SUPREME COURT OF FLORIDA

CASE NO: 83,218
District Court of Appeal
5th District - No. 93-2808

SHIRLEY DOELFEL, ET VIR.

Petitioners,

vs.

THOMAS P. TREVISANI, M.D., ET AL.

Respondents.
_____/

RESPONDENTS', THOMAS P. TREVISANI, M.D., AND THOMAS P. TREVISANI, M.D., P.A.,

INITIAL BRIEF

TARASKA, GROWER, UNGER
& KETCHAM, P.A.
Attorneys for Defendants
111 North Orange Avenue
Suite 1700
Orlando, FL 32801
(407) 423-9545

By: James M. Miller
James M. Miller, Esquire
Florida Bar No: 405220
Hector A. Moré, Esquire
Florida Bar No: 328944

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INTRODUCTION

Petitioners, Shirley Doelfel and John Doelfel, her husband (Plaintiffs), filed a Notice To Invoke Discretionary Jurisdiction of the Supreme Court of Florida on February 11, 1994. This Notice To Invoke Discretionary Jurisdiction was sought to review a District Court of Appeal decision rendered on February 4, 1994. The decision of the Fifth District Court of Appeal upheld an order entered by the Honorable William C. Gridley on November 10, 1993, in the Circuit Court of the 9th Judicial Circuit, in and for Orange County, Florida. Under the terms of the order at issue, the Petitioner, Shirley Doelfel, has been ordered to sign medical authorizations for the release of her medical records to the Respondents, Thomas P. Trevisani, M.D., and Thomas P. Trevisani, M.D., P.A. (Defendants). This Court entered an order postponing decision on jurisdiction and required Petitioner to file a brief on the merits on or before March 15, 1994. Additionally, this Court ordered the Respondents herein to file a brief on the merits twenty (20) days after service of Petitioner's brief on the merits. The Petitioner's brief on the merits was served on March 14, 1994. Respondents, therefore, file this their initial brief on the merits.

JURISDICTION

This Court has jurisdiction over this matter and, pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(vi). The opinion of the Fifth District Court of Appeal certifies conflict of its decision with the decision of other district courts of appeal.

FACTS

This is a medical negligence action in which Plaintiff, Shirley Doelfel, alleges that the care and treatment rendered to her by Defendant, Thomas P. Trevisani, M.D., fell below comparable standards of care in performing a surgical procedure on her. A loss of consortium claim has also been made on behalf of John G. Doelfel, husband of Shirley Doelfel.

On August 5, 1993, counsel for Respondents filed Notices of Production from Non-Party, pursuant to Florida Rules of Civil Procedure 1.351(b) to Petitioner Shirley Doelfel's past and present treating physicians in Pennsylvania and Florida (Appendix 1). In doing so, the Respondents were attempting to obtain medical records from numerous health care providers both in the State of Florida and in the State of Pennsylvania to discover information relating to Shirley Doelfel's past and present medical condition.

On or about August 11, 1993, Petitioners filed objections to these Notices of Production from Non-Party without citing any specific reasons for their objection (Appendix 2).

On August 25, 1993, Respondents then filed a Request to Produce, pursuant to Florida Rules of Civil Procedure 1.350, asking the Petitioners to produce any and all medical records which they had in their possession relating to the care and treatment rendered by any of Shirley Doelfel's past or present treating physicians (Appendix 3). Included within the Request to Produce was correspondence asking the Petitioners to sign an Authorization Form

for the release of these medical records, should they not have the records in their possession (Appendix 4).

On August 30, 1993, the Petitioners filed a Response to the Request to Produce, indicating that no medical records were in their possession (Appendix 5). Counsel for Petitioners also notified the Respondents at that time that the Petitioners would not be signing the Authorization Form for release of medical records.

On September 8, 1993, the Respondents then filed a Motion to Compel Shirley Doelfel to sign an Authorization Form for the release of medical records (Appendix 6). A hearing on the Motion to Compel was held on November 4, 1993, before the Honorable William C. Gridley, a circuit court judge in the Circuit Court of the 9th Judicial Circuit, in and for Orange County, Florida. Judge Gridley, after argument, granted Respondents' Motion to Compel and, on November 10, 1993, entered an order directing the Petitioners to sign an authorization for release of medical records and to return same to counsel for Respondents (Appendix 7).

On December 3, 1993, Petitioners petitioned the Fifth District Court of Appeal for a Writ of Certiorari, quashing the order of the trial court (Appendix 8). On December 15, 1993, the Fifth District Court of Appeal ordered Respondents to file and show cause why the Petition for Writ of Certiorari should not be granted, which Respondents filed same on January 4, 1994 (Appendix 9 and 10). Petitioners then filed a Reply to Respondents' Response to Petition for Writ of Certiorari on January 13, 1994 (Appendix 11).

On February 4, 1994, the Fifth District Court of Appeal issued an opinion denying Petitioners' Writ of Certiorari. Specifically, the Fifth District Court of Appeal denied certiorari review of the trial court's discovery order in the underlying case, based on their agreement with the case of Rojas v. Ryder Truck Rental, Inc., 625 So.2d 106 (Fla. 3 DCA 1993). However, the Fifth District Court of Appeal did certify conflict with the cases of Johnston v. Donnelly, 581 So.2d 909 (Fla. 2 DCA 1991), and Reinhardt v. Northside Motors, Inc., 479 So.2d 240 (Fla. 4 DCA 1985) (Appendix 12).

SUMMARY OF ARGUMENT

The trial court did not depart from the essential requirements of law in compelling the Petitioner, Shirley Doelfel, to execute authorizations for release of her medical records from her various health care providers.

Respondents have attempted to gain the medical records of Shirley Doelfel by filing Notices of Production from Non-Party, which were objected to. After objection, these Respondents filed a Request to Produce asking Petitioners to produce any and all medical records which they had in their possession relating to the care and treatment rendered by any of Shirley Doelfel's past or present treating physicians. Included in the Request to Produce was correspondence asking Petitioners to sign an authorization for the release of medical records, should they not have same in their possession. Respondents have made several attempts to obtain the needed medical documents through normal discovery

methods, but have been thwarted at each and every step. The trial court has broad discretion in overseeing discovery and protecting the parties that come before it. The trial court was well within its discretionary authority to require Petitioner, Shirley Doelfel, to sign and execute authorizations for release of her medical records from various health care providers.

ARGUMENT

The Petition for Writ of Certiorari should be denied because the trial court has not departed from the essential requirements of law in ordering the Petitioners to sign the authorization for release of medical records. The Fifth District Court of Appeal in a per curiam opinion, denied certiorari review of the trial court's discovery order in this case, based upon their agreement with the case of Rojas v. Ryder Truck Rental, Inc., 625 So.2d 106 (Fla. 3 DCA 1993). Additionally, they certified conflict with the cases of Johnston v. Donnelly, 581 So.2d 909 (Fla. 2 DCA 1991), and Reinhardt v. Northside Motors, Inc., 479 So.2d 240 (Fla. 4 DCA 1985). The Fifth District Court of Appeal's denial of certiorari review of the trial court's discovery order was appropriate and did not depart from the essential requirements of law.

It was found in ACandS, Inc. v. Askew, 597 So.2d 895 (Fla. 1 DCA 1992), that in order to obtain relief by writ of certiorari, the Petitioner must demonstrate both departure from essential requirements of law and injury which cannot be remedied by appeal from final order. See also American Southern Company v. Tinter, Inc., 565 So.2d 891 (Fla. 3 DCA 1990). Trial courts generally

possess broad discretion in granting or refusing discovery motions and in protecting the parties. Only in an abuse of this broad discretion in its treatment of requests for discovery should a Court's ruling be disturbed. Id. In Martin-Johnson, Inc. v. Savage, 509 So.2d 1097, (Fla. 1987), this Court addressed the propriety of certiorari review of discovery orders and found that certiorari is an extraordinary remedy, and is only applicable in "extremely rare circumstances".

In the case at hand, the Petitioners have filed a lawsuit claiming medical negligence, but, in every instance, have hindered the Respondents' discovery of information leading to Petitioner Shirley Doelfel's past and present medical condition. When Respondents filed their Notices of Production from Non-Party, the Petitioners objected. They cited no reason for this objection, but claimed the only recourse was for the Respondents to set the depositions of Shirley Doelfel's various treating physicians. Respondents then filed a Request to Produce to Shirley Doelfel, who indicated that she has no records in her possession or control and, therefore, no records were forthcoming. When Shirley Doelfel brought this lawsuit, she placed her medical condition at issue. She should not now be permitted to object to the Respondents' attempts to discover information about the very issue she has made the basis of her claim. As such, Petitioners can show no material injury from the trial court's decision to require medical authorizations to be signed and furnished to Respondents for obtaining medical records.

The trial court's authority to order medical authorizations to be signed was recently affirmed by the Third District Court of Appeal in the case of Rojas v. Ryder Truck Rental, Inc., 625 So.2d 106 (Fla. 3 DCA 1993). In Rojas, the plaintiffs, who were residents of Massachusetts, were injured in an automobile accident which occurred in Florida. In their complaint for damages, the plaintiffs sought remuneration for injuries arising directly from the accident and for the aggravation of previously existing medical conditions. During discovery, the defendants sought the plaintiffs' medical record from a Massachusetts hospital and a Massachusetts health care plan, both of which had treated the plaintiffs both before and after the accident. The defendants subsequently moved the trial court to compel the plaintiffs to sign written authorizations directing the health care institutions to release medical records directly to the defendants. The trial court granted the motion and ordered the plaintiffs to execute authorizations. The plaintiffs appealed, stating that the defendants had failed to file a request for production under Florida Rules of Civil Procedure 1.350.

On appeal, the Third District Court of Appeal affirmed the trial court's order and denied plaintiffs' petition for certiorari stating that the "order entered here was well within the power and discretion of the trial court. A trial court possesses broad discretion in overseeing discovery, and protecting the parties that come before it". Id. at 107. Additionally, the Third District Court of Appeal stated in its opinion that "there are various forms

of discovery available to litigants which are not exclusive and the determination of which discovery method to pursue remains the choice of the requesting party". Id. at 108. The Third District Court of Appeal, in Rojas, found that an order authorizing release of medical records, was the most expedient and practical way possible to have the records released directly to defendants.

In this case, Respondents, prior to requesting a signed medical authorization for release of records, filed both a Request for Production from Non-Party directed to the treating physicians and a Request to Produce to the Plaintiffs. Both attempts to obtain the necessary records were thwarted by Petitioners. Since Respondents' attempts have been to no avail, and there is no requirement that the Respondents must take the depositions of the treating physicians without having at their disposal, prior to the depositions, the medical records being questioned about, the signing of medical authorizations ordered by Judge Gridley did not depart from the essential requirements of law.

The cases which are certified in conflict with the Fifth District Court of Appeal ruling in this case and the case of Rojas v. Ryder Truck Rental, Inc., supra can be distinguished and should not be relied upon by this Court.

Specifically, in Johnston v. Donnelly, 581 So.2d 909 (Fla. 2 DCA 1991), the defendants in that negligence action sought to obtain medical records from the plaintiff's treating Canadian physicians. Some of the physicians refused to honor subpoenas issued by the Florida courts pursuant to Rule 1.351, Florida Rules

of Civil Procedure 1.351. The defendants also attempted to obtain the records by sending forms to the plaintiffs for their signature. When these attempts proved unsuccessful, a motion to compel the execution of a medical authorization form was filed and was granted by the trial court. The Second District Court of Appeal found that in ordering the execution of the release for medical information, the trial court bypassed the procedural safeguards of the discovery rules - defendants had not attempted to serve a request for production of documents pursuant to Florida Rules of Civil Procedure 1.350. Rule 1.350 is the means whereby a party may obtain documents within the possession, custody or control of another party. Since the defendant had failed to request the production of documents under Rule 1.350, Florida Rules of Civil Procedure, the Second District Court of Appeal granted certiorari.

As stated above, this case can be greatly distinguished from the case at hand in that the Respondents herein have not only attempted to gain the medical records by use of a subpoena to non-party, but also by a request for production of documents to the Petitioners. Thus, the reason for granting certiorari in the Johnston case is not applicable to this case, since the requirement of filing a request for production to the other party has been met by these Respondents.

In Reinhardt v. Northside Motors, Inc., 479 So.2d 240, (Fla. 4 DCA 1985), the other case noted to be in conflict with the Fifth District Court of Appeal's ruling in the case at hand, the Fourth District Court of Appeal in granting certiorari and quashing the

trial court's order, found that the respondent had failed to attempt to obtain records by use of Rule 1.350, Florida Rules of Civil Procedure, and also did not seek production of documents from non-parties pursuant to Rule 1.351, Florida Rules of Civil Procedure. Thus, in the Reinhardt case the respondents therein made no attempt to obtain records through the existing means of discovery. In effect, there was an absence of a showing that the records could not be obtained by the use of discovery procedures already provided by the Florida Rules of Civil Procedure.

Respondents herein attempted to utilize both Rule 1.350 and Rule 1.351, Florida Rules of Civil Procedure, to obtain medical records of past and present treating physicians of the Petitioner, Shirley Doelfel. Accordingly, the Reinhardt case can also be greatly distinguished from the case at hand. These Respondents were not able to obtain the medical records through the use of available discovery methods set forth within the Florida Rules of Civil Procedure. Therefore, the trial court, in ordering the signing of medical authorizations was correct and did not depart from the essential requirements of law.

The Fourth District Court of Appeal in Wilson v. Rodriguez, 547 So.2d 196 (Fla. 4 DCA 1989), once again addressed the same issue and again quashed the trial court's order requiring the petitioners to sign an order releasing out-of-state medical records. In Wilson, the respondents had not exercised their right to obtain the medical records through notices of production from non-party or from a request to produce. Instead, the respondent

had set the depositions of the treating physicians and canceled them because medical records could not be obtained by subpoena duces tecum under Michigan law.

As with the Johnston case and the Reinhardt case, the Wilson case can be distinguished from the case at bar in that the respondents therein had failed to show that the records could not be obtained by the use of discovery procedures provided by the Florida Rules of Civil Procedure. Specifically, attempts had not been made to gain the records through the use of Rule 1.350 and/or Rule 1.351, Florida Rules of Civil Procedure, which procedures were attempted in the case at bar.

Fairness and equity demand that the trial court's order be affirmed. Complete disclosure in discovery matters as limited by considerations of privilege, work product and relevancy, are favored by Florida courts. See ACandS, Inc, supra. The Petitioner has not objected to the documents requested as being privileged, work product or irrelevant. Since Judge Gridley's order will allow Respondents to obtain the records in the most efficient and frugal manner possible under the circumstances, the Petitioners should be required to sign the authorization forms. The Petitioners should not be permitted to obstruct the efforts of the Respondents and force them to take the depositions of the Records Custodians in another state in order to obtain the medical records when the Petitioner, herself, has placed her medical condition at issue in her lawsuit. The signing of a medical authorization to obtain records, is a just, speedy, practical, and inexpensive way to

obtain medical records.

CONCLUSION

For all the foregoing reasons, the Respondents respectfully request this Court to deny the Petitioners' Writ for Certiorari and affirm the trial court's order requiring the Petitioners to provide to the Respondents a signed authorization for release of medical records from various health care providers in or out of the State of Florida.

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail to **FRANCIS R. DELUCA, ESQUIRE**, Post Office Box 14063, Ft. Lauderdale, Florida, 33302, this 1ST day of April, 1994.

James M. Miller
JAMES M. MILLER, ESQUIRE
Florida Bar #405220
HECTOR A. MORÉ, ESQUIRE
Florida Bar #328944
Taraska, Grower, Unger &
Ketcham, P.A.
Florida Bar #328944
111 N. Orange Ave., Suite 1700
Post Office Box 538065
Orlando, Florida 32853-8065
(407) 423-9545
Attorneys for Defendants

1061.pld