

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

SIHAR T. RAZICK, :
 :
 Plaintiff, :
 : No. 112343
 v. :
 :
 ZIAD KAMAL TAYEH, :
 :
 Defendant-Appellee. :
 :
 [Appeal by Nadwa Razick and :
 Hanee Razick]

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED
RELEASED AND JOURNALIZED: August 31, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-22-390983

Appearances:

Morganstern, MacAdams, & DeVito Co., LPA, Pamela J. MacAdams, and Luke T. Brewer, *for appellee*.

Rosenthal |Thurman | Lane, LLC, and Adam J. Thurman and Erik B. Quattro, *for appellants*.

MARY EILEEN KILBANE, J.:

{¶ 1} Nonparty appellants Nadwa Razick and Hanee Razick (“Razicks”) appeal from the domestic relations division’s order denying their combined motion

for protective order and motion to quash defendant-appellee Ziad Tayeh's ("Ziad") subpoenas issued to Verizon Wireless Services, LLC ("Verizon") and Verizon Security Assistance Team ("VSAT"). For the reasons that follow, we reverse the trial court's order.

Factual and Procedural History

{¶ 2} On August 1, 2022, plaintiff Sihar Razick ("Sihar") filed a complaint against her husband Ziad seeking a divorce; allocation of parental rights and responsibilities; designation as the sole residential parent and legal custodian to the couple's minor child, Z.K.T. (dob 10/9/2015); division of marital property; awards of child and spousal support; and an award of attorney fees and litigation expenses. On the same date, Sihar filed a motion for temporary support. On August 22, 2022, Ziad filed an answer and counterclaim. On September 6, 2022, Ziad filed a counter affidavit to Sihar's motion for temporary support, and Sihar filed a response to Ziad's counterclaim.

{¶ 3} On January 6, 2023, Ziad issued subpoenas to Verizon and VSAT seeking all documents including, but not limited to, the Razicks' electronically stored information, call logs, call history, GPS location data, and itemized billing statements for six cellular phone numbers allegedly assigned to the Razicks and any additional phone numbers associated with those phone numbers. The Razicks are not parties to the underlying divorce action, but are Sihar's brother and sister. Ziad sought the Razicks' cell phone records to establish through GPS location data that the Razicks resided with Sihar and, therefore, Sihar's daily expenses were inflated

and impacted her request for support. On January 17, 2023, the Razicks filed a combined motion for protective order and motion to quash Ziad's subpoenas to Verizon and VSAT ("combined motion"). On January 19, 2023, the trial court summarily denied the Razicks' combined motion.

{¶ 4} On January 20, 2023, the Razicks filed a timely appeal, presenting this assignment of error:

The trial court erred and abused its discretion when it denied appellant[s'] motion for protective order and to quash defendant/appellee's subpoenas directed to Verizon.

On the same date, the Razicks filed a motion to stay execution of the trial court's January 19, 2023 judgment entry pending appeal. The docket reflects no ruling on that motion.¹

Legal Analysis

{¶ 5} At issue in this appeal are the subpoenas filed by Ziad seeking the Razicks' cell phone records and the Razicks' motion for a protective order and motion to quash the subpoenas. The Razicks argue that the trial court's order denying their combined motion was a final, appealable order and, therefore, this court has jurisdiction to review the matter. Further, the Razicks deny any financial

¹ Following the filing of the instant appeal and as the underlying divorce case proceeded, Ziad filed a subpoena seeking the Razicks' J.P. Morgan Chase, N.A. records. On June 22, 2023, the Razicks filed a combined motion for protective order and to quash the subpoena. On July 7, 2023, the trial court denied the Razicks' motion. On July 19, 2023, the Razicks filed another appeal arguing that the trial court abused its discretion when it denied their combined motion for protective order and motion to quash Ziad's subpoena to J.P. Morgan Chase, N.A. *S.T.R. v. Z.K.T.*, 8th Dist. Cuyahoga No. 112995. That appeal is currently pending before this court. On July 19, 2023, the Razicks filed with the trial court a motion to stay pending appeal that the court granted.

support from Sihar and argue that the trial court abused its discretion when it denied their motion for protective order and thereby allowed the discovery of irrelevant and confidential cell phone records. The Razicks contend that the trial court abused its discretion when it denied their motion to quash because the subpoenas created an undue burden.

Final, Appealable Order

{¶ 6} We first address whether the trial court’s denial of the combined motion constituted a final, appealable order. Generally, discovery orders are interlocutory in nature and do not result in final, appealable orders. *Am. Environmental Group, Ltd. v. H.M. Miller Constr. Co.*, 8th Dist. Cuyahoga No. 100854, 2014-Ohio-4681, ¶ 11, citing *Walters v. The Enrichment Ctr. of Wishing Well, Inc.*, 78 Ohio St.3d 118, 120-121, 676 N.E.2d 890 (1997). However, exceptions to the general rule apply to orders that grant provisional remedies and satisfy certain statutory requirements. R.C. 2505.02(B)(4).

{¶ 7} A provisional remedy is an order in “a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, [and] suppression of evidence * * * .” R.C. 2505.02(A)(3). “An ancillary proceeding is one that aids another proceeding.” *Hanick v. Ferrara*, 7th Dist. Mahoning No. 18 MA 0073, 2019-Ohio-880, ¶ 22, citing *Bishop v. Dresser Industries, Inc.*, 134 Ohio App.3d 321, 324, 730 N.E.2d 1079 (3d Dist.1999).

{¶ 8} A motion to quash a discovery subpoena is generally considered “a proceeding ancillary to an action” and an order on that motion is a provisional remedy as defined in 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. Similarly, we find the appellants’ motion for protective order is a proceeding ancillary to the underlying divorce action and the trial court’s subsequent order on the motion a provisional remedy.

{¶ 9} In addition to finding that the trial court’s order granted a provisional remedy, the Razicks must demonstrate application of R.C. 2505.02(B)(4) to show the court rendered a final, appealable order. According to R.C. 2505.02(B)(4), the following requirements must apply to an order that grants or denies a provisional remedy:

(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.

R.C. 2505.02(B)(4)(a) and (b). Both of these statutory factors are met in the instant case.

{¶ 10} The Razicks sought to prevent disclosure of information related to their cell phones. The trial court’s January 19, 2023 order required Verizon and VSAT’s compliance with the subpoenas and disclosure of the requested cell phone

information. Once the requested discovery information is turned over pursuant to the subpoenas, the action on the subpoenas is determined and the Razicks cannot obtain a subsequent judgment on that issue in their favor. In other words, the Razicks cannot reverse disclosure of the cell phone records once those documents are shared with Ziad, thereby satisfying the terms of R.C. 2505.02(B)(4)(a).

{¶ 11} Similarly, following final judgment in the divorce complaint, the Razicks would not have a meaningful or effective remedy through a direct appeal because the disputed documents would have already been produced. R.C. 2505.02(B)(4)(b); see *DMS Constr. Ents., L.L.C. v. Homick*, 8th Dist. Cuyahoga No. 109343, 2020-Ohio-4919, ¶ 55 (final, appealable order where the trial court issued an order requiring production of information or materials.). The denial of the motion to quash and the motion for protective order required Verizon and VSAT to provide the requested phone records, “an act that cannot be remedied at the conclusion of the case after the documents have been produced.” *Godwin*, 2020-Ohio-4834, 160 N.E.3d 372, at ¶ 11, citing *Future Communications, Inc. v. Hightower*, 10th Dist. Franklin No. 01AP-1175, 2002-Ohio-2245.

{¶ 12} Upon determining that the Razicks have satisfied the terms of R.C. 2505.02(B)(4), we find the trial court’s denial of the Razicks’ combined motion was a final, appealable order.

Motion for Protective Order

{¶ 13} We review a trial court’s decision to deny a motion for protective order for an abuse of discretion. *Clinical Technology, Inc. v. NeuroTherm, Inc.*, 8th

Dist. Cuyahoga No. 99745, 2013-Ohio-3739, ¶ 4, citing *Scanlon v. Scanlon*, 2013-Ohio-2694, 993 N.E.2d 855, ¶ 24 (8th Dist.). The term abuse of discretion “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). An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, ¶ 35.

{¶ 14} The Razicks filed a motion for protective order to prevent disclosure of their Verizon and VSAT records pursuant to Ziad’s subpoenas. According to Civ.R. 26(C),

[u]pon motion [for a protective order] 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.

If the motion for a protective order is denied in whole or in part, the court, on terms and conditions as are just, may order that any party or person provide or permit discovery. The provisions of Civ.R. 37(A)(4) apply to the award of expenses incurred in relation to the motion.

Before any person moves for a protective order under this rule, that person shall make a reasonable effort to resolve the matter through discussion with the attorney or unrepresented party seeking discovery. A motion for a protective order shall be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph.

{¶ 15} Courts apply a balancing test to determine whether they should grant protective orders, weighing the competing interests served by allowing discovery to proceed against the harm that may result from production of the discovery. *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).

{¶ 16} The Razicks argued a protective order was warranted because the subpoenaed records were irrelevant and contained confidential business information that should not be disclosed. The Razicks argued that Ziad’s “inquiry into their phone records and location data [was] merely an attempt to harass and annoy [Sihar] and her family members” and such acts should not be condoned by the trial court. Combined motion, 3. The Razicks further argued that “[t]he issue of whether [Sihar was] using support from [Ziad] to support other individuals [could] be determined by alternative means that [did] not require [appellants] to disclose their private phone records to [Ziad].” Combined motion, 3.

{¶ 17} On appeal, the Razicks argue for the first time that disclosure of their clients’ names and contact information pursuant to the subpoenas is tantamount to disclosure of a client list because is a trade secret. The Razicks cite *Fred Siegel Co.*,

L.P.A. v. Arter & Hadden, 85 Ohio St.3d 171, 707 N.E.2d 853 (1999), and *Tomaydo-Tomahhdo L.L.C. v. Vozary*, 2017-Ohio-4292, 82 N.E.3d 1180 (8th Dist.), in support of their position and argue that trade secrets should not be disclosed pursuant to Civ.R. 26(C)(7). The Razicks further argue if disclosure of their clients' names and contact information is appropriate, the trial court should restrict disclosure as permitted under Civ.R. 26(C). Our review is limited to the record and arguments presented to the trial court. "It is fundamental to appellate review that issues not presented to the trial court may not be initially reviewed on appeal, such that a party may not assert new legal theories for the first time before the appellate court." *Garrick v. Greater Cleveland Regional Transit Auth.*, 8th Dist. Cuyahoga No. 99547, 2013-Ohio-5029, ¶ 22, citing *AMF, Inc. v. Mravec*, 2 Ohio App.3d 29, 32, 440 N.E.2d 600 (8th Dist.1981). Thus, we will not consider the Razicks' argument about trade secrets that was first raised on appeal.

{¶ 18} Applying the balancing test appropriate for a motion for protective order, we weigh Ziad's interests served by obtaining the cell phone records with the harm caused to the Razicks. Ziad allegedly seeks the Razicks' phone records to show the Razicks reside at Sihar's home thereby refuting the amount of support sought by Sihar. Yet, even if the phone records demonstrate the Razicks' presence at Sihar's home, this information alone does not establish that Sihar's claim for support is exaggerated and includes expenses for the Razicks. Further, the subpoenas are broad and request significant information beyond the GPS location data. While there is no right to privacy in one's cell phone records, generally, a person may have

an interest in their text messages. *State v. Mock*, 2018-Ohio-268, 106 N.E.3d 154, ¶ 25 (8th Dist.). And the information sought by Ziad including “electronically stored information” may incorporate the Razicks’ text messages.

{¶ 19} We find that the harm to the Razicks caused by the issuance of the subpoenas to Verizon and VSAT outweighs any benefit to Ziad to obtain the information from nonparties, the Razicks. For these reasons, we find the trial court abused its discretion when it denied the Razicks’ motion for protective order. We sustain the Razicks’ assignment of error and reverse the judgment of the trial court denying their motion for protective order. The Razicks’ argument regarding the trial court’s denial of its motion to quash the subpoenas is, therefore, overruled as moot.

{¶ 20} Judgment reversed.

It is ordered that appellants recover appellee from 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, domestic relations division, 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.

MARY EILEEN KILBANE, JUDGE

ANITA LASTER MAYS, A.J., and
EMANUELLA D. GROVES, J., CONCUR