

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

V.

BROOKSHIRE GROCERY COMPANY

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No. 5:06CV115

ORDER

Before the Court is Plaintiff Equal Employment Opportunity Commission's Motion for Protective Order to Protect Identity of Individual on Whose Claims its Lawsuit is Based (Docket Entry # 3). The Court, having reviewed the motion, the response, and the reply, is of the opinion the motion should be **GRANTED**.

BACKGROUND

Plaintiff Equal Employment Opportunity Commission ("Plaintiff") claims that Brookshire Grocery Company ("Defendant") violated Section 102(a) of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12112(a) when it demoted and constructively discharged Jane Doe. Plaintiff EEOC also claims Defendant violated Section 102(d) of Title I of the ADA, 42 U.S.C. §12112(d), when it subjected Jane Doe to a prohibited examination and inquiry. Additionally, Plaintiff claims that Defendant's violations of the ADA were intentional and were done with malice or with reckless indifference to Jane Doe's federally protected rights.

PLAINTIFF'S MOTION

Currently, Plaintiff moves for a protective order which will allow it to proceed with litigation of this action without revealing the individual's real name who filed EEOC Charge Number 310-2005-01872 and which will also prohibit all other parties from revealing that name. Plaintiff points

out Federal Rule of Civil Procedure 10(a) provides that in the Complaint, the title of the action shall include the names of all *parties*. FED. R. CIV. P. 10(a). Plaintiff states the individual on whose claims Plaintiff's lawsuit is based is not a party to this action.

Plaintiff further asserts the individual on whose claims Plaintiff's lawsuit is based has been diagnosed with Hepatitis C, and in Plaintiff's Complaint, Plaintiff alleges Brookshire Grocery Company discriminated against that individual in violation of the Americans with Disabilities Act because she has Hepatitis C. Plaintiff states the individual believes if others, including her current employer, learn of her diagnosis, she will be embarrassed, stigmatized, and subjected to further discrimination. Plaintiff states the matters involved in this lawsuit are matters of a sensitive and highly personal nature, making this a case in which the anonymity of the individual on whose claims the EEOC brings this lawsuit should be preserved.

DEFENDANT'S RESPONSE

In response, Defendant asserts the basic principle set forth by the federal rules is that the identity of the real parties in interest to a lawsuit should not be concealed. According to Defendant, there is a constitutionally-embedded presumption of openness in judicial proceedings, and in this instance, the Court should use its discretion to uphold the presumption. Defendant contends there has been no showing by the real party in interest or by the EEOC that the Hepatitis C virus carries with it some overwhelming stigma that would result in harm to the real party in interest by the mere mention of her name in association with her Hepatitis C positive status. Defendant argues Plaintiff's request to proceed under a fictitious name is an unnecessary complication in this matter.

DISCUSSION

Federal Rule of Civil Procedure 17(a) provides that every action shall be prosecuted in the

name of the real party in interest. Defendant asserts Plaintiff is the real party in interest, and there has been no showing that Hepatitis C carries a stigma in society or is a cause of embarrassment or routine discrimination. However, as stated by Plaintiff, Defendant has not cited a case which holds that FED. R. CIV. P. 17(a) requires the identification of an individual whose claims form the basis of an EEOC lawsuit. No other federal or local rules requires the identification of the individual on whose claims Plaintiff's EEOC lawsuit is based. This Court has discretion to allow this lawsuit to proceed without revealing the identity of the individual on whose behalf the EEOC has brought this lawsuit. *See, e.g., EW v. New York Blood Center and United Blood Services*, 213 F.R.D. 108, 110 (E.D. N.Y. 2003). The Court finds the matters involved in this case are matters of a sensitive and highly personal nature, justifying the issuance of a protective order to protect the anonymity of the individual on whose claims the EEOC brings this lawsuit. Accordingly, it is

ORDERED that Plaintiff Equal Employment Opportunity Commission's Motion for Protective Order to Protect Identity of Individual on Whose Claims its Lawsuit is Based (Docket Entry # 3) is **GRANTED**. It is further

ORDERED that Plaintiff may proceed with this litigation without revealing the real name of the individual on whose claims its lawsuit is based. It is further

ORDERED that all other parties are prohibited from revealing that name, and the individual on whose claims Plaintiff's lawsuit is based shall be referred to as "Jane Doe" throughout this litigation.

SIGNED this 23rd day of October, 2006.


CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE