

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

KRISTAL HOLMES,

Plaintiff,

v.

CIVIL ACTION FILE
NO. 1:13-CV-04270-HLM

GRAMBLING . Dominique Jr.,
a.k.a. ERNEST EUGENE SLADE,

Defendant.

ORDER

This case is before the Court on the Court's own
Motion.

I. Background

On January 3, 2014, the Court issued an Order restricting access to the Docket to the Court staff, the Parties, and Counsel for the Parties. (Order of Jan. 3, 2014 (Docket Entry No. 5).) Acting out of an abundance of

caution, the Court restricted access to the docket because the request came at an early stage in the case, and the possibility remained that intimate information that would justify proceeding under seal would become part of the record. See e.g., Plaintiff B v. Francis, 631 F.3d 1310 (11th Cir. 2011) (discussing the three factors to analyze for whether a plaintiff has a claim of a substantial privacy right). On September 9, 2014, the Court issued an Order directing the parties to show cause why this case should continue to proceed under seal. (Order of Sept. 9, 2014 (Docket Entry No. 67).) Plaintiff filed her Brief in Support of Request for Continued Seal of Case on September 19, 2014. (Pl. Br. Supp. Request for Continued Seal (Docket Entry No. 74).)

II. Discussion

A. Standard for Proceeding Under Seal

“The operations of the courts and the judicial conduct of judges are matters of utmost public concern.” Romero v. Drummond Co., 480 F.3d 1234, 1245 (11th Cir. 2007) (quoting Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 839 (1978)). “The common-law right of access to judicial proceedings, an essential component of our system of justice, is instrumental in securing the integrity of the process.” Chicago Tribune Co. v. Bridgestone/Firestone, Inc., 263 F.3d 1304, 1311 (11th Cir. 2001). This right “includes the right to inspect and copy public records and documents.” Id. “This right of access is not absolute....and, ...may be overcome by a showing of good cause.” Romero,

480 F.3d at 1245. A good cause showing requires balancing the right of access against the interest in keeping information confidential. Id. at 1246 (citing Chicago Tribune, 263 F.3d at 1309). When balancing these competing interests, “courts consider, among other factors, whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.” Id.

B. Plaintiff’s Claim for Continuing under Seal

Plaintiffs seek to keep this case completely under seal in order to prevent Defendant's defamatory statements from becoming public again through public access to the court records. Plaintiff specifically worries about the quoted statements contained in Plaintiff's Amended Complaint and Second Amended Complaint. (Docket Entry Nos. 14, 28.) Indeed, these statements contain offensive language, touch on personal, intimate matters of Plaintiff's life, discuss Plaintiff's minor daughter, and accuse Plaintiff of a variety of unethical and likely criminal conduct. (See e.g., Second Amd. Compl. ¶ 30.) Plaintiff contends that if these accusations were spread around it would be injurious to her personal and professional reputation.

Plaintiff's central argument for keeping this case under seal is that keeping the case sealed is necessary to prevent the further dissemination of allegedly defamatory statements made against Plaintiff that were posted online. The logical conclusion of Plaintiff's argument is that whenever someone sues for defamation because of potentially embarrassing comments, the plaintiff should be allowed to sue anonymously and with the case under seal. Neither Plaintiff's Brief nor the Court's own research indicates that there is any such rule. The cases cited by Plaintiff exclusively deal with whether a plaintiff may sue anonymously. (See generally Pl. Br. Supp. Request for Continued Seal (Docket Entry No. 74).) The Court,

however, previously ruled that Plaintiff could not proceed under a pseudonym. (Order of Jan. 3, 2014.)

Courts have reached varying conclusions in similar situations in defamation cases. In Pia v. Supernova Media, Inc., the plaintiffs sought a protective order preventing the defendant from disseminating a deposition that could be embarrassing to Plaintiff when the underlying cause of action included claims for defamation and libel. 275 F.R.D. 559 (D. Utah July 29, 2011). The Court concluded that there was not good cause for a protective order because the deposition was not inherently oppressive, would only cause some discomfort, and defendant was not using the deposition for commercial gain. Id. at 561-62. Pia distinguished itself from another case where a court granted

a protective order barring dissemination of a videotaped deposition where the videotaping was commercially motivated. Id. at 561 (citing Paisley Park Enterprises, Inc. v. Uptown Productions, 54 F.Supp.2d 347 (S.D.N.Y. June 29, 1999)). Instead, Pia relied on a case in which the court found that the parties had not shown good cause for a protective order even though the plaintiff freely admitted that it intended to use disseminate the deposition for the purpose of humiliating the defendant. Id. (citing Flaherty v. Seroussi, 209 F.R.D. 295 (N.D.N.Y. Oct. 30, 2001)).

In this case, Plaintiff has not shown any greater risks for dissemination or humiliation as were present in Paisley Park. There is not extensive media coverage of this case. Publishing court documents does not aid Defendant in

future defamation of Plaintiff. Defendant has no commercial motivation for disseminating court filings. Additionally, the statements quoted in the Complaint and Amended Complaint were already published on the internet.

Several other factors from Romero counsel against continuing under seal. While the degree of harm to Plaintiff may be significant, Plaintiff has not shown a significant likelihood that the injury will occur, i.e. that the defamatory comments will be widely republished. There is not extensive, if any, media coverage of this case, and Plaintiff does not suggest how this information would be spread around or by whom, or if it would be spread to anyone who has not already seen the original statements. Many people may not find the information reliable, given the poor

grammar, spelling, and unreliable website source. Furthermore, Plaintiff has the opportunity to respond to the statements, and anyone who has access to the defamatory statements through the court records would also see the rest of Plaintiff's Amended Complaint and Second Amended Complaint along with Plaintiff's other filings responding to the defamatory claims.

Plaintiff is also the one who submitted these statements to the Court. Some other courts have suggested, when dealing with discovery material, that the party submitting the material forgoes confidentiality. In re Estate of Martin Luther King, Jr., Inc. v. CBS, Inc., 184 F. Supp. 2d 1353, 1367 (N.D. Ga. Feb. 15, 2002) (“[I]t is important to recognize that here, ‘the party filing the presumptively

confidential discovery material with the court [was] not the party claiming confidentiality'....because, although one 'voluntarily forgoes confidentiality when one submits material for dispute resolution in a judicial forum ... [t]here is no voluntariness, of course, where one's adversary' makes the submission." (alterations and second omission in original) (quoting Chicago Tribune, 263 F.3d at 1315 n.15)). This case is not about discovery material, and the Court finds it difficult to conclude that in every instance potential plaintiffs would have to choose between making public harmful information and foregoing a rightful legal remedy. The present case, however, does not present such a difficult choice as not only did Plaintiff submit the

incriminating statements to the Court but several other factors counsel against continuing the case under seal.

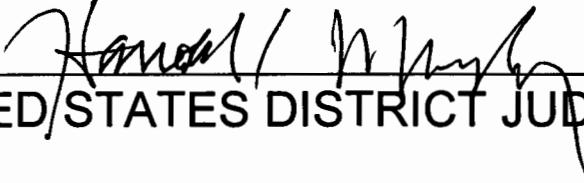
Plaintiff alleges that Defendant's defamatory statements have caused her great harm and been seen by her family, acquaintances, business partners, potential clients, and others. (Pl. Br. Supp. Request for Continued Seal at 2-3.) Plaintiff fails to demonstrate what additional harm will occur by allowing public access to those statements in the court record, in the context of Plaintiff's Complaint, and in a forum where Plaintiff has had the opportunity to respond to the statements. Furthermore, the restricted access to the Docket has caused repeated confusion and difficulties for all the Parties in this case, causing them to file several unnecessary motions and

briefs, as well as delaying the resolution of this case. For the foregoing reasons, the Court finds that the case should not continue under seal.

III. Conclusion

Accordingly, the Court **DIRECTS** the Clerk's Office to **UNSEAL** the entire case, removing the restricted access to the Instant Docket.

IT IS SO ORDERED, this the 17th day of October, 2014.



UNITED STATES DISTRICT JUDGE