

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DELAWARE VALLEY AESTHETICS, PLLC	:	
d/b/a RUMER COSMETIC SURGERY, et al.	:	
	:	
v.	:	CIVIL NO. 20-0456
	:	
JOHN DOE 1, et al.	:	

MEMORANDUM

Kenney, J.

June 30, 2021

Dr. Kathy Rumer, a surgeon performing gender reassignment surgeries, has discovered a website with statements allegedly aiming to tarnish her reputation in the medical community. Dr. Rumer claims that this website is maintained by Defendant, one of her former patients who underwent gender reassignment surgery, as well as an unknown defendant (John Doe 1). The complaint alleges Libel Per Se, Commercial Disparagement, Intentional Interference with Business Relationships, and Invasion of Privacy.

Presently before the Court is Defendant's Motion to Proceed Anonymously, in which she argues that her name and contact information should be stricken from the record given the safety concerns regarding her status as a transgender woman. Dr. Rumer does not oppose the motion. In the motion, Defendant seeks to strike certain items from the currently public filings and to proceed anonymously.

I. Factual Background

Dr. Kathy Rumer is a leading aesthetic and reconstructive plastic surgeon. Plaintiff's First Amended Complaint ("Pl.'s Am. Compl.") ¶ 7, Delaware Valley v. Doe, No. 20-456 (Dec. 4, 2020), ECF No. 11. Dr. Rumer maintains her business and operates at Delaware Valley Aesthetics, PLLC, located in Ardmore, which is also known as "Rumer Cosmetics" ("Rumer

Cosmetics”). *Id.* ¶ 1. She offers a host of surgeries and is best renowned for gender reassignment surgery. *Id.* ¶ 6-7.

In or around 2019, Dr. Rumer discovered allegedly defamatory statements about her on a website called “Kathy Rumer’s Anonymous,” a blog dedicated to “Chasing the #ButcherofArdmore.” *Id.* ¶ 10. Dr. Rumer alleges that Defendant, a former patient who went to considerable lengths to conceal her identity, contributed to and updated the website. *Id.* ¶ 4, 11-12. The website accuses Dr. Rumer of false advertisements, forcing a patient to help perform her own surgery, among other allegations, and also labeled Dr. Rumer as the “Butcher of Ardmore.” *Id.* It also disclosed Dr. Rumer’s home address. *Id.* Dr. Rumer has received threatening emails allegedly sent by Defendant. *Id.* ¶ 13. Dr. Rumer also alleges that another adult individual (“John Doe 1”), whose identity is unknown, has also defamed and harmed Dr. Rumer’s reputation. *Id.* ¶ 3. At this stage, Dr. Rumer does not know whether Defendant and John Doe 1 acted separately or in concert. *Id.* ¶ 4.

After seeing these blogs, prospective and existing customers approached Dr. Rumer and commented on and questioned those statements. *Id.* ¶ 22. Alleging losses as a direct result of damage to her business reputation, Dr. Rumer filed suit against “John Doe 1 and Jane Doe 1” for Libel Per Se, Commercial Disparagement, Intentional Interference with Business Relationships, and Invasion of Privacy. *See* ECF No. 1. After considerable effort, Dr. Rumer allegedly discovered that Defendant is Jane Doe 1. Dr. Rumer amended the pleading to include Defendant’s name and home address. *See generally* Pl.’s Am. Compl. As a response, Defendant filed the instant motion to strike and to allow her to proceed pseudonymously, which Dr. Rumer does not oppose. *See* Defendant’s Motion to Strike and to Allow Defendant to Proceed

Pseudonymously (“Def.’s Mot.”), Delaware Valley v. Doe, No. 20-456 (June 7, 2021), ECF No. 20.

II. Discussion

Defendant asks the Court to grant her motion to proceed anonymously because she reasonably fears possible harassment and death threats because of her status as a transgender woman. She asserts that, as a result of this lawsuit, her personal information has already appeared on a notorious internet forum that directs harassment and threats to transgender women. Def.’s Mot. at 2 n.2. She further claims that her identity has no bearing on the resolution of the case, and that there is a protected First Amendment right to talk about sensitive topics anonymously online. *Id.* at 4-5.

The Federal Rules of Civil Procedure require that the title of a complaint must name all parties, and the title of other pleadings must name the first party on each side. Fed. R. Civ. P. 10(a). This rule is justified by the strong public interest in knowing who is using the court and promoting access to civil judicial records. *Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011); *Doe v. Provident Life & Acc. Ins. Co.*, 176 F.R.D. 464, 466 (E.D. Pa. 1997).

However, in exceptional cases when there is “a strong social interest in concealing the identity of the plaintiff,” courts will allow a litigant to proceed anonymously. *Doe v. Borough of Morrisville*, 130 F.R.D. 612, 614 (E.D. Pa. 1990); *see, e.g., Roe v. Wade*, 410 U.S. 113 (1973). Mere embarrassment or economic harm is not enough to justify proceeding anonymously. *Borough of Morrisville*, 130 F.R.D. at 614. Instead, the litigant must show a reasonable fear of severe physical harm. *Megless*, 654 F.3d at 408. Courts have clarified that similar justifications of anonymity also apply to defendants. *Provident Life*, 176 F.R.D. at 466. In the cases of plaintiffs seeking anonymity, such exceptions are justified in part by the public interest in

preserving the courage to sue. *See Provident Life*, 176 F.R.D. at 467 (considering the deterrence of future meritorious litigation if plaintiffs are forced to identify themselves).

Defendant's motion is unopposed. However, given that the interests involved in pending litigation may extend beyond the parties, the Court still needs to determine whether there is sufficient ground to grant the motion. *Doe v. Triangle Doughnuts, LLC*, No. 19-CV-5275, 2020 WL 3425150, at *4 (E.D. Pa. June 23, 2020); *but see Malibu Media, LLC v. Doe*, No. CIV.A. 14-3945 MAS, 2015 WL 3795716, at *4 (D.N.J. June 18, 2015) (holding that absent objection from the plaintiff, the court will grant the defendant's motion to proceed anonymously until the end of discovery). When a litigant sufficiently alleges a reasonable fear of severe harm, courts must employ a balancing test of competing public and private interests in access to court and personal privacy in deciding whether to allow anonymity. *Megless*, 654 F.3d at 408. Among the examples of circumstances where courts have granted leave to proceed anonymously listed by the *Borough of Morrisville* court, transgender status is one of them. 130 F.R.D. at 614.

In *Megless*, the Third Circuit articulated a test that had been widely applied by the lower courts in determining whether a motion to proceed anonymously should be granted. *Megless*, 654 F.3d at 409 (citing *Provident Life*, 176 F.R.D. at 467). The factors in favor of allowing a litigant to proceed anonymously are:

“(1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant's identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; and (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives.”

Id. The Third Circuit also identified factors that cut against allowing a litigant to proceed anonymously:

“(1) the universal level of public interest in access to the identities of litigants; (2) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant's identities, beyond the public's interest which is normally obtained; and (3) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated.”

Id. The same factors apply when a defendant seeks to proceed anonymously. *See, e.g., Strike 3 Holdings, LLC v. Doe Subscriber Assigned IP address 173.63.148.25*, No. CV1910252KMMAH, 2020 WL 5525549 (D.N.J. Sept. 14, 2020).

A. The Factors in Favor of Allowing Litigants to Proceed Anonymously

1. The extent to which the identity of the litigant has been kept confidential.

The first factor concerns whether the defendant has kept her identity confidential. This factor refers not to whether the identity has been disclosed to the public in the pleadings, but before the lawsuit is filed. *Doe v. United Behav. Health*, No. CIV.A. 10-5192, 2010 WL 5173206, at *2 (E.D. Pa. Dec. 10, 2010). In *United Behavioral Health*, the plaintiff's history of mental illness was disclosed only to closest family, friends, and treating physicians. 2010 WL 5173206, at *2. The court held that this factor weighed in favor of allowing the plaintiff to proceed anonymously. *Id.*; *see also Doe v. Hartford Life & Acc. Ins. Co.*, 237 F.R.D. 545, 550 (D.N.J. 2006) (stating that since before the suit was commenced, the plaintiff kept his illness confidential except for close friends or families, the first factor found in favor of the plaintiff).

Here, it is unclear whether Defendant's transgender status was kept confidential before the lawsuit was filed. While Defendant disputes the allegation that she is the blogger in question, she claims that if she were the blogger, such confidentiality should remain undisturbed by the lawsuit because she has tried to keep her identity confidential by maintaining an anonymous

online presence. However, the fact that Defendant allegedly anonymously attacked Dr. Rumer online is a separate issue from whether she kept her transgender status confidential in her community. That one has the right to make anonymous statements online has no bearing on determining whether one is essentially estopped from concealing an aspect of one's identity in a lawsuit due to prior disclosure of that aspect to the public. This factor revolves around whether Defendant has concealed her transgender status in her community, whereas the record at this point shows only that she maintained an online presence on the blog about Dr. Rumer.

Defendant's strongest argument under this factor is that if she is not the author, she should not suffer from public danger for the conduct of others. Def.'s Mot. at 3 n.4. However, Defendant still needs to illustrate that she has taken steps to keep her identity confidential from at least the larger community. Further, if the fact that a defendant is not recognized with full certainty as the wrongdoer suffices to grant a motion to proceed anonymously, there will be a flood of motions because before discovery, or even final judgment, such uncertainty exists in many cases.

Given that nothing in the record shows whether Defendant has disclosed her transgender status, this factor is neutral without additional evidence.

2. The bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases.

The second factor asks about the harm and the substantiality of that harm that a litigant will suffer if her identity were disclosed. Economic embarrassment and fear of limited professional opportunities are an insufficient basis for proceeding anonymously. *Doe v. Triangle Doughnuts, LLC*, No. 19-CV-5275, 2020 WL 3425150, at *5 (E.D. Pa. June 23, 2020); *but see Provident Life*, 176 F.R.D. at 468 (admitting the fear of stigma in professional life as a legitimate basis of fear).

Other cases have found this factor weighs in favor of plaintiffs who seek to proceed anonymously because the litigation reveals their transgender identity. In *Triangle Doughnuts*, for example, a transgender plaintiff brought a discrimination claim against her employer because of harassment from coworkers and customers who consistently misgendered her. *Triangle Doughnuts*, 2020 WL 3425150. Seeking to proceed anonymously, the plaintiff cited worries of additional threats or violent interactions with coworkers accompanying an identity disclosure. *Id.*, at *5. The court held that this fear was reasonable and substantial. *Id.*; see also *Doe v. Univ. of Scranton*, No. 3:19CV1486, 2020 WL 1244368, at *2 (M.D. Pa. Mar. 16, 2020) (holding that because of the known threat of violence to the LGBTQ community and previous instances of physical assault and threat to murder accompanying the disclosure of sexual orientation, there was reasonable fear).

This factor cuts in favor of Defendant. Both parties agree that Defendant reasonably fears violence from the disclosure of her trans identity. Indeed, Defendant notes that her personal information has, as a result of this litigation, appeared on internet forums notorious for directing harassment and death threats toward transgender women, and has offered to present such information for in-camera review. Therefore, Defendant has stated a substantial basis upon which disclosure of her identity is feared.

3. The magnitude of the public interest in maintaining the confidentiality of the litigant's identity.

The third factor measures the public interest in keeping the identity confidential. This factor is usually discussed in the context of plaintiffs seeking to proceed anonymously because there is a strong public interest in making sure plaintiffs are not deterred from bringing meritorious claims for fear that their identity will be disclosed. *Megless*, 654 F.3d at 410. Defendant argues that this factor cuts in favor of anonymity because keeping her – the

defendant's rather than a potential plaintiff's – identity anonymous will not deter plaintiffs from bringing meritorious claims in the future.

In the procedural posture of this case, the usual public interest in maintaining the confidentiality of the plaintiff's identity does not apply. In *Triangle Doughnuts*, the Court noted the “important societal issues of equity and persona value” when it found the public interest favored allowing a transgender plaintiff to proceed anonymously in her claim seeking redress for harm suffered because of her identity. *Triangle Doughnuts*, 2020 WL 3425150, at *6; *see, e.g., Provident Life*, 176 F.R.D. at 468 (stating that there is a public interest in preventing stigmatization of litigants with mental illness). Because Defendant is being sued – rather than seeking access to the courts herself – for alleged defamation, those public interests in confidentiality are not relevant here and will find neither for nor against Defendant.

However, there are other public interests related to the First Amendment rights and public safety involved here. It is indisputable that there is a protected First Amendment right to engage in anonymous communication, including on the Internet. *Reno v. ACLU*, 521 U.S. 844, 870 (1997). “[A]ny ruling that does not fully protect the anonymity of the anonymous Internet speaker may deter anonymous Internet speech.” *Melvin v. Doe*, 575 Pa. 264, 280 n. 11 (2003). Further, there is a public interest in ensuring the safety of minority groups, and as is discussed above, revealing Defendant's identity has led to a threat to her safety.

On the other hand, courts in the Third Circuit, including this Court, have repeatedly stated that the protection of anonymity is not absolute, especially “where the anonymous speaker allegedly made defamatory statements and disclosed confidential insider information online.” *McVicker*, 266 F.R.D. at 94; *see also Patrick Collins, Inc. v. John Does 1-11*, No. CIV.A. 12-3146, 2013 WL 395497, at *3-4 (E.D. Pa. Jan. 31, 2013) (holding that protection of First

Amendment right is not absolute). Cases from this Court and in Pennsylvania also support this proposition. *See, e.g., First Senior Fin. Grp. LLC v. Watchdog*, No. 12-CV-1247, 2012 WL 12903829, at *1 n.1 (E.D. Pa. Nov. 8, 2012) (“this right to engage in anonymous communication does not amount to an absolute protection, particularly if the speech involved constitutes to actionable defamation”); *Polito v. AOL Time Warner, Inc.*, No. Civ.A. 03CV3218, 2004 WL 3768897, at *4 (Com. Pl. 2004) (holding that the protection of First Amendment right should be balanced against the need to assure answer from tortious behaviors). However, the Court has located no case law in this Circuit that discusses balancing the First Amendment right to speak anonymously online against the protection from defamation in the context of a defendant’s motion to proceed anonymously.

Courts in this and other circuits have considered such balancing in the procedural context of the plaintiff seeking information of the defendant’s identity necessary to prosecute defamation. *See, e.g., Thomas M. Cooley L. Sch. v. Doe I*, 300 Mich. App. 245, 257-59 (2013). Courts recognize the importance of speaking anonymously on sensitive topics without the fear of embarrassment by frivolous lawsuits. *Pilchesky v. Gatelli*, 12 A.3d 430, 440 (Pa. Super. Ct., 2011) (citing *Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 767 (N.J. Super. Ct. App. Div. 2001)). Although different standards are adopted in different jurisdictions within this Circuit for this issue, all courts acknowledge that allowing the revelation of identity too easily will chill the potential exercise of First Amendment rights and lead to extra-judicial self-help. *See Dendrite*, 775 A.2d; *Doe v. Cahill*, 884 A.2d 451 (Del.2005); *Melvin v. Doe*, 575 Pa. 264 (2003).

To resolve this dilemma, courts compare the First Amendment rights with the strength of the prima facie case. *Dendrite*, 342 N.J. Super. at 141(adopting the standard for motion to dismiss as the standard of balancing interests); *Cahill*, 884 A.2d at 457-58 (adopting the standard

for summary judgment as the standard of balancing interests). The Pennsylvania Superior Court adopts a modified *Dendrite/Cahill* test that requires the plaintiff to plead a prima facie case sufficient to survive a motion for summary judgment and the court to balance the defendant's First Amendment right and the strength of prima facie case. *Pilchesky*, 12 A.3d at 442-46. This standard is set to ensure that the plaintiff does more than simply plead the case to discover the defendant's identity. *Id.* at 443.

While this matter has survived Defendant's motion to dismiss, there is no definitive evidence showing that Defendant will win this lawsuit at this early stage. Meanwhile, due to the same uncertainty of the author's identity, the strength of the prima facie case will not outweigh the First Amendment right in the context of this motion to proceed anonymously. As a result, there is a public interest in concealing Defendant's identity in order to prevent deterrence of First Amendment rights and to protect her from alleged threats of harm. Therefore, this factor finds for Defendant.

4. Whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identities.

This factor turns on whether the issues presented are purely legal, or whether there is some other reason why the identities of the parties are weak. If the issues in question are fact-sensitive, then this factor weighs against anonymity. *Megless*, 654 F.3d at 410; *United Behav. Health*, 2010 WL 5173206, at *4.

The issue presented here is whether the statements on the website are defamatory and false and whether the author knows the falsity. Under Pennsylvania law, a claim of commercial disparagement requires the plaintiff to show that the publisher knows the falsity of the statement or acts recklessly. *McNulty v. Citadel Broad. Co.*, 58 F. App'x 556, 566 (3d Cir. 2003).

Defendant's identity may bear on the merit of the claim, since knowing that she is a former

patient of Dr. Rumer's and that she underwent a gender reassignment surgery performed by Dr. Rumer may have implications on the knowledge of the blog author regarding the authenticity of the statements. For example, Dr. Rumer alleges in her complaint that the blog author labels surgeries as "botched" without supporting facts. Pl. 's Am. Compl. ¶ 12. Although Defendant's identity is not necessarily required to prove the cause of action, her identity may help determine whether the blog author knew the falsity of the statement or was acting recklessly. Therefore, this factor weighs against Defendant.

5. The undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified.

The fifth factor asks whether allowing the litigant to proceed anonymously will harm the resolution of the claim on merits. Generally, for this factor, the Court evaluates whether the plaintiffs will refuse to pursue the lawsuit if they are required to identify themselves. *See United Behav. Health*, 2010 WL 5173206, at *4; *Doe v. Megless*, No. CIV.A. 10-1008, 2010 WL 3076246, at *4 (E.D. Pa. Aug. 5, 2010) (*Megless II*), *aff'd*, 654 F.3d 404 (3d Cir. 2011). There is no implication that forcing Defendant to identify herself will deter Dr. Rumer from pursuing this litigation. Rather, "a plaintiff's stubborn refusal to litigate openly by itself cannot outweigh the public's interest in open trials." *Doe v. Trishul Consultancy, LLC*, No. CV1816468FLWZNQ, 2019 WL 4750078, at*5 (D.N.J. Sept. 30, 2019) (quoting *Megless*, 654 F.3d at 410). In *Triangle Doughnuts*, the court raised the concern that in the context of a sexual assault case, forcing the plaintiff to disclose the identity would deter litigations by people who are similarly harmed due to fear of physical harm. 2020 WL 3425150, at *6.

The concern in the present case is a bit different. There is no similar concern that Defendant's fear of physical harm will defer future litigation by other plaintiffs. However, there

is a nontrivial possibility that concealing the identity of Defendant may deter future cases brought by people who are similarly harmed as Dr. Rumer. One of the major purposes of a lawsuit is to deter people from similar wrongdoings, and if anonymous defamatory statements are left unidentified, the deterrence effect is too weak to work. Therefore, this factor weighs against Defendant.

6. Whether the party seeking to sue pseudonymously has illegitimate ulterior motives.

The last factor asks if the litigant has an ulterior motive in seeking anonymity. If there is no accusation from the other party, then the court will consider this factor in favor of the movant. *See United Behav. Health*, 2010 WL 5173206, at *4 (holding that since there was no accusation from the Defendant, this factor weighs in favor of the Plaintiff); *Megless*, 654 F.3d at 411 (standing for the same proposition). Further, the court will not assume an ulterior motivation with bare assertions. *F.B. v. E. Stroudsburg Univ.*, No. 3:09CV525, 2009 WL 2003363, at *4 (M.D. Pa. July 7, 2009). There is no accusation from Dr. Rumer that Defendant is filing this motion for illegal or ulterior behavior, so this factor weighs in favor of Defendant.

Therefore, of the six factors, the second, the third, and the sixth factors weigh in favor of Defendant. The reasonable fear of physical harm and the protected First Amendment right to speak anonymously online are to be balanced against the public interest in open proceedings, the resolution of the present case to deter future allegedly defamatory behavior, and any competing public interest set forth below.

B. The Factors Against Allowing Litigants to Proceed Anonymously

Since Defendant is not a public figure, and neither does Dr. Rumer oppose this motion, there is only a general public interest in knowing the litigant's identity and no particular public interest in either the subject matter or the litigant. *See United Behav. Health*, 2010 WL 5173206,

at *4. “[W]e must acknowledge the thumb on the scale that is the universal interest in favor of open judicial proceedings.” *Megless*, 654 F.3d at 411. On the other hand, courts in this Circuit have only recognized particularly strong interests when public figures are presented. *See Provident Life*, 176 F.R.D. at 469 (holding that since no public figure is involved, public interest in the case is only general public interest obtains in any civil action).

Nonetheless, the Third Circuit clarified that this list of factors is non-exhaustive, and thus when relevant, courts may consider other public or private interests. *Megless*, 654 F.3d at 409. Dr. Rumer alleges that there are existing or prospective customers who have seen the posts approaching her, and thus there is interest concerned beyond the parties of the lawsuit. Pl.’s Am. Compl. ¶ 22. Further, there is another militating public interest against keeping Defendant’s identity confidential in knowing who posted defamatory statements online, especially for those potentially similarly harmed. As is discussed above, knowing the identity encourages future litigation because of the deterrence effect of open litigation.

Since there is the general public interest in access to the identity of litigants that exists in almost all civil actions and particular public interest in the lawsuit and Defendant’s identity, these factors weigh against Defendant proceeding anonymously.

III. Conclusion

The reasonable and legitimate private interest in privacy and safety and the First Amendment right to speak anonymously online are balanced against the vital public interest in open judicial proceedings, resolution of the current case, deterrence of defamatory behaviors, and encouragement of future similar claims. Considering the public and private interests at play and the fact that Dr. Rumer does not oppose the motion, the Court will grant the motion to strike and proceed anonymously to alleviate Defendant’s concern. However, the Court reserves the

right to sua sponte change the Court's ruling in this regard should facts relating to confidentiality come to light.

BY THE COURT:

/s/ Chad F. Kenney

CHAD F. KENNEY, JUDGE