

IN THE CIRCUIT COURT OF THE  
15TH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY,  
FLORIDA

MARNI BRYSON,

Plaintiff,

v.

WILLIAM R. SCHERER JR., and  
CONRAD & SCHERER, LLP,

Defendants.

Case No.: 502019CA004756XXXXMB  
Division AK

**DEFENDANTS' MOTION TO COMPEL PLAINTIFF  
TO PRODUCE HER PREGNANCY PHOTOGRAPHS**

Defendants William R. Scherer, Jr. and Conrad & Scherer, LLP file this Motion to Compel Plaintiff Marni Bryson to produce to Defendants her pregnancy photographs to Defendants to use as evidence in the trial of this case.

On October 19, 2020, Defendants moved to compel Bryson to produce the "pregnancy photographs" she testified she took while she was pregnant - which would be from September 2012 to right after she gave birth to her son on June 12, 2013. These are the photographs that Bryson alleges in her Amended Complaint, responses to Interrogatories and in deposition, that Defendants threatened to release publicly if she deposed Stephanie Toothaker in Bryson's Contempt Proceeding against her former husband Blake MacDiarmid. The Court granted the Motion but restricted the production to an examination by Defendants' counsel at the office of Plaintiff's counsel. The Court ruled that if copies of the photographs are needed as evidence, then Defendants may seek a hearing to compel production. *See* Exhibit A. That is what this motion seeks.

To prove her case based on the allegations in the Amended Complaint Bryson will need to show that that she had “pregnancy photographs” that somehow ended up in Defendants’ possession and that is what was threatened to be publicly released. As the Court knows by now, there is but one “nude photograph” at issue in this case – the one the Court reviewed *in camera* that Stephanie Toothaker retrieved from her husband Peter Kemp’s cell phone and sent to her work email. See Order dated August 4, 2020, Filing No. 111260738. Since then, Peter Kemp testified, and evidence has shown, that Bryson took this photograph on March 29, 2014, seven months after giving birth, and then sent it to others, including Peter Kemp to whom she sent the photograph via text during a late-night call with him on July 11, 2014. Despite indisputable evidence that this photograph is not one Bryson took in the “thrill and joy of pregnancy” as she alleges in paragraph 25 of her Amended Complaint, but one she took of herself long after, Bryson continues to claim the photograph was one of her confidential pregnancy photographs (that she claimed at first was never sent to anyone, but when hard pressed to explain how Defendants could have these photographs, changed her story and said she sent them to her then husband notwithstanding that in March 2014 when the photograph at issue was taken she and Mr. MacDiarmid were 3-months into a bitter divorce proceeding).

Bryson has made the pregnancy photographs a central fact issue in the case and thus Defendants are entitled to compare the nude photograph at issue in this case with the pregnancy photographs and the metadata from those photographs, and present them as evidence that the photo at issue looks nothing like her pregnancy photographs and is in fact a nude photograph Bryson took and the publicly distributed via her cell phone to others, and which she has known was circulated and talked about long before the alleged “threat” was made to release it (although there is still no admissible evidence of a threat.)

**CERTIFICATE OF COMPLIANCE**

Pursuant to Fla.R.Civ.P. 1.380(a)(2), movant, in good faith, has conferred or attempted to confer with the Plaintiff’s counsel but was unsuccessful in their effort to resolve the issues raised in this motion. Counsel for Defendants will continue to work with Plaintiff’s counsel to resolve these matters prior to a hearing.

Respectfully submitted,

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By: /s/ Gail A. McQuilkin

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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 2023, I electronically filed the foregoing with the Florida Court E-Filing Portal, which will serve it via electronic mail to counsel of record.

By: /s/ Gail A. McQuilkin

# EXHIBIT

“A”

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CONRAD & SCHERER, LLP,

Defendants.

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**ORDER GRANTING DEFENDANTS' MOTION TO COMPEL DISCOVERY  
AND CONTINUING THE TRIAL DATE**

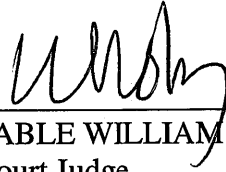
**THIS MATTER** came before the Court on Defendants' Motion to Compel Discovery and Continue the Trial Date. The Court having reviewed the Motion and being otherwise fully advised in the premises, it is hereby

**ORDERED and ADJUDGED** as follows:

1. The Motion to Continue the Trial Date is **GRANTED**. The Court will issue a revised Order Directing Pre-Trial Procedure and Setting Jury Trial Date.
2. The Motion to Compel is **GRANTED**. Plaintiff shall make the pregnancy photographs available for Defendants' review at a conference room in her counsel's office no later than November 30, 2020. If Defendants believe that copies of the photographs are needed as evidence in their case, then Defendants shall set a hearing to seek the production of copies.

**DONE AND ORDERED** in Chambers at <sup>St. Lucie</sup>~~Martin~~ County, Florida, this 11 day of

November, 2020.



HONORABLE WILLIAM L. ROBY  
Circuit Court Judge

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