

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Springhill Health Care Associates, LLC v. Benlein

81 So. 3d 624 (Fla. Dist. Ct. App. 2012) · No. No. 5D11-2780 · Decided March 9, 2012

SUMMARY

The Florida Fifth District Court of Appeal granted a petition for writ of certiorari and quashed an order compelling production of documents and answers to interrogatories. The court held that the trial court was required to conduct an in camera inspection and assess asserted work-product and statutory privileges, including privileges under sections 400.147 and 415.107, Florida Statutes.

OPINION

PER CURIAM.

81 So. 3d 624 (2012) SPRINGHILL HEALTH CARE ASSOCIATES, LLC, et al., Petitioners, v. Linda BENLEIN, Personal Representative of, etc., Respondent. No. 5D11-2780. District Court of Appeal of Florida, Fifth District. March 9, 2012. Thomas A. Valdez and Deborah L. Moskowitz of Quintairos, Prieto Wood & Boyer, P.A., Tampa, for Petitioners. Gregory J. Perenich and Jowita L. Wysocka of Perenich Law, P.L., Clearwater, for Respondent.

PER CURIAM. We grant the petition for writ of certiorari because the trial court departed from the essential requirements of the law by ordering the production of documents and *625 an answer to interrogatories without first conducting an in camera inspection to determine the precise nature of the ostensibly privileged documents and to further determine the applicability of the work product and statutory privileges.

Specifically, with respect to the document dated December 8, 2007, the trial court should determine if it is discoverable pursuant to section 400.147(4), Florida Statutes (2011). See *Mariner Health Care of Metrowest, Inc. v. Best*, 879 So. 2d 65, 67 (Fla. 5th DCA 2004) (if record discoverable pursuant to section 400.147(4), need and inability to obtain substantial equivalent from other sources without undue hardship must be shown).

As to the document dated December 10, 2007 (and all documents identified by Bates numbers 00032-55), the trial court must determine whether these documents fall within the privilege identified in section 400.147(8)(d), or any other applicable privilege asserted by Springhill Health Care Associates, LLC, in its response. Concerning the last document, although we view the assertion of privilege with some skepticism given the nature of the document, the trial court should consider the applicability of section 415.107(1), before compelling the production of the document.

Additionally, the trial court should also address the claimed privileges to the interrogatory.
PETITION GRANTED; ORDER QUASHED. GRIFFIN, SAWAYA and TORPY, JJ., concur.

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