

OHIO COURT OF APPEALS, FIFTH APPELLATE DISTRICT

In re Guardianship of Sharp

2014-Ohio-3613 (Ohio Ct. App. 2014) · No. CT2014-0003 · Decided August 21, 2014

SUMMARY

The Fifth District Court of Appeals of Ohio held that a probate court's discovery order compelling production of medical, financial, and business records was a final, appealable order. The court reversed and remanded because the probate court had not conducted an in camera inspection to determine which records were privileged and relevant to the guardianship proceeding.

CASE DETAILS

COURT	Ohio Court of Appeals, Fifth Appellate District
WRITING FOR THE COURT	Craig R. Baldwin; W. Scott Gwin, P.J.; Sheila G. Farmer, J.; Craig R. Baldwin, J.
JURISDICTION	Ohio
DECIDED	August 21, 2014
DOCKET	CT2014-0003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Muskingum County Probate Court order lifting a stay on discovery directed to Ellen Sharp, removing limitations on discovery directed to Fountain Sharp, and compelling both appellants to provide full discovery responses.
STANDARD OF REVIEW	Abuse of discretion. A discovery order will not be reversed absent an unreasonable, arbitrary, or unconscionable attitude by the trial court.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the applicable Ohio appellate district subject to Ohio law.
PARTIES	Ellen Jane Powelson Sharp, Fountain Sharp v. Marian Davis Sharp Thompson

TOPICS

- guardianship procedure
- discovery dispute
- probate procedure
- appellate jurisdiction
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the probate court's discovery order compelling production of medical records and confidential business records was a final, appealable order.
2. Whether the probate court abused its discretion by compelling broad discovery without first conducting an in camera inspection to determine privilege and relevance.
3. Whether the probate court erred in lifting the stay on discovery directed to Ellen Sharp and removing limitations on discovery directed to Fountain Sharp.

HOLDINGS

1. A discovery order compelling production of medical records and confidential business material is a final, appealable order.
2. The probate court abused its discretion by compelling production of the broad medical, financial, and business-record requests without first conducting an in camera inspection to determine which records were privileged and which were relevant to the guardianship proceeding.

KEY QUOTATIONS

“Based on the claim of privilege, the broad scope of the discovery request, and the personal nature of the requested materials as to both Fountain and Ellen Sharp, the trial court abused its discretion in not first conducting an in camera inspection of the records to determine what records are protected from discovery by medical or other privilege, and which records are in fact relevant to the guardianship proceeding as defined in Civ. R. 26(B)(1).” (¶18)

FACTUAL BACKGROUND

In 2005, Ellen Sharp executed durable powers of attorney naming her son, Fountain Sharp, as attorney-in-fact. In 2011, Marian Davis Sharp Thompson sought appointment as Ellen's guardian, alleging that Fountain had isolated Ellen and exercised manipulation and control over her and her significant assets. Thompson requested medical and financial records dating to 2000, while the appellants objected that the requests were privileged, confidential, burdensome, and overbroad. The probate court ultimately ordered both appellants to answer all discovery requests without the prior limitations.

PROCEDURAL HISTORY

Marian Davis Sharp Thompson applied to be appointed guardian of her mother, Ellen Sharp. During the guardianship proceeding, Thompson served broad requests for medical, financial, and business records. The probate court initially entered a protective order limiting discovery concerning Fountain Sharp and stayed discovery directed to Ellen, but later lifted the stay and ordered full responses. Ellen and Fountain appealed, and the Fifth District reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded to the Muskingum County Probate Court for further proceedings according to law consistent with the opinion, including an in camera inspection to determine which records are protected by medical or other privilege and which are relevant to the guardianship proceeding.

CASES CITED

- Banks v. Ohio Physical & Medical Rehabilitation, Inc., 5th Dist. Fairfield No. 07CA68, 2008-Ohio-2165, ¶16
- Northeast Professional Home Care, Inc. v. Advantage Home Health Services, Inc., 188 Ohio App. 3d 704, 2010-Ohio-1640, 936 N.E.2d 964, ¶34
- State ex rel. The V Cos. v. Marshall, 81 Ohio St. 3d 467, 469, 692 N.E.2d 198 (1998)
- Wooten v. Westfield Insurance Co., 181 Ohio App. 3d 59, 907 N.E.2d 1219, 2009-Ohio-494, ¶¶20-21
- Bircher v. Duroske, 5th Dist. Fairfield No. 13-CA-62, 2013-Ohio-5873
- Collins v. Interim Healthcare of Columbus, 5th Dist. Perry No. 13-CA-00003, 2014-Ohio-40