

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

ESTATE OF RICHARD A.  
WIEDEMER, JR., DECEASED, ET AL., :

Plaintiffs-Appellants, :

Nos. 110432 and 110681

v. :

THE CLEVELAND YACHTING CLUB  
INC., ET AL., :

Defendants-Appellees. :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT:** AFFIRMED IN PART; REVERSED IN PART;  
AND REMANDED  
**RELEASED AND JOURNALIZED:** January 6, 2022

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CV-20-928773

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***Appearances:***

Plevin & Gallucci Co., L.P.A., David R. Grant, and Frank L. Gallucci III; Paul W. Flowers Co., L.P.A., Paul W. Flowers, and Louis E. Grube, *for appellant* Estate of Richard A. Wiedemer, Jr., Deceased, Et Al.

Wickens Herzer Panza, Richard D. Panza, and Matthew N. Danese, *for appellant* Hinkley Lighting, Inc.

Seeley, Savidge Ebert & Gourash, L.P.A., Daniel F. Gourash, and Jeffrey S. Moeller, *for appellee*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} In these consolidated appeals, plaintiffs-appellants Estate of Richard A. Wiedemer, Jr., Jess A. Wiedemer, Eric C. Wiedemer, and Kristine Turner (“appellants”), and nonparty appellant Hinkley Lighting, Inc. (“Hinkley Lighting”) appeal the judgment of the Cuyahoga County Court of Common Pleas denying appellants’ and Hinkley Lighting’s respective motions to quash subpoenas and for a protective order. After a thorough review of the facts and applicable law, we affirm in part and reverse in part the judgment of the trial court.

### **I. Factual and Procedural History**

{¶ 2} Richard A. Wiedemer, Jr., deceased (“Decedent”) and his family were longtime members of defendant-appellee The Cleveland Yachting Club, Inc. (“CYC”). On June 17, 2019, the Decedent fell off an unsecured stepping stool placed on the dock that members and their guests were required to utilize to access their boats. The Decedent’s head struck a protruding dock structure, and he ultimately passed away from a traumatic brain injury he sustained in the fall.

{¶ 3} Decedent’s estate commenced a wrongful death/survivorship action against CYC. Plaintiffs-appellants Jess A. Wiedemer, Eric C. Wiedemer, and Kristine E. Turner also asserted their own individual claims for loss of consortium. Relevant to the issues in the instant appeal, the complaint specifically alleged that

Plaintiff The Estate of Rick Wiedemer and decedent’s heirs, legatees and next of kin have sustained damages recoverable under Ohio law, including \* \* \* loss of support from the reasonably expected earning capacity [and] prospective inheritance which said next of kin would

have received at the time of decedent's death, had he lived his reasonably expected and anticipated natural life \* \* \* .

{¶ 4} CYC answered the complaint, denying liability, and the parties proceeded to discovery. During this time, CYC issued five subpoenas to the accounting firm of Bober Markey Fedorovich & Co. The subpoena sought all tax and financial records prepared over the last five years for the Decedent, appellants Jess A. Wiedemer, Eric C. Wiedemer, Kristine E. Turner, and Hinkley Lighting, the employer of Decedent and appellants. The Decedent owned and operated Hinkley Lighting as a family business.

{¶ 5} Specifically, the subpoenas sought the following:

**Hinkley Lighting:**

1. All Corporate Financial Statements from 2015 to the present;
2. All Corporate Tax Returns from 2015 to the present;
3. Any documents showing annual compensation to all executives including but not limited to Richard Wiedemer, Jr., Jess Wiedemer, Eric Wiedemer, and Kristine Turner;
4. All documents used to complete, support, etc., all Corporate Tax Returns from 2015 to the present; and
5. All documents showing stock ownership in Hinkley Lighting.

**Eric C. Wiedemer/Jess A. Wiedemer/Kristine E. Turner:**

1. All 1040 documents from 2015 to the present;
2. All W-2 documents from 2015 to the present;
3. All K-1 documents from 2015 to the present;
4. All 1099 documents from 2015 to the present;

5. All Tax Returns including Federal, State, and Local, from 2015 to the present;
6. All documents used to complete, support, etc., all tax returns from 2015 to the present.
7. All gifts received from Richard Wiedemer, Jr.;
8. All documents showing stock ownership in Hinkley Lighting; and
9. Any documents showing any inheritance received from 2019 to the present.

**Decedent:**

1. All 1040 documents from 2015 to the present;
2. All W-2 documents from 2015 to the present;
3. All K-1 documents from 2015 to the present;
4. All 1099 documents from 2015 to the present;
5. All Tax Returns including Federal, State, and Local, from 2015 to the present;
6. All documents used to complete, support, etc., all tax returns from 2015 to the present.
7. All documents showing stock ownership in Hinkley Lighting; and
8. All documents showing gifts made by Richard Wiedemer, Jr. from 2015 through 2019 to all individuals including but not limited to, Jess Wiedemer, Eric Wiedemer, and Kristine Turner.

{¶ 6} Appellants moved to quash the subpoenas, arguing that the requests constituted an invasion of their privacy, sought irrelevant materials, and subjected appellants to undue burden and expense. Appellants further moved for a protective

order, requesting that the tax and financial discovery conducted in this case be limited to only the net worth and earnings of the Decedent.

{¶ 7} Hinkley Lighting, a nonparty, also filed a motion to quash the subpoena issued concerning its records, arguing that it sought disclosure of privileged or otherwise protected information, that the documents sought were not relevant and could be obtained through appellants, and that the subpoena constituted an undue burden. Hinkley Lighting further moved for a protective order that would allow the discovery but prevent the unnecessary disclosure and/or potential misuse of highly sensitive, confidential information.

{¶ 8} The trial court denied appellants' and Hinkley Lighting's motions without analysis. Appellants then filed the instant appeal, assigning one error for review:

The trial court erred, as a matter of law, and otherwise committed an abuse of discretion, by failing to properly interpret and apply plaintiff-appellants' privilege against disclosure of private and confidential information.

{¶ 9} Hinkley Lighting also filed an appeal, raising two assignments of error for our review:

I. The Court of Common Pleas erred when it denied Appellant's Combined Motion To Quash and/or for a Protective Order dated April 16, 2021, requesting the Court quash the subpoena issued to Hinkley Lighting by Appellee Cleveland Yachting Club, Inc.

II. The Court of Common Pleas erred when it denied Appellant's Combined Motion To Quash and/or for a Protective Order dated April 16, 2021, requesting the Court issue a protective order for the information sought by the subpoena issued to Hinkley Lighting by Appellee CYC.

## II. Law and Analysis

{¶ 10} At the outset, we must address a jurisdictional issue raised by CYC related to appellants' appeal. In its brief, CYC asserts that this court lacks jurisdiction over appellants' appeal because the discovery order related to appellants' motion was interlocutory. "A motion to quash a discovery subpoena is generally considered 'a proceeding ancillary to an action' and therefore a provisional remedy pursuant to R.C. 2505.02(A)(3)." *Godwin v. Facebook, Inc.*, 2020-Ohio-4834, 160 N.E.3d 372, ¶ 11 (8th Dist.), quoting *In re Grand Jury Proceeding of Doe*, 150 Ohio St.3d 398, 2016-Ohio-8001, 82 N.E.3d 1115, ¶ 19. Thus, in order to determine whether such a provisional remedy qualifies as a final order pursuant to R.C. 2505.02(B)(4), the party appealing must demonstrate both that

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

*Id.*

{¶ 11} The denial of a motion to quash requires a nonparty to produce documents. This act cannot be remedied at the conclusion of the case, long after the documents have been produced. *Godwin* at ¶ 11, citing *Future Communications, Inc. v. Hightower*, 10th Dist. Franklin No. 01AP-1175, 2002-Ohio-2245. Consequently, because the appealing party lacks any meaningful remedy following the final judgment as contemplated under R.C. 2505.02(B)(4), the denial of a

motion to quash is generally considered a final appealable order. *Id.* The same concerns are not implicated when a court grants a motion to quash. *Hanick v. Ferrara*, 7th Dist. Mahoning No. 18 MA 0073, 2019-Ohio-880, ¶ 25; *McCarthy v. Anderson*, 5th Dist. Licking No. 17 CA 36, 2018-Ohio-1993, ¶ 19; *In re Estate of Adkins*, 4th Dist. Lawrence No. 16CA22, 2016-Ohio-5602, ¶ 9; *In re Tracy M.*, 6th Dist. Huron No. H-04-028, 2004-Ohio-5756, ¶ 29.

{¶ 12} Accordingly, the order denying appellants' motion to quash and motion for protective order is reviewable by this court.

#### **A. Appellants' Motion to Quash Subpoenas**

{¶ 13} Ohio discovery rules, like their federal model, are designed to favor the fullest opportunity to perform complete discovery. *Stegawski v. Cleveland Anesthesia Group, Inc.*, 37 Ohio App.3d 78, 85, 523 N.E.2d 902 (8th Dist.1987). A trial court does, however, have discretion in controlling the discovery process. *State ex rel. Daggett v. Gessaman*, 34 Ohio St.2d 55, 57, 295 N.E.2d 659 (1973). Nevertheless, such discretion is not without limits, and an appellate court will reverse a trial court's decision to extinguish a party's right to discovery if such a decision is improvident and affects the discovering party's substantial rights. *Bellinger v. Weight Watchers Gourmet Food Co.*, 142 Ohio App.3d 708, 717, 756 N.E.2d 1251 (5th Dist.2001); *Smith v. Klein*, 23 Ohio App.3d 146, 151, 492 N.E.2d 852 (8th Dist.1985); *Rossmann v. Rossmann*, 47 Ohio App.2d 103, 110, 352 N.E.2d 149 (8th Dist.1975).

{¶ 14} Civ.R. 45 allows subpoenas to be issued to nonparties. However, the court shall grant a motion to quash a subpoena if it, inter alia, “(b) Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; [or] (d) Subjects a person to undue burden.” Civ.R. 45(C)(3).

{¶ 15} This court reviews a trial court’s ruling on a motion to quash a subpoena for an abuse of discretion. *State ex rel. The V Cos. v. Marshall*, 81 Ohio St.3d 467, 469, 692 N.E.2d 198 (1998). “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 16} Appellants contend that the subpoenas seek the disclosure of privileged or otherwise protected material. Appellants note that they have no objection to the release of the Decedent’s potentially relevant tax and accounting records, including his income and compensation from Hinkley Lighting, subject to the standard protections afforded to such confidential and sensitive information; however, they do object to the Decedent’s family members having to divulge such personal financial information. Appellants further contend that the subpoena imposes an undue burden on them.

{¶ 17} We are not persuaded by these assertions. “Tax returns, while subject to heightened protection from disclosure, are not privileged.” *G.S. v. Khavari*, 11th Dist. Trumbull No. 2016-T-0036, 2016-Ohio-5187, ¶ 10, quoting *Garver Rd. Invest., L.L.C. v. Diversapack of Monroe, L.L.C.*, 12th Dist. Butler Nos. CA2013-10-181 and



CA2013-10-183, 2014-Ohio-3551, ¶ 14. No law supports the assertion that the financial records sought are privileged. See R.C. 2317.02 (listing privileged communications and acts, including those involving attorneys, physicians and other healthcare providers, clerics, and spouses).

{¶ 18} The Supreme Court of Ohio has noted that while tax returns are not, “privileged,” per se, they do “reflect intimate, private details of an individual’s life,” and citizens have an expectation of privacy with respect to their tax returns. *State ex rel. Fisher v. Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, 845 N.E.2d 500, ¶ 27, 32. However, the court further stated that such privacy interests must be weighed against the benefits of disclosure.

{¶ 19} *Fisher* involved the disclosure of a municipal employee’s individual tax returns that were required to be produced as part of an informal document request in a residency investigation. The *Fisher* Court determined that the individual’s right to privacy and the negative implications from the forced disclosure of significant personal information unrelated to the residency investigation outweighed the city’s stated reasons for seeking the tax returns. *Id.* at ¶ 32.

{¶ 20} *Fisher* is distinguishable from the instant matter. Here, there is a benefit to the disclosure of appellants’ financial records in that they are relevant to the damages sought by appellants in this matter, in particular the claimed loss of support by the Decedent. The extent to which the Decedent had been supporting appellants may be ascertainable from the financial records sought by the subpoena. It does not appear from the record that appellants sought an in camera inspection

of the documents so that the court could determine if any protection should be afforded to the documents sought. Because we do not know specifically what the financial records will show with regard to the support by the Decedent, we find that the benefit of the disclosure of the records outweighs appellants' privacy interests. We therefore find that the trial court did not abuse its discretion in denying the motion to quash subpoena on the grounds of privilege or protection.

**{¶ 21}** Likewise, appellants' undue burden argument lacks merit. Civ.R. 45(C)(1) provides that "[a] party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." The movant bears the initial burden of establishing an undue burden. *Hightower*, 10th Dist. Franklin No. 01AP-1175, 2002-Ohio-2245, at ¶ 17. When a motion to quash is made under Civ.R. 45(C)(3)(d) and establishes an undue burden,

the court shall quash or modify the subpoena unless the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated.

Civ.R. 45(C)(5).

**{¶ 22}** Appellants argue the undue burden is on *them*; however, the rule requires demonstration of any undue burden or expense "to the person subject to the subpoena." In this case, the subpoenas were directed to Bober Markey Fedorovich & Co., which was the accounting firm for the Decedent, appellants, and Hinkley Lighting. Appellants do not offer any specific assertions regarding time and

expense that the accounting firm would incur. It cannot automatically be assumed that it would be an undue burden for an accounting firm to be required to produce financial documents. *See, e.g., Tisco Trading USA, Inc. v. Cleveland Metal Exchange, Ltd.*, 8th Dist. Cuyahoga No. 97114, 2012-Ohio-493, ¶ 10.

{¶ 23} For the foregoing reasons, the trial court properly denied appellants' motion to quash subpoenas.

### **B. Appellants' Motion for Protective Order**

{¶ 24} Appellants also moved for a protective order with regard to the subpoenas. Civ.R. 26(C) provides,

Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; or the allocation of expenses; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

{¶ 25} "In determining whether to grant a protective order, a trial court must balance the competing interests to be served by allowing discovery to proceed against the harm which may result." *Alpha Benefits Agency v. King Ins. Agency*,

134 Ohio App.3d 673, 681-683, 731 N.E.2d 1209 (8th Dist.1999), citing *Arnold v. Am. Natl. Red Cross*, 93 Ohio App.3d 564, 576, 639 N.E.2d 484 (8th Dist.1994), citing *Doe v. Univ. of Cincinnati*, 42 Ohio App.3d 227, 231, 538 N.E.2d 419 (10th Dist.1988). In this case, CYC's need for the information must be balanced with the potential harm to appellants resulting from disclosure of the financial information.

{¶ 26} Appellants sought a protective order that would limit discovery to only the Decedent's taxes and finances and preclude discovery of financial information related to the Decedent's children. There is no justification for such limitation. Appellants, who are Decedent's children, are seeking damages for "loss of support from the reasonably expected earning capacity, and \* \* \* [loss of] prospective inheritance which said next of kin would have received at the time of decedent's death, had he lived his reasonably expected and anticipated natural life \* \* \* ." Thus, as discussed above, discovery of appellants' financial information, which will likely reflect the amount of support they had been receiving from Decedent, is indispensable to CYC's defense against appellants' claimed damages.

{¶ 27} Therefore, we conclude that any potential harm to appellants by disclosing their financial information is outweighed by CYC's need for the information to defend against appellants' claims. The trial court therefore did not err in denying the motion for protective order.

### **C. Hinkley Lighting's Motion to Quash Subpoena and for Protective Order**

**{¶ 28}** Preliminarily, we note that Hinkley Lighting filed a brief but did not appear at oral argument. Counsel for CYC stated that the parties had agreed to a protective order resolving the issues raised in Hinkley Lighting's appeal. However, there is nothing in the record before us reflecting the same. A review of the trial court's electronic docket does show that a joint motion for protective order was filed on August 31, 2021, after the commencement of this appeal, by Hinkley Lighting and CYC, but there does not appear to have been a ruling on the motion. Hinkley Lighting has not sought to dismiss its appeal, and we are therefore bound to consider and address the issues raised therein.

**{¶ 29}** Hinkley Lighting's original motion for protective order essentially acknowledged that it would produce the requested information but asked that the information be prevented from being disclosed beyond use in the instant suit. It appears that Hinkley Lighting was amenable to producing the records and states that it would have already agreed to a protective order but was never served with the one drafted by CYC. Hinkley reiterates the same position in its briefing in this matter. Accordingly, the court should have granted Hinkley Lighting's motion to the extent that it only sought a protective order to prevent disclosure of the financial records beyond the underlying suit. We therefore sustain Hinkley Lighting's second assignment of error and reverse the judgment of the trial court denying the motion

for protective order. Hinkley Lighting's first assignment of error, regarding the trial court's denial of its motion to quash subpoena, is therefore overruled as moot.

### **III. Conclusion**

**{¶ 30}** The trial court did not abuse its discretion in denying appellants' motion to quash subpoena and motion for protective order. Appellants' sole assignment of error is overruled.

**{¶ 31}** Hinkley Lighting's first assignment of error is overruled, and its second assignment of error is sustained. We reverse the denial of Hinkley Lighting's motion for protective order and remand the matter for further proceedings consistent with this opinion.

**{¶ 32}** This cause is affirmed in part, reversed in part, and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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FRANK D. CELEBREZZE, JR., JUDGE

MARY J. BOYLE, P.J., and  
JAMES A. BROGAN, J.,\* CONCUR

(\*Sitting by assignment: James A. Brogan, J., retired, of the Second District Court of Appeals.)