

SUPREME COURT OF KENTUCKY

Richmond Health Facilities-Madison, LP, d/b/a Madison Health & Rehabilitation Center; Preferred Care Partners Management Group, LP; Preferred Care, Inc., d/b/a Preferred Care of Delaware, Inc.; and Kentucky Partners Management, LLC v. Hon. William G. Clouse, Jr., Judge, Madison Circuit Court; and Extendicare, Inc.; Extendicare, L.P.; Extendicare Homes, Inc.; Fir Lane Terrace Convalescent Center, Inc., d/b/a Madison Health & Rehabilitation Center; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare Health Services, Inc.; and Extendicare Health Facility Holdings, Inc. v. Hon. William G. Clouse, Jr., Judge, Madison Circuit Court

Richmond Health Facilities-Madison, LP v. Clouse, 2015-SC-000045-MR, 2015-SC-000122-MR (Ky. Oct. 29, 2015) · No. 2015-SC-000045-MR; 2015-SC-000122-MR · Decided November 16, 2015

SUMMARY

The Kentucky Supreme Court affirmed the Court of Appeals' denial of writ petitions seeking to prevent discovery of financial and quality-assurance materials in a nursing-home wrongful-death and negligence action. The Court held that the requested financial information was relevant and that the petitioners failed to establish that the Federal Quality Assurance Privilege applied because they provided no privilege log, in-camera materials, or sufficiently detailed descriptions of the documents. A separate opinion concurring in result would have adopted a narrow interpretation of the federal privilege, protecting only records generated by a nursing home's quality-assurance committee.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Minton, C.J.; Abramson, J.; Noble, J.; Keller, J.; Barber, J.; Cunningham, J.; Venters, J.
JURISDICTION	Kentucky
DECIDED	November 16, 2015
DOCKET	2015-SC-000045-MR; 2015-SC-000122-MR

DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petitions for writs of prohibition challenging the trial court's discovery orders were denied by the Kentucky Court of Appeals. The appellants appealed to the Kentucky Supreme Court as a matter of right under CR 76.36(7)(a).
STANDARD OF REVIEW	The Supreme Court first determines whether a writ is an appropriate remedy. For a second-class writ alleging erroneous action within jurisdiction, review is for abuse of discretion, meaning a decision that is arbitrary, unreasonable, unfair, or unsupported by sound legal principles.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential value indicated by the designation 'TO BE PUBLISHED.'
PARTIES	Richmond Health Facilities-Madison, LP, Preferred Care Partners Management Group, LP, Preferred Care, Inc., Kentucky Partners Management, LLC, Extendicare, Inc., Extendicare, L.P., Extendicare Homes, Inc., Fir Lane Terrace Convalescent Center, Inc., Extendicare Health Network, Inc., Extendicare Holdings, Inc., Extendicare Health Services, Inc., Extendicare Health Facility Holdings, Inc. v. Hon. William G. Clouse, Jr., Judge, Madison Circuit Court

TOPICS

discovery dispute privilege writ of certiorari appellate procedure nursing home liability

PRACTICE AREAS

civil procedure appellate procedure evidence health law remedies

QUESTIONS PRESENTED

1. Whether a writ of prohibition was appropriate to prevent discovery of the defendants' corporate financial information.
2. Whether the trial court abused its discretion by entering a protective order that did not cover all of the defendants' requested financial information.
3. Whether the defendants established that the Federal Quality Assurance Privilege applied to the disputed discovery materials.
4. Whether the writ petitions were sufficiently supported by an adequate record and preserved arguments.

HOLDINGS

1. A writ was unavailable because the requested financial information was relevant to the estate's negligence and punitive-damages claims, and compelling production of relevant information did not

establish irreparable injury, great injustice, or the absence of an adequate appellate remedy.

2. The defendants were not entitled to a broader protective order because they offered no specific showing that the existing order was inadequate, and the trial court acted within its discretion in balancing the discovery request against privacy and proprietary concerns.
3. The defendants failed to carry their burden of establishing that the Federal Quality Assurance Privilege applied because they did not produce a privilege log, seek in-camera review, or provide a sufficiently detailed description of the disputed documents.
4. The majority declined to decide the scope of the Federal Quality Assurance Privilege because the defendants had not supplied an adequate factual record to which either interpretation could be applied.

KEY QUOTATIONS

“Accordingly, a writ should issue only: [U]pon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great injustice and irreparable injury will result if the petition is not granted.” (at 3-4)

“It is axiomatic that a party who asserts a privilege bears the burden of proving the privilege applies.” (at 10-11)

“We reject the writ petitions—they do not meet our writ standard and, in our estimation, would be nothing more than advisory.” (at 11)

FACTUAL BACKGROUND

Geraldine McCafferty was admitted to Richmond Health, a nursing facility owned and operated by Extendicare, and was transferred to a hospital after her health rapidly deteriorated. After McCafferty died, her estate alleged that Extendicare diverted funds from Richmond Health, resulting in inadequate care and her death. The estate sought discovery concerning clinical monitoring, oversight, and corporate finances, while the defendants claimed the materials were irrelevant or protected by the Federal Quality Assurance Privilege.

PROCEDURAL HISTORY

The estate administrator filed wrongful-death, nursing-home-abuse, and corporate-negligence claims against the nursing-facility and corporate defendants. During discovery, the trial court ordered production of financial information and documents claimed to be protected by the Federal Quality Assurance Privilege and entered a protective order covering certain private materials. The Court of Appeals denied separate writ petitions, and the Kentucky Supreme Court affirmed and denied the writs.

DISPOSITION

writ_denied

CASES CITED

- Hoskins v. Maricle, 150 S.W.3d 1, 5, 9-10, 20 (Ky. 2004)
- Bender v. Eaton, 343 S.W.2d 799, 800-01 (Ky. 1961)
- Tax Ease Lien Investments 1, LLC v. Commonwealth Bank & Trust, 384 S.W.3d 141, 143 (Ky. 2012)
- Grange Mutual Insurance Co. v. Trude, 151 S.W.3d 803, 808, 810 (Ky. 2004)
- Maddox v. Grauman, 265 S.W.2d 939, 941 (Ky. 1954)
- Hoffman v. Dow Chemical Co., 413 S.W.2d 332, 334 (Ky. 1967)
- Ewing v. May, 705 S.W.2d 910, 913 (Ky. 1986)
- Stidham v. Clark, 74 S.W.3d 719, 722, 725 (Ky. 2002)
- Collins v. Braden, 384 S.W.3d 154, 159, 163-64 (Ky. 2012)
- Lexington Public Library v. Clark, 90 S.W.3d 53, 63 (Ky. 2002)
- Ohio River Contract Co. v. Gordon, 186 S.W. 178, 181 (Ky. 1916)
- State ex rel. Boone Ret. Ctr. v. Hamilton, 946 S.W.2d 740, 743 (Mo. 1997) (en banc)
- In re Subpoena Duces Tecum to Jane Doe, Esq., 787 N.E.2d 618, 622-23 (N.Y. 2003)
- Jewish Home of Eastern Pennsylvania v. Centers for Medicare and Medicaid Services, 693 F.3d 359, 362 (3d Cir. 2012)
- Evans v. Quaboag on the Common, Inc., 26 Mass. L. Rptr. 372 (Mass. Super. Ct. Dec. 7, 2009)
- Caldwell v. Chauvin, 2015 WL 3653447, at *1 (Ky. June 11, 2015)
- Sisters of Charity Health System, Inc. v. Raikes, 984 S.W.2d 464, 468, 470 (Ky. 1998)
- Trammel v. United States, 445 U.S. 40, 45, 50 (1980)
- Swidler & Berlin v. United States, 524 U.S. 399, 411 (1998) (O'Connor, J., dissenting)
- Jaffee v. Redmond, 518 U.S. 1, 19 (1996) (Scalia, J., dissenting)
- University of Pennsylvania v. EEOC, 493 U.S. 182 (1990)
- Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc., 332 F.3d 976, 979-80 (6th Cir. 2003)
- United States v. Nixon, 418 U.S. 683, 710 (1974)
- United States v. Bryan, 339 U.S. 323, 331 (1950)