extent Defendants argue that the deposition testimony of one of their employees and/or the fact that she did not contact Ms. Porter waived the privilege and somehow permits them to now obtain information from Ms. Porter, that argument lacks any merit. Likewise, Plaintiff's identification of an expert to testify to Plaintiff's status as a transgender person does not create some waiver of the psychotherapist-patient privilege, nor does the privilege yield to the needs of discovery in this case.

As the Court noted in a previous Order, Defendants have never disputed the fact that Plaintiff Tudor has been undergoing a transition in her gender. Thus, to the extent Defendants seek to obtain information from Ms. Porter on that issue, it lacks relevance to any issue in dispute in the litigation. Further, as Plaintiff notes in her response, her visits with Ms. Porter predated the time frame for which she is claiming damages in this matter and Defendants have failed to offer any argument demonstrating how Ms. Porter could offer relevant information. The timing of Plaintiff's visits with Ms. Porter also overcome Defendants' arguments that Plaintiff has placed her mental condition in dispute sufficient to warrant the deposition. Initially, the Court does not read Plaintiff's Complaint in Intervention to raise those claims and Plaintiff Tudor has, in previous pleadings, disavowed

any claim for emotional distress. Even if damages were claimed for emotional distress, the timing of Plaintiff Tudor's visits with Ms. Porter predate the alleged wrongdoing by Defendants. There is no basis to find that she would offer relevant testimony about any harassment, guilt, or humiliation suffered by Plaintiff. To the extent Defendants argue Ms. Porter can offer evidence on Plaintiff Tudor's pre-existing mental state, that argument is too tenuous to overcome the reasons for preventing the deposition.

While the Court finds Defendants' actions in issuing the subpoenas and general lack of communication and cooperation with Plaintiff's counsel troubling, it provides an insufficient basis on which to sanction Defendants. Certainly Defendants were entitled to challenge Plaintiff's assertion of privilege. While the process for undertaking that challenge could and should have been more efficiently pursued, it does not rise to sanctionable conduct. Therefore, Plaintiff's request for sanctions will be denied.

For the reasons set forth herein, the Motion to Quash of Plaintiff, originally filed in the Eastern District of Oklahoma (Dkt. No. 82-1), is GRANTED IN PART and DENIED IN PART. Defendants' Amended Notice to Take Deposition of Feleshia Porter (Dkt. No. 77) is QUASHED.

IT IS SO ORDERED this 1st day of September, 2016.


ROBIN J. CAUTHRON
United States District Judge