

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Valerie A. Lyons, et al. v. Sanford D. Lyons, et al.

Lyons v. Lyons, 162 So. 3d 212 (Fla. 4th DCA 2015) · No. 4D14–3429

SUMMARY

The Florida District Court of Appeal held that when a party objects to a non-party subpoena duces tecum under Florida Rule of Civil Procedure 1.351 on grounds of privilege (including attorney-client, accountant-client, and work product), the trial court must conduct an in camera inspection before ordering production. The court clarified that the 2008 amendment to Rule 1.351 allows the court to rule on such objections without requiring the requesting party to proceed by deposition under Rule 1.310. The petition for certiorari was denied as moot because the trial court later entered a protective order providing a privilege-review procedure, and the court dismissed challenges based on overbreadth and irrelevance as outside the scope of certiorari review.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Warner, J.; Warner; May; Conner
JURISDICTION	Florida
DOCKET	4D14–3429
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for writ of certiorari seeking to quash trial court order overruling privilege objections to a subpoena duces tecum under Florida Rule of Civil Procedure 1.351.
STANDARD OF REVIEW	Departure from the essential requirements of law (certiorari standard for non-final discovery orders)
PRECEDENTIAL VALUE	published
PARTIES	Valerie A. Lyons Individually and as Co-Trustee and Beneficiary of the Richard C. Lyons and Norma W. Lyons 1998 Dynasty Trust, Norma W. Lyons Individually and as Managing Partner and the General Partner(s) of Lyons Family Limited Partnership, Lyons Family Limited Partnership v. Sanford D. Lyons Individually and as Co-Trustee of the Richard C. Lyons and Norma W. Lyons 1998 Dynasty Trust, Timothy R. Lyons Individually and as Purported Cotrustee of the Richard C. Lyons and Norma W. Lyons 1998 Dynasty

Trust, The Richard C. Lyons and Norma W. Lyons 1998 Dynasty Trust, Dorothy A. Lyons-Heffner, John C. Lyons, John C. Lyons and Carol Ann Williams Lyons as Co-Trustees of the John C. Lyons Trust September 2, 1988

TOPICS

civil procedure appellate procedure discovery dispute family law trusts

PRACTICE AREAS

Civil procedure Trusts and estates Discovery

QUESTIONS PRESENTED

1. Whether the trial court departed from the essential requirements of law by authorizing a Rule 1.351 subpoena without first conducting an in camera review of documents for privilege.
2. Whether an objection to a Rule 1.351 subpoena is self-executing, compelling the proponent to obtain documents solely through a deposition under Rule 1.310.
3. Whether the subpoena was overbroad and sought irrelevant materials such that certiorari relief was warranted.

HOLDINGS

1. When a party objects to a Rule 1.351 subpoena on grounds of privilege, the trial court must ensure that privileged documents are protected—typically through an in camera inspection—prior to ordering production.
2. Under amended Rule 1.351(d), a party's objection does not automatically compel the requesting party to seek production via deposition under Rule 1.310; the trial court has authority to rule on the objection.
3. Certiorari review is generally not available to challenge discovery orders on the grounds that they are vague, overbroad, or seek irrelevant material.

KEY QUOTATIONS

“Thus, under the amended rule, an objection did not automatically trigger a deposition pursuant to Rule 1.310. Instead, the court could rule on the objection.” (215)

“This provision, however, did not remove the trial court's obligation to treat privilege objections differently than it would had the objection been made at a deposition of the non-party records custodian. Any claim of privilege must be ruled on and in camera inspection conducted prior to production of such documents.” (215)

“The trial court has discretion to fashion a process to deal with the production of the documents, and it did in this case. After the filing of this petition, the trial court considered a motion for protective order from the accountant and entered an order providing a procedure for the accountant to gather the documents sought by the subpoena. Thereafter, petitioners would be entitled to review the documents to segregate those they claimed were privileged. The court would hold an evidentiary hearing on those claimed to be privileged and

conduct an in camera review where necessary. This procedure is sufficient to protect privileged documents.”
(216)

FACTUAL BACKGROUND

Lyons Family Limited Partnership owns and rents commercial property. After the death of Richard Lyons, four of the couple's five children sought to remove their sister Valerie as co-trustee and their mother Norma as managing general partner. Valerie and Norma responded with declaratory judgment challenges, and the partnership sued the siblings for over \$3 million in damages. The three actions were consolidated for discovery and trial.

PROCEDURAL HISTORY

Petitioners objected to a notice of intent to serve a subpoena on a non-party accountant on grounds of privilege, overbreadth, and irrelevance. The trial court overruled the objections, authorized the subpoena, and did not conduct an in camera review. Petitioners sought certiorari. After the subpoena issued, the court entered a protective order specifying a procedure to isolate privileged documents.

DISPOSITION

writ_denied

CASES CITED

- Patrowicz v. Wolff, 110 So. 3d 973 (Fla. 2d DCA 2013)
- Russell v. Stardust Cruisers, Inc., 690 So. 2d 743 (Fla. 5th DCA 1997)
- ABC Liquors, Inc. v. Berkey, 589 So. 2d 457 (Fla. 5th DCA 1991)
- Bennett v. Berges, 84 So. 3d 373 (Fla. 4th DCA 2012)
- All About Cruises, Inc. v. Cruise Options, Inc., 889 So. 2d 905 (Fla. 4th DCA 2004)

CITED IN

- Valerie A. Lyons, et al. v. Sanford D. Lyons, et al., Lyons v. Lyons, 162 So. 3d 212 (Fla. 4th DCA 2015)
- Valerie A. Lyons, et al. v. Sanford D. Lyons, et al., Lyons v. Lyons, 162 So. 3d 212, 215-216 (Fla. 4th DCA 2015)

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