

**COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY**

Molnar v. Wong & Associates Co., L.P.A., et al.

Molnar v. Wong & Associates Co., L.P.A., 2021-Ohio-1402 (Ohio Ct. App. 2021) · No. No. 109440 · Decided
April 22, 2021

SUMMARY

The Eighth District Court of Appeals of Ohio affirmed the denial of Erika and Zsolt Molnar’s motion to quash a subpoena directed to the Cleveland Police Department in their legal-malpractice action. The court held that the Molnars had standing to challenge the subpoena and that U-visa confidentiality provisions applied, but were not absolute; discovery required balancing the hardship and public interests against the information’s probative value. The court concluded that the Molnars’ failure to appeal an earlier protective-order ruling did not bar review of the subpoena issue.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Eileen T. Gallagher, J.; Kathleen Ann Keough, P.J.; Lisa B. Forbes, J.
JURISDICTION	Ohio
DECIDED	April 22, 2021
DOCKET	No. 109440
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs in a legal-malpractice action appealed the denial of their motion to quash a subpoena duces tecum issued to the Cleveland Police Department. They argued that the subpoena sought privileged U-visa information protected by 8 U.S.C. 1367(a)(2) and 8 C.F.R. 214.14.
STANDARD OF REVIEW	Discovery rulings are reviewed for abuse of discretion. The interpretation of statutes and regulations governing privilege is reviewed de novo; factual determinations underlying a claimed privilege are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Erika Molnar, Zsolt Molnar v. Margaret W. Wong & Associates Co., L.P.A., Margaret W. Wong, Lori A. Pinjuh

TOPICS

u visa discovery dispute appellate procedure statutory interpretation standard of review

PRACTICE AREAS

Immigration law Civil discovery Appellate procedure

QUESTIONS PRESENTED

1. Whether the Molnars had standing to move to quash a subpoena served on the Cleveland Police Department on the ground that it sought privileged information.
2. Whether the Molnars waived challenges to the trial court's prior discovery ruling by failing to appeal the partial denial of their motion for a protective order.
3. Whether information relating to the Molnars' U-visa applications was protected from discovery under 8 U.S.C. 1367(a)(2) and 8 C.F.R. 214.14.
4. Whether the trial court abused its discretion by denying the motion to quash after balancing the confidentiality interests and potential chilling effect against the appellees' need for the information.

HOLDINGS

1. A party has standing to move to quash a subpoena served on a nonparty when the party objects that the subpoena seeks privileged information.
2. Information relating to a beneficiary of a pending or approved U-visa petition is subject to the confidentiality restrictions in 8 U.S.C. 1367 and 8 C.F.R. 214.14, including when the information is held by a local law-enforcement agency that received it from an enumerated federal agency.
3. The U-visa confidentiality protection is not absolute in discovery; the trial court must balance the hardship and potential chilling effect on the U-visa applicant against the probative value and need for the information, while considering relevant public interests.

KEY QUOTATIONS

“Therefore, despite Wong & Associates’ argument to the contrary, the Molnars had standing to file a motion to quash the subpoena propounded on the Cleveland Police Department on grounds that it sought privileged information.” (Section II.C)

“Under the plain language of these provisions, any information relating a beneficiary of a pending or approved U visa is privileged.” (Section II.D)

“We, therefore, find that the trial court correctly interpreted and applied the law regarding the confidentiality provisions set forth in 8 U.S.C. 1367(a)(2) and 8 C.F.R. 214.14.” (Section II.D)

FACTUAL BACKGROUND

The Molnars retained Wong & Associates to pursue adjustment of their immigration status, later alleged that the firm committed qualifying crimes in connection with its representation, and obtained U nonimmigrant status

based on certifications from the Cleveland Police Department. They subsequently obtained lawful permanent resident status through the U-visa program. In their legal-malpractice case, the Molnars placed their U-visa applications and the underlying alleged criminal activity at issue, while the appellees sought investigative materials from the Cleveland Police Department to defend against the malpractice claims.

PROCEDURAL HISTORY

The Molnars filed a legal-malpractice action against the appellees, voluntarily dismissed it, and later refiled the action. During discovery in the refiled case, the trial court granted a protective order in part, required production of some U-visa-related information, and denied protection as to other materials. After the Molnars produced forms identifying the Cleveland Police Department and its certifying officers, the appellees subpoenaed the department for investigative materials. The trial court denied the Molnars' motion to quash, and the appellate court affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Brignoni-Ponce, 422 U.S. 873, 879 (1975)
- Sanchez v. Mukasey, 508 F.3d 1254 (9th Cir. 2007)
- Am. Environmental Group, Ltd. v. H.M. Miller Constr. Co., 8th Dist. Cuyahoga No. 100854, 2014-Ohio-4681, ¶ 13
- Johnson v. Univ. Hosps. of Cleveland, 8th Dist. Cuyahoga No. 80117, 2002-Ohio-1396
- Esparza v. Klocker, 8th Dist. Cuyahoga No. 101604, 2015-Ohio-110, ¶ 23
- Wall v. Ohio Permanente Med. Group Inc., 119 Ohio App.3d 654, 695 N.E.2d 1233 (8th Dist. 1997)
- Ward v. Summa Health Sys., 128 Ohio St.3d 212, 2010-Ohio-6275, 943 N.E.2d 514, ¶ 13
- Med Mut. of Ohio v. Schlotterer, 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237
- Randall v. Cantwell Mach. Co., 10th Dist. Franklin No. 12AP-786, 2013-Ohio-2744, ¶ 9
- Lycourt-Donovan v. Columbia Gas of Ohio, Inc., 152 Ohio St.3d 73, 2017-Ohio-7566, 93 N.E.3d 902
- In re A.R., 8th Dist. Cuyahoga No. 109482, 2020-Ohio-5005, ¶ 16
- Cazorla v. Koch Foods of Mississippi, L.L.C., 838 F.3d 540 (5th Cir. 2016)
- Samuel v. Signal Internatl., L.L.C., E.D. Tex. No. 1:13-CV-323, 2014 U.S. Dist. LEXIS 197639 (Oct. 15, 2014)
- David v. Signal Internatl., L.L.C., 735 F. Supp. 2d 440 (E.D. La. 2010)
- EEOC v. Sol Mexican Grill L.L.C., D.D.C. Civil Action No. 18-2227 (CKK), 2019 U.S. Dist. LEXIS 112745 (June 11, 2019)
- Rivera v. NIBCO, Inc., 364 F.3d 1057, 1064-1065 (9th Cir. 2004)
- Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1062-1063 (9th Cir. 2000)
- Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 886-887 (1984)

- Singh v. Jutla & C.D. & R's Oil, Inc., 214 F. Supp. 2d 1056, 1057 (N.D. Cal. 2002)
- Contreras v. Corinthian Vigor Ins. Brokerage, Inc., 25 F. Supp. 2d 1053, 1055 (N.D. Cal. 1998)
- Washington v. Horning Bros., L.L.C., 339 F. Supp. 3d 1106 (E.D. Wash. 2018)
- Camayo v. John Peroulis & Sons Sheep, Inc., D. Colo. Nos. 10-cv-00772-MSK-MJW and 11-cv-01132-REB-MJW, 2012 U.S. Dist. LEXIS 168078 (Nov. 27, 2012)
- Velasquez Catalan v. Vermillion Ranch L.P., D. Colo. Civil Action No. 06-cv-01043-WYD-MJW, 2007
- Waldmann v. Waldmann, 48 Ohio St.2d 176, 178, 358 N.E.2d 521 (1976)

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