UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SUSAN HERTZ, Individually and as Personal Representative of the Estate of Roger B. Hertz,

Plaintiff,

Case No. 07-14369
Honorable David M. Lawson

v.

SHELDON L. MILLER, SHELDON L. MILLER & ASSOCIATES, P.C., and LAW OFFICE OF SHELDON L. MILLER,

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION TO FILE CERTAIN EXHIBITS UNDER SEAL

The plaintiff in this case is the widow of Roger Hertz, in her individual capacity and as personal representative of the deceased's estate. She has filed a complaint alleging legal malpractice against defendant Sheldon Miller and his law firms, contending that Miller mishandled a wrongful death action to recover damages for Roger Hertz's death. After contentious and protracted pretrial proceedings, the Court ordered trial to begin on September 20, 2011. On Friday, September 16, 2011, the parties notified the Court that they had settled their case. Based on that representation, the Court cancelled the jury order. Because the settlement involved a decedent's estate and minor children are among the beneficiaries, the Court directed plaintiff's counsel to file promptly a motion to approve the settlement.

A proper motion to approve the settlement has not been filed, although the plaintiff filed papers on September 20, 2011 stating that she anticipates that the parties will agree to drafts of settlement documents. The papers do not describe the settlement terms, except to say that the plaintiff's minor children will be settlement beneficiaries. However, plaintiff's counsel has filed a

motion for permission to file under seal the exhibits to the anticipated motion. In support of the motion to seal, the plaintiff alleges that (1) the terms of the settlement are "confidential"; (2) the parties wish to keep the settlement terms confidential; (3) some of the beneficiaries to the settlement are minors; and (4) the plaintiff wants to keep from the public the settlement terms involving the minors. The Court is not able to discern from the motion any other grounds that might justify sealing the proposed motion exhibits.

It is well established that this Court, as every other court, "has supervisory power over its own records and files." *Nixon v. Warner Communications Inc.*, 435 U.S. 589, 598 (1978). Such authority includes fashioning protective orders that limit access to certain court documents. *See* Fed. R. Civ. P. 26(c). But the district court's power to seal records is subject to the "long-established legal tradition" of open access to court documents. *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1177 (6th Cir. 1983). "[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon*, 435 U.S. at 597 (footnotes omitted); *Brown & Williamson*, 710 F.2d at 1180 (ordering Federal Trade Commission documents unsealed because "[t]he public has a strong interest in obtaining the information contained in the court record."); *see also In re Perrigo Co.*, 128 F.3d 430, 446 (6th Cir.1997) (Moore, J., concurring in part and dissenting in part) (declaring that "[s]ealing court records . . . is a drastic step, and only the most compelling reasons should ever justify non-disclosure of judicial records"). As the court of appeals explained in *In re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470 (6th Cir. 1983), there is a "presumptive right" of public access to court records, which permits inspection and copying.

> The recognition of this right of access goes back to the Nineteenth Century, when, in *Ex Parte Drawbraugh*, 2 App. D.C. 404 (1894), the D.C. Circuit stated: "Any

> attempt to maintain secrecy, as to the records of this court, would seem to be inconsistent with the common understanding of what belongs to a public court of record, to which all persons have the right of access."

Id. at 474 (citations omitted).

In exercising its discretion to seal judicial records, the Court must balance the public's common law right of access against the interests favoring nondisclosure. *See Nixon*, 435 U.S. at 599, 602 (stating that Court must consider "relevant facts and circumstances of the particular case"); *Belo Broadcasting Corp. v.. Clark*, 654 F.2d 423, 434 (5th Cir. 1981); *see also Bank of Am. Nat'l Trust & Sav. Ass'n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986) (court has a duty to "balance the factors favoring secrecy against the common law presumption of access"); *Newman v. Graddick*, 696 F.2d 796, 803 (11th Cir. 1983) ("The historic presumption of access to judicial records must be considered in the balance of competing interests.").

"Only the most compelling reasons can justify non-disclosure of judicial records." *In re Knoxville News-Sentinel*, 723 F.2d at 476. Certainly, the Court has the discretion to limit this access in extraordinary cases, such as when those seeking access intend to "gratify private spite or promote public scandal through the publication of the painful and sometimes disgusting details of a divorce case," or use court "files to serve as reservoirs of libelous statements for press consumption, or as sources of business information that might harm a litigant's competitive standing." *Nixon*, 435 U.S. at 598. "Trial courts have always been afforded the power to seal their records when interests of privacy outweigh the public's right to know. But . . . the decision as to when judicial records should be sealed is left to the sound discretion of the district court, subject to appellate review for abuse." *Knoxville News-Sentinel*, 723 F.2d at 474.

It was observed in *Tinman v. Blue Cross & Blue Shield of Michigan*, 176 F. Supp. 2d 743 (E.D. Mich. 2001), that in order to have confidential information in a court record kept under seal, the movant must make a specific showing that disclosure of information would result in some sort of serious competitive or financial harm. *Id.* at 745. But the existence of a "confidentiality agreement between the parties does not bind the court in any way." *Brown & Williamson*, 710 F.2d at 1180. "The mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). A showing of substantial personal or financial harm is a prerequisite to an order sealing a file. In this case, no such showing has been made. The only grounds offered in support of sealing the proposed settlement exhibits are the parties' desire to keep them secret and the status of some settlement beneficiaries as minors. More is required to justify the "drastic step" of sealing the settlement documents.

Accordingly, it is **ORDERED** that the motion to seal proposed exhibits to the motion to approve the settlement [dkt. #158] is **DENIED**.

It is further **ORDERED** that the plaintiff must file her complete motion to approve the proposed settlement, together with supporting exhibits, **on or before September 23, 2011.**

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 21, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 21, 2011.

s/Deborah R. Tofil
DEBORAH R. TOFIL