

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO: 1:16-cv-01460-ELR-WEJ
CLAYTON COUNTY,)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S
OBJECTIONS TO MAGISTRATE JUDGE’S ORDER
REGARDING CONFIDENTIAL DESIGNATION**

COMES NOW Clayton County (the “County”), the Defendant herein, and files its Response to Plaintiff’s Objections to Magistrate Judge’s Order Regarding Confidential Designation. (“Objections”) (Doc. 57). For the reasons discussed below, Plaintiff has failed to establish that the Magistrate Judge’s ruling that the contents of a judge’s personal diary should remain confidential is clearly erroneous or contrary to law. Accordingly, Plaintiff’s Objections should be overruled.

I. BACKGROUND

On September 10, 2021, the Court entered a Consent Protective Order. (Doc. 85). The Consent Protective Order contemplates maintaining the confidentiality of documents containing “sensitive, private, personal, and/or confidential information,

including but not limited to personnel, medical and financial information, concerning Plaintiff and/or the County's current and former employees." (Doc. 85, at p. 1) (emphasis added). The Consent Protective Order states that various categories of documents shall constitute "Confidential Information," including documents "that a party in good faith designates as 'confidential.'" *Id.* at p. 2, ¶ 1(f). Under the Consent Protective Order, the parties agreed that "they shall designate as 'confidential' only those documents which truly contain private and highly sensitive information relating to a party or to Defendant's current or former employees." (*Id.* at p. 3, ¶ 4).

During discovery, the County produced to Plaintiff excerpts from the private and personal diary of now retired Clayton County Juvenile Court Chief Judge Steven C. Teske. The diary excerpts contain personal thoughts regarding Judge Teske's personal, family and social life. The diary excerpts also include passages concerning Plaintiff and his termination, and thus contain discoverable information responsive to Plaintiff's document requests. Because the documents being produced are from Judge Teske's personal diary, however, the County in good faith designated the diary excerpts as "confidential" pursuant to the Consent Protective Order before producing them to Plaintiff.

Plaintiff challenged the County's designation of the diary excerpts as "confidential" and contacted Magistrate Judge Walter E. Johnson to resolve the dispute. After reviewing the submissions emailed by the parties (Docs. 109, 110) and the diary excerpts submitted by Plaintiff, Judge Johnson conducted a telephone hearing with counsel for the parties and ruled that the County's designation of the diary excerpts as "confidential" was proper. Judge Johnson followed his oral ruling with a written order entered on January 13, 2022. (Doc. 112). In his 1/13/22 Order, Judge Johnson reiterated his conclusion during the telephone hearing that "it is difficult to imagine a document more sensitive and private than one's personal diary." (Id. at p.2). Judge Johnson's Order reiterated that the designation of the diary as confidential would not preclude any party from filing it with the Court in support of or in opposition to a motion. (Id.).

II. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

A magistrate judge is authorized to hear and decide pretrial matters not dispositive of a party's claim or defense referred to the magistrate judge. Fed.R.Civ.P. 72(a). A district judge may reconsider an order entered by a magistrate judge regarding such non-dispositive pretrial matters "where it has been shown that

the magistrate judge's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

This Court has articulated the parameters of the "clearly erroneous or contrary to law" standard as follows:

"Clear error is a highly deferential standard of review." See Holton v. City of Thomasville Sch. Dist., 425 F.3d 1325, 1350 (11th Cir. 2005). "The party seeking to overturn a [m]agistrate [j]udge's order bears the burden of proving that the [m]agistrate [j]udge's decision was 'clearly erroneous' or 'contrary to law.'" Schaaf v. SmithKline Beecham Corp., CIV.A.1:04CV2346GET, 2008 WL 489010, at *2 (N.D. Ga. Feb. 20, 2008), order clarified on other grounds, 1:04-CV-2346-GET, 2008 WL 11336754 (N.D. Ga. June 9, 2008).

"A finding is clearly erroneous when the reviewing court, after assessing the evidence in its entirety, is left with a definite and firm conviction that a mistake has been committed." Krys v. Lufthansa German Airlines, 119 F.3d 1515, 1523 (11th Cir. 1997); accord Pullman-Stand v. Swint, 456 U.S. 273, 285 n.14 (1982). For instance, "a court commits a clear error when it makes a factual finding that has no support in the record." See Day v. Persels & Assocs., Ltd. Liab. Co., 729 F.3d 1309, 1327 (11th Cir.2013). Additionally, "[a]magistrate judge's order 'is contrary to law' when it fails to apply or misapplies relevant statutes, case law[,] or rules of procedure." See Pearson v. Travelers Home & Marine Ins. Co., 4:11-CV-01846-JHE, 2014 WL 1329528, at *3 (N.D. Ala. Mar. 31, 2014) (internal citations omitted).

(Doc. 100, at pp. 10-11).

Under the "clearly erroneous or contrary to law" standard, "the district court may not reverse the magistrate judge's decision simply because the district court would have come to a different conclusion." McGuire v. Carrier Corp., 2010 U.S.

Dist. LEXIS 3118, at *2, 2010 WL 231099 (S.D. Ind. Jan. 13, 2010), cited with approval in United States v. Lee, 2015 U.S. Dist. LEXIS 128951, at *9, 2015 WL 5667102 (N.D. Ga. Sept. 15, 2015).

B. Plaintiff Has Failed To Demonstrate That Magistrate Johnson’s Ruling Upholding The County Designation Of Judge Teske’s Personal Diary As Confidential Was Clearly Erroneous Or Contrary To Law

Plaintiff contends that Magistrate Johnson’s ruling is clearly erroneous or contrary to law because courts that have applied the phrase “private and highly sensitive information” have typically involved medical, psychological or financial information or family matters. (Doc. 115, at p. 5). However, Plaintiff has not cited any case law (much less controlling case law) holding that the universe of documents that may be designated as confidential and subject to a consent protective order is limited to documents containing medical or financial information or family matters. Indeed, as Magistrate Johnson correctly observed (Doc. 112, at p. 2), it is difficult to envision documents more sensitive, private or personal than a personal diary.¹ The County is confident that any judge who maintained a personal diary containing material that became relevant to a pending lawsuit appropriately would

¹ In his Objections, Plaintiff characterizes the diary as “recounting a trip to theatre shows or movies, mentioning that it snowed and that school was cancelled, and recounting or planning out-of-town trips.” (Doc. 115, at p. 6). These features simply underscore the personal and private nature of Judge Teske’s diary.

expect that the personal diary would be kept confidential and not disseminated to the public.

Moreover, courts have recognized that personal diaries may be the appropriate subject of a protective order ensuring their confidentiality and limiting their dissemination. See, e.g., Hawkins v. St. Clair County, 2008 U.S. Dist. LEXIS 85340, at *11 (S.D. Ill. Sept. 17, 2008) (ordering production of plaintiff's personal diaries and journals due to their relevance, but also ordering that they be kept confidential and that they be filed under seal if relied upon in connection with a motion or other filing); Topol v Trustees of the Univ. of Pa., 160 F.R.D. 475, 477 (E.D. Pa. 1995) (ordering production of plaintiff's personal diary, but also noting that court previously had approved confidentiality stipulation limiting the parties' use and disclosure of material marked as confidential). See also Ramsay v. Bailey, 531 F.2d 706, 708 (5th Cir. 1976) (affirming dismissal for want of prosecution, including failure to comply with order compelling production of plaintiff's personal diaries, where plaintiff did not seek any protective order to maintain confidentiality of diaries or even state in writing a desire for confidentiality even though defendants indicated willingness to maintain confidentiality of diaries).

Plaintiff, however, insists that Magistrate Johnson's ruling that Judge Teske's personal diary should remain confidential is clearly erroneous and contrary to law

because it contains relevant material concerning his termination. (Doc. 115, at p. 6). The fact that the excerpts from Judge Teske's personal diary include material concerning Plaintiff's termination only goes to whether they are discoverable, not whether the diary excerpts should remain confidential. The fact that Judge Teske's personal diary contains discoverable information does not mean that it loses its personal, sensitive or private nature. Nor does it mean that Plaintiff should be allowed to disseminate Judge Teske's private and personal diary to whomever Plaintiff pleases or that the diary should be placed on the docket for public viewing. Under Plaintiff's analysis, Plaintiff's personnel and medical records (for example) would lose their confidential designation simply because they contain discoverable information. That is not the case, of course, and the County doubts that Plaintiff would suggest otherwise.

Plaintiff next cites various cases and other authorities for the general proposition that judicial records are presumed to be public documents. (Doc. 115, at pp. 6-7, 8). However, the Consent Protective Order itself, as well as the Court's Local Rules and this Court's Standing Order recognize that there are numerous exceptions to this general rule, and the Local Rules contain detailed provisions and procedures for the filing of confidential information provisionally under seal subject to Court approval. See N.D. Ga. Local Rules, Appendix H, Section II(J); this Court's

Standing Order, at pp. 6-7. As the Court and Plaintiff are well aware, documents that are subject to a consent protective order, such as Judge Teske's diary excerpts, routinely are filed under seal pursuant to this Court's Local Rules as set forth above. Thus, maintaining the confidentiality of Judge Teske's personal diary would not prejudice Plaintiff's prosecution of this case in any way. Plaintiff may cite to it as he pleases in his filings and present to the Court whatever arguments he wants to make with respect to Judge Teske's diary.

Given the absence of prejudice to Plaintiff if the confidentiality of Judge Teske's diary is maintained, it is readily apparent that Plaintiff has ulterior motives in seeking the removal of the confidential designation from Judge Teske's personal diary. Plaintiff disclaims any desire to disseminate Judge Teske's diary excerpts to the media, but yet points out that Judge Teske spoke to the media on the day that Plaintiff was terminated and again after the Supreme Court issued its decision. (Doc. 115, at pp. 8-9). While Plaintiff observes that Judge Teske "has not been shy" about speaking to the media about the case (*id.* at p. 9), the exhibits submitted by Plaintiff demonstrate that Plaintiff and his counsel also have not been bashful about speaking to the media about this case. (Doc. 115-2).² By asserting these types of arguments,

² Plaintiff has spoken to the media, including the national media, about this case on other occasions as well.

it is readily apparent that Plaintiff and his counsel are itching to disseminate Judge Teske's personal diary to the media in hopes of advancing their narratives about this case to potential jurors.

Finally, contrary to Plaintiff's contentions (Doc. 115, at pp. 8-9), the County's concern is not with what Judge Teske wrote in his personal diary, but rather that the contents of a judge's personal diary should not be made available for public consumption merely because it includes material that is relevant to a party's claims or defenses. Magistrate Johnson agreed, and Plaintiff has failed to demonstrate that Magistrate Johnson's ruling was clearly erroneous or contrary to law.

II. CONCLUSION

For all the reasons set forth above, Plaintiff has failed to demonstrate that Magistrate Johnson's ruling maintaining the confidentiality of Judge Teske's personal diary was clearly erroneous or contrary to law. Accordingly, Plaintiff's Objections to Magistrate Johnson's ruling should be overruled.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(D), I hereby certify that the within and foregoing **DEFENDANT’S RESPONSE TO PLAINTIFF’S OBJECTIONS TO MAGISTRATE JUDGE’S ORDER REGARDING CONFIDENTIAL DESIGNATION** has been prepared in compliance with Local Rule 5.1(B) in 14-point Times New Roman type face.

This 10th day of February, 2022.

/s/ Jack R. Hancock _____

Jack R. Hancock
Georgia Bar No. 322450

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the within and foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S ORDER REGARDING CONFIDENTIAL DESIGNATION** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following counsel of record:

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This 10th day of February, 2022.

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