

IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

ORIGINAL

PATRICK C. DESMOND, MARY C.
DESMOND, INDIVIDUALLY, AND
MARY C. DESMOND, AS
ADMINISTRATRIX OF THE ESTATE
OF PATRICK W. DESMOND,

Plaintiffs,

v.

Civil Action File No: 10A28641-2

NARCONON OF GEORGIA, INC.,
NARCONON INTERNATIONAL,
DELGADO DEVELOPMENT, INC.,
SOVEREIGN PLACE, LLC,
SOVEREIGN PLACE APARTMENT
MANAGEMENT, INC., LISA
CAROLINA ROBBINS, M.D., AND THE
ROBBINS GROUP, INC.,

Defendants.

**REPLY BRIEF IN SUPPORT OF DEFENDANT
NARCONON OF GEORGIA'S MOTION TO COMPEL**

COMES NOW Narconon of Georgia, Inc., named defendant herein, and files this, its
Reply Brief in Support of its Motion to Compel, showing the Court as follows:

Statement of Facts

This case arises out of the tragic death of Patrick Desmond, a 28-year-old man who
struggled with substance abuse all of his life. (Deposition of Mary Desmond, relevant pages of
which are attached hereto as Exhibit "A", pp. 20-26, 47, 174-177, Ex. 3; Deposition of Patrick
Desmond, relevant pages of which are attached hereto as Exhibit "B", p. 39). In 2006, at the age
of 26, Mr. Desmond was arrested, not for the first time, in Florida for possession of cocaine and
drug paraphernalia. (Deposition of Lisa Mooty, relevant pages of which are attached hereto as

Exhibit "C", pp. 9-10). He entered the Florida drug court program, but continued to have difficulty with drugs and alcohol. (Plaintiffs' Requests for Production Responses, relevant pages of which are attached hereto as Exhibit "D", pp. Desmond0037, Desmond0112, Desmond0127; Mooty Depo., pp. 12-13).

When Mr. Desmond was arrested for substance abuse yet again, his father did not bail him out of jail, but he did go see a lawyer. (P. Desmond Depo., p. 23). The lawyer told the father that he ought to look for an alternative to Florida's Bridge program which had been offered to Mr. Desmond. (P. Desmond Depo., pp. 23-24). The father conducted an internet search and found Narconon of Georgia. ("NNGa"). (P. Desmond Depo., p. 25). The father asked the drug court supervisor, Lisa Mooty, to approve Mr. Desmond's enrollment at NNGa. (P. Desmond Depo., p. 26-27). Ms. Mooty then communicated with NNGa and, among other things, got a copy of NNGa's license from the Georgia Department of Human Resources. (Mooty Depo., p. 19, Ex. 2, p. 2). That license allowed NNGa to provide an ambulatory, or non-residential, detoxification program. (Mooty Depo., Ex. 2, p. 2). The Desmonds understood "the goal of the [NNGa] program was to help change lifestyles, teach the patients to be able to cope with life without relying on substances and to be better able to integrate in society and not abuse the various substances, whatever they were." (P. Desmond Depo., p. 42).

Ms. Mooty determined that NNGa met the Florida drug court requirements, which neither she nor the Desmonds ever provided to NNGa. (Mooty Depo., pp. 69,80; M. Desmond Depo., p. 72; P. Desmond Depo., p. 41). Mr. Desmond and his parents then decided to enroll Mr. Desmond in NNGa (an entity licensed by, but not a subsidiary of nor owned by, Narconon International). (Defendant Narconon of Georgia, Inc.'s Objections and Responses to Plaintiffs' First Request for Production of Documents, relevant pages of which are attached hereto as

Exhibit "E", Desmond-D-Ga-0989). Mrs. Desmond drove Mr. Desmond, her adult son, to Atlanta. (M. Desmond Depo., p. 77). Mr. Desmond, the father, did not accompany them, instead choosing to leave the country. (P. Desmond Depo., p. 27).

Mr. Desmond, now 27½ years old, toured the Narconon facility with his mother. (M. Desmond Depo., p. 74). Mrs. Desmond then went to see the apartment complex in which Mr. Desmond would live, which was run by a company separate and apart from NNGa. (P. Desmond Depo., pp. 43, 87). Meanwhile, Mr. Desmond went to Peachford Hospital for alcohol detoxification. (M. Desmond Depo., pp. 75-77). When she was at the apartments, Mrs. Desmond could see that it was not a lock-down facility and that residents were free to come and go. (M. Desmond Depo., p. 198). Mrs. Desmond returned to Florida, although she did visit her son at the apartments several times after that. (M. Desmond Depo., pp. 79, 197).

Mr. Desmond, the son, completed detox and entered the NNGa program. (M. Desmond Depo., p. 80). He thrived in this environment and graduated in February of 2008, just before his 28th birthday. (M. Desmond Depo., p. 81). Mr. Desmond remained at the NNGa program, assisting other students and continuing his drug-free living training, for about another month. (Defendant Narconon of Georgia Inc.'s Responses to Plaintiffs' Third Interrogatories, No. 5). His mother then took him back to Florida to live with her. (M. Desmond Depo., p. 81).

While he was home with his mother, Mr. Desmond reported to the drug court about the NNGa program. (Mooty Depo., p. 34). He did not, however, have a regular job. (M. Desmond Depo., pp. 129-130). He worked a few odd jobs and began drinking again. (M. Desmond Depo., p. 85). Mrs. Desmond did nothing to stop Mr. Desmond from drinking because Mr. Desmond, "was twenty-eight years old. He was a young man. [She] could [only] advise him." (M. Desmond Depo., p. 86).

Mr. Desmond was arrested again for DUI within two months of returning home with Mrs. Desmond. The Desmonds, thus, re-enrolled Mr. Desmond at NNGa. (M. Desmond Depo., p. 26). By all accounts, Mr. Desmond was again doing well in the program until June 10, 2008. On that date, he drank a considerable amount of alcohol and then left the apartment complex in which he was living. (M. Desmond Depo, p. 122). While away from there, he obtained heroin from some unknown source and ingested it. (M. Desmond Depo, p. 122). He died the next day from intoxication with ethanol and morphine. (NNGa's Responses to Plaintiffs' First Request for Production of Documents, Desmond-D-Ga-0011).

Plaintiffs subsequently filed this lawsuit, contending among other things, that the negligence and misrepresentations of Defendants caused or contributed to cause Mr. Desmond's death. Defendants denied the material allegations of Plaintiffs' Complaint and discovery commenced. Plaintiffs served as many as three sets of interrogatories and requests for production on each of the seven defendants, each of which was timely answered. In all, at least 135 questions were answered and nearly 8,000 documents were produced. Plaintiffs asked for and Defendants participated in the depositions of Defendant Lisa Robbins, M.D., Elizabeth Backus (the designated representative for Defendant Sovereign Place, LLC) and Mary Rieser. Plaintiffs also took the deposition of Lisa Mooty and Defendants took the depositions of the Desmonds. Plaintiffs asked for no other depositions, either party or non-party.

Despite this extensive discovery, no evidence has been adduced which shows that any Defendant breached a duty, either in contract or in tort, to Plaintiffs. There likewise has been no evidence adduced that any Defendant made a representation to Plaintiffs which would amount to fraud under Georgia law. In fact, the evidence generated thus far shows that NNGa provided legal documentation showing it was an outpatient program. NNGa had much other written and

on-line information available to the Desmonds and Ms. Mooty explaining the NNGa program and what it did and did not offer. The Desmonds visited and were very familiar with the NNGa program and facilities and knew it was not a lock-down. The Desmonds were aware that students at NNGa, while referred to and encouraged to stay in a supportive living environment, lived where they chose and were able to come and go freely. With all of this information, the Desmonds chose to enroll Mr. Desmond a second time, who then voluntarily chose to drink to excess and take illegal drugs.

In an effort to confirm that the evidence shows Mr. Desmond, alone, was responsible for the poor choices leading to his death, NNGa, as allowed by the Georgia Civil Practice Act, served interrogatories and requests for production on Plaintiffs. NNGa asked that Plaintiffs set forth the facts supporting their claims of negligence, specify the statements they contend amount to fraud, produce any relevant contracts, itemize their damages, and allow Defendants to obtain their decedent's education records. (Interrogatory Nos. 6, 7, 12, 24, 25, 27). Specifically, NNGa asked:

6.

Please identify and describe with specificity each and every act or omission that you contend constitutes an act of negligence on the part of each Defendant in this lawsuit. For each such act or omission, please describe:

- (a) in what manner you contend each act or omission caused or contributed to Patrick Desmond's death;
- (b) the conduct that you contend under the circumstances would have represented proper care; and
- (c) any damages, special or general, you or the decedent claim in relation thereto;

7.

Please itemize by dollar amount and separately describe each element of special damage and economic or monetary loss which you claim or claim on decedent's behalf against Defendants in this case, including but not limited to:

- (a) Hospital bills;
- (b) Other medical expenses, including doctors' fees;
- (c) Costs of drugs and medication;
- (d) Lost earnings, wages, or profits including the relevant dates and rates of pay; and
- (e) All other monetary losses or expenses for which you seek recovery in the instant action.

12.

Please identify and describe with specificity any and all contracts, express or implied, alleged to have been entered into between you or decedent and each Defendant, as well as any alleged breach thereof on the part of each Defendant, as well as any damages allegedly suffered by you or decedent as a result of any such breach.

25.

Please describe with specificity each and every alleged misrepresentation that was made by Narconon of Georgia or Narconon International, including but not limited to the persons involved in each communication, any documents that evidence the communication, the time, place and circumstances of each communication and all persons with knowledge of each communication.

[A] sign[ed] a HIPAA release form for all your decedent's [education records]. If not, please state why not.

Plaintiffs failed to provide the requested information and document and completely ignored NNGa's efforts to resolve the issue without court intervention. (See, for example, Letter of October 27, 2010 from Kathryn S. Whitlock to Jeffrey R. Harris and Rebecca Franklin, a true and accurate copy of which is attached hereto as Exhibit "F"; Letter of May 4, 2011 from Kathryn S. Whitlock to Rebecca Franklin and Jeffrey R. Harris, a true and accurate copy of which is attached hereto as Exhibit "G"). They now have opposed NNGa's Motion to Compel, arguing not that the discovery was impermissible or that they provided that which the law requires, but that a deposition which was taken seven months after the discovery was served and some three months before the Motion was filed somehow protects them from the clear mandates of Georgia law. Plaintiffs' argument is without merit.

Argument and Citation of Authority

Under the Georgia Civil Practice Act, parties are entitled to discover all information that is relevant and not privileged. O.C.G.A. § 9-11-26. The requirement that one engage in discovery is not, as Plaintiffs imply, contingent upon one's satisfaction with the opponent's deposition responses. (Plaintiffs' Brief, p. 4). Plaintiffs instead have an independent duty fully and completely to respond to discovery properly served upon them. O.C.G.A. § 9-11-26(d). Since Plaintiffs have failed to do so, this Court should order them not only to respond fully to the discovery, but to bear the costs associated with filing this Motion. O.C.G.A. § 9-11-37.

This conclusion is buttressed by the fact that, as set forth in greater detail in NNGa's Brief in Opposition to Plaintiffs' Motion for Sanctions, there was no improper conduct at the

deposition of Mary Rieser and Plaintiffs were not “forced to essentially halt discovery and file a Motion for Sanctions” after that deposition. (Plaintiffs’ Brief, p. 2). Instead, Plaintiffs chose to ask improper questions at the deposition and to spend much of their seven deposition hours on matters wholly irrelevant to the case. They then chose to conduct no discovery in the three months between the deposition and their Motion. Finally, they chose to be idle in this case for three months and then, the day before the discovery cut-off, to file a sanctions motion that is spurious, at best, and frivolous and in bad faith, at worst. It certainly provides no basis for Plaintiffs failing to provide information discoverable under Georgia law. *See, generally, Travis Meat & Seafood Co., Inc. v. Ashworth, 127 Ga.App. 284, 193 S.E.2d 166 (1972).*

Plaintiffs next argue that “contention interrogatories” are limited until the end of a lawsuit, so they need not tell Defendants what they contend Defendants did wrong. (Plaintiffs’ Brief, p. 6). The Georgia code, however, states specifically that, “an interrogatory...is not necessarily objectionable merely because an answer to the interrogatory involves [a] contention that relates to fact....” O.C.G.A § 9-11-33(b)(2). Indeed, any other rule would allow a plaintiff to file a complaint, not tell the defendant what its contentions were until discovery closed and thereby effectively prohibit the defendant from discovering relevant information because there would be no way for the defendant to determine what conduct was at issue. Such an anomalous result is warranted by neither the spirit nor the letter of the Georgia Civil Practice Act. If Plaintiffs learn additional facts during the discovery process, they not only can but should supplement their discovery responses. At this point, however, Defendants are entitled to know the facts on which Plaintiffs base their contentions. (Interrogatory Nos. 6, 12, 25).

Plaintiffs next assert that there are other sources from which Defendants can obtain the requested information, including from NNGa itself. (Plaintiffs’ Brief, pp. 7-8). Plaintiffs have

failed, however, to tell this Court or NNGa how NNGa is to learn, other than from Plaintiffs, what acts Plaintiffs “contend constitutes an act of negligence on the part of each defendant”, what misrepresentations were made to Plaintiffs, and what contracts Plaintiffs contend are relevant. (Interrogatory Nos. 6, 12, 25). The law requires that Plaintiffs provide the information and this Court should order them to do so. O.C.G.A. §§9-11-9(b), 9-11-26(b)(1).

Plaintiffs next allege that they need not itemize their contended damages because they have not yet identified experts. (Plaintiffs’ Brief, p. 9). Plaintiffs thus make the circular argument that, because they failed to engage timely in mandated offensive discovery, they also need not participate in defensive discovery. The argument has no basis in logic or law and there is, consequently, no valid reason for Plaintiffs not to provide the requested information. (Interrogatories Nos. 7 and 24). Their refusal begs the inference that they do not have the requested information because the support for their contentions does not exist.

Finally, Plaintiffs concede that their decedent’s educational records are discoverable, but assert that Defendants are required to accept the information filtered through Plaintiffs’ counsel. (Plaintiffs’ Brief, pp. 10-11). There is first, no such limitation in the Georgia rules as they specifically provide otherwise. O.C.G.A. §9-11-34(c). Second, Defendants have not asked for psychiatric records, but for educational institution records. Such records are not privileged under Georgia law. O.C.G.A. §24-9-22. Furthermore, even if there were some privilege, Plaintiffs waived it by placing Mr. Desmond’s mental condition at issue. Plunkett v. Ginsburg, 217 Ga.App. 20, 456 S.E.2d 595 (1995). It is Plaintiffs who contend that Mr. Desmond was “so unable to control his own impulses or restrain himself to the extent that his life would be at risk...” (P. Desmond Depo., p. 54). Therefore, the information is both relevant and non-privileged and NNGa is entitled to it.

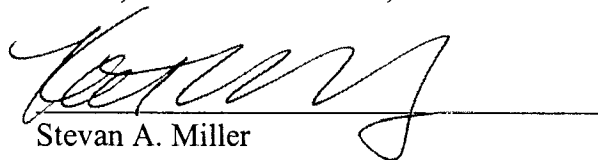
Conclusion

In short, Plaintiffs have failed to provide the information that the Georgia Civil Practice Act requires them to provide to NNGa. NNGa properly requested it in formal discovery and at least twice more informally sought the information from Plaintiffs, to no avail. This Court should, therefore, compel that full responses be provided and impose sanctions against Plaintiffs for forcing NNGa to file this Motion.

WHEREFORE, for the above and foregoing reasons, Defendant Narconon of Georgia, Inc. prays that its Motion be sustained and that Plaintiffs be required to fully answer Interrogatories numbered 6, 7, 12, 25 and 27. Defendant Narconon of Georgia, Inc. further prays that this Court sanction Plaintiffs for failing to comply with the Civil Practice Act by ordering that they bear all costs, including Narconon of Georgia, Inc.'s attorneys fees and expenses, associated with this Motion.

Respectfully submitted this 11th day of July, 2011.

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STATE COURT OF
DEKALB COUNTY, GA.

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FILED

BY: 
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing *Reply Brief* in Support of Defendant Narconon of Georgia, Inc. 's Motion to Compel upon all parties to this matter by United States Mail addressed to the following counsel of record:

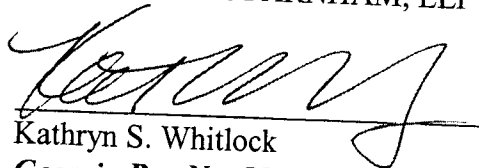
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