

OREGON SUPREME COURT

Brumwell v. Premo

355 Or. 543 (2014) · Decided May 30, 2014

SUMMARY

The Oregon Supreme Court held that the lawyer-client privilege breach-of-duty exception under OEC 503(4)(c) permits disclosure of confidential information only as reasonably necessary to defend against specific breach-of-duty allegations in a post-conviction proceeding. The post-conviction court erred by denying the petitioner’s motion for a protective order and motions seeking to quash subpoenas before in camera review. The court directed issuance of a peremptory writ of mandamus requiring the lower court to vacate its order and issue an appropriate protective order.

CASE DETAILS

COURT	Oregon Supreme Court
WRITING FOR THE COURT	Baldwin, J.
JURISDICTION	Oregon
DECIDED	May 30, 2014
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding arising from a post-conviction case. The petitioner sought to compel the Marion County Circuit Court to issue a protective order limiting disclosure of lawyer-client privileged materials and to quash or subject subpoenas to in camera review.
STANDARD OF REVIEW	Legal error and mandamus review; whether the post-conviction court had a legal duty to protect privileged communications and whether it had discretion to deny the requested protection.
PRECEDENTIAL VALUE	binding
PARTIES	Brumwell v. Premo

TOPICS

- attorney client privilege
- privilege
- state post-conviction relief
- post-conviction relief
- criminal procedure

PRACTICE AREAS

- criminal procedure
- post-conviction relief
- evidence

QUESTIONS PRESENTED

1. Whether the lawyer-client privilege and its breach-of-duty exception permitted unrestricted disclosure of confidential communications to persons unrelated to the post-conviction proceeding.
2. Whether the post-conviction court had a legal duty under OEC 503(2), OEC 503(4)(c), and ORCP 36 C to issue a protective order limiting disclosure of privileged materials.
3. Whether mandamus was an appropriate remedy for the post-conviction court's denial of the protective-order and subpoena-related motions.

HOLDINGS

1. OEC 503(4)(c) is a limited exception to the lawyer-client privilege that permits disclosure of confidential information only as reasonably necessary for the state to defend against the petitioner's specific allegations of breach of duty during the pendency of the post-conviction proceeding, including appeal.
2. The post-conviction court had a legal duty to prevent disclosure of confidential communications not reasonably necessary to defend against the ineffective-assistance allegations and therefore erred by denying Brumwell's motion for a protective order.
3. Mandamus was appropriate, and a peremptory writ must issue requiring the post-conviction court to vacate its order and issue a protective order.

KEY QUOTATIONS

“The first two categories of disclosures are not necessary for the preparation of the state’s defense and, thus, do not fall within the limited exception of OEC 503(4)(c).” (549-550)

“Under OEC 503(2) and ORCP 36 C, a protective order was appropriate to prohibit those disclosures not reasonably necessary for the preparation of a defense.” (550)

“We therefore direct the issuance of a peremptory writ of mandamus requiring the post-conviction court to vacate its order and issue a protective order.” (551)

FACTUAL BACKGROUND

Brumwell was convicted in Marion County Circuit Court of two counts of aggravated murder and sentenced to death. In his post-conviction proceeding, he alleged that his court-appointed trial counsel had provided ineffective assistance and sought protection for confidential communications and documents disclosed in connection with those claims. The state subpoenaed defense billing records, and the post-conviction court denied Brumwell's requests to quash the subpoenas, conduct in camera review, and restrict disclosure of privileged information.

PROCEDURAL HISTORY

Brumwell, who was convicted of aggravated murder and sentenced to death, filed a petition for post-conviction relief alleging ineffective assistance of trial counsel. During that proceeding, the state subpoenaed defense billing records and Brumwell sought protective orders, in camera review, and restrictions on further disclosure.

The post-conviction court denied the motions. The Oregon Supreme Court issued an alternative writ of mandamus, the lower court declined to change its ruling, and the matter proceeded to decision.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The post-conviction court must vacate its order and issue a protective order. On remand, it may determine, in its discretion, which disclosures are reasonably necessary to defend the breach-of-duty allegations and what procedures are appropriate, including treatment of the subpoenaed materials, provided that OEC 503(2) and OEC 503(4)(c) are enforced.

CASES CITED

- Longo v. Premo, 355 Or. 525, 326 P.3d 1152 (2014)
- State v. Brumwell, 350 Or. 93, 249 P.3d 965 (2011), cert. denied, 132 S. Ct. 1028 (2012)
- State v. Van Brumwell, 154 Or. App. 729, 963 P.2d 756 (1998), rev. denied, 327 Or. 583 (1998)
- State ex rel. Johnson v. Richardson, 276 Or. 325, 555 P.2d 202 (1976)
- State ex rel. Automotive Emporium v. Murchison, 289 Or. 265, 611 P.2d 1169 (1980)