

SUPREME COURT OF COLORADO

In re the Marriage of Gromicko

2017 CO 1, 387 P.3d 58 · Decided January 9, 2017

SUMMARY

The Colorado Supreme Court reviews a discovery order requiring nonparty InterNACHI to produce business records in a dissolution-of-marriage proceeding. The court holds that the wife was not required to plead a corporate-veil-piercing claim in the dissolution petition, but concludes that the district court failed to actively manage and tailor discovery to the reasonable needs of the case. The court makes the rule absolute, vacates the overbroad discovery order concerning alter-ego allegations, and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Gabriel
JURISDICTION	Colorado
DECIDED	January 9, 2017
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	InterNACHI petitioned the Colorado Supreme Court for relief under C.A.R. 21 from district court discovery orders compelling production of its business records in a pending dissolution-of-marriage proceeding.
STANDARD OF REVIEW	Discovery orders are reviewed for abuse of discretion. A district court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair. Exercise of original jurisdiction under C.A.R. 21 is discretionary and is appropriate when an interlocutory discovery error cannot be adequately remedied on appeal.
PRECEDENTIAL VALUE	Published Colorado Supreme Court opinion; precedential.
PARTIES	International Association of Certified Home Inspectors (InterNACHI) v. Lisa Dawn Gromicko

TOPICS

dissolution of marriage

discovery dispute

family law procedure

corporate veil piercing

writ of certiorari

PRACTICE AREAS

family law

civil procedure

corporate law

appellate procedure

QUESTIONS PRESENTED

1. Whether a petitioner in a Colorado dissolution proceeding must plead a corporate-veil-piercing claim in the dissolution petition before seeking discovery concerning an entity allegedly related to the respondent.
2. Whether the district court abused its discretion by denying InterNACHI's motion to quash and permitting broad discovery without determining and tailoring the appropriate scope of discovery.
3. Whether the Colorado Supreme Court should exercise original jurisdiction under C.A.R. 21 to review the interlocutory discovery orders.

HOLDINGS

1. A petitioner in a Colorado dissolution proceeding is not required to plead a corporate-veil-piercing claim in the dissolution petition before seeking discovery concerning an entity allegedly related to the respondent.
2. When a person or entity objects to the scope of discovery, the district court must actively determine the appropriate scope of discovery in light of the reasonable needs of the case and tailor discovery to those needs, considering proportionality and cost-benefit factors.
3. The district court abused its discretion by permitting virtually unrestricted discovery concerning the alleged alter-ego relationship instead of initially limiting discovery to information reasonably necessary to establish whether the alter-ego factors were present.

KEY QUOTATIONS

“district courts must take an active role in managing discovery when, as here, a person or entity from whom discovery is sought objects to the scope of that discovery.” (¶30)

“determine the appropriate scope of discovery in light of the reasonable needs of the case and tailor discovery to those needs.” (¶30)

“On remand, the court should assess the proper scope of discovery to which Wife should be entitled given the reasonable needs of this case, and it should grant Wife only such discovery as would permit her to attempt to establish, by reference to the factors set forth in Leonard, 63 P.3d at 330, that InterNACHI is Husband’s alter ego.” (¶41)

FACTUAL BACKGROUND

Lisa Dawn Gromicko sought spousal maintenance and equitable division of marital assets in her dissolution proceeding against Nicldfor Nicholas Gromicko. She sought records from InterNACHI, a Colorado nonprofit corporation founded by Husband, where he served on the board and was allegedly employed as chief operating officer. Wife alleged that InterNACHI might be Husband's alter ego and therefore marital property, while InterNACHI argued that the subpoena sought confidential, privileged, irrelevant, and overbroad records. The

district court permitted broad discovery under the alter-ego theory without tailoring the requests to the reasonable needs of the case.

PROCEDURAL HISTORY

Lisa Dawn Gromicko filed for dissolution of marriage and sought discovery from InterNACHI, a nonprofit corporation founded by and allegedly employing her husband. The district court denied InterNACHI's motion to quash and allowed discovery under an alter-ego theory without tailoring the scope of discovery or making proportionality findings. The Colorado Supreme Court issued a rule to show cause, made the rule absolute, vacated the challenged portion of the discovery order, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must reconsider InterNACHI's motion to quash, determine the proper scope of discovery in light of the reasonable needs of the case, and initially allow only discovery that would permit Wife to attempt to establish the alter-ego relationship by reference to the factors identified in *Leonard v. McMorris*. Any later discovery must be evaluated under the active case-management, proportionality, privilege, and confidentiality principles described in the opinion.

CASES CITED

- *Fognani v. Young*, 115 P.3d 1268, 1271 (Colo. 2005)
- *Gateway Logistics, Inc. v. Smay*, 2013 CO 25, 302 P.3d 235
- *Weil v. Dillon Cos.*, 109 P.3d 127, 129 (Colo. 2005)
- *Johnson v. Trujillo*, 977 P.2d 152, 154 (Colo. 1999)
- *Estate of Burford v. Burford*, 935 P.2d 943, 952 (Colo. 1997)
- *Boulder Cty. Bd. of Comm'rs v. HealthSouth Corp.*, 246 P.3d 948, 954 (Colo. 2011)
- *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 2013 CO 36, 303 P.3d 1187
- *In re Marriage of de Koning*, 2016 CO 2, 364 P.3d 494, 498
- *Leonard v. McMorris*, 63 P.3d 323, 330 (Colo. 2003)
- *Newport Steel Corp. v. Thompson*, 757 F. Supp. 1152, 1157 (D. Colo. 1990)
- *Breeden v. Breeden*, 678 N.E.2d 423, 426 (Ind. Ct. App. 1997)