

SUPREME COURT OF NEVADA

Mitchell v. Eighth Judicial District Court

2015 NV 21 (Nev. 2015) · No. 63076 · Decided April 30, 2015

SUMMARY

The Nevada Supreme Court conditionally granted a writ petition concerning a physician's asserted privileges over family-therapy and substance-abuse treatment records in a medical-malpractice and negligent-hiring case. The court held that the family and marital therapy records remained privileged, while the doctor-patient privilege was subject to Nevada's patient-litigant exception where the physician's condition was an element of the negligent hiring and supervision claims. The court further required in-camera review and appropriate limitations before disclosure of relevant medical records.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Pickering, J.; Parraguirre, C.J.; Douglas, J.; Saitta, J.
JURISDICTION	Nevada
DECIDED	April 30, 2015
DOCKET	63076
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original petition for a writ of mandamus seeking protection of a defendant doctor's counseling and substance-abuse treatment records from discovery in a medical-malpractice action.
STANDARD OF REVIEW	De novo review of the legal question whether the asserted statutory privileges and statutory exceptions apply; extraordinary writ relief is generally unavailable for discovery orders but may be appropriate when disclosure of privileged information would eliminate an effective appellate remedy.
PRECEDENTIAL VALUE	Published precedential Nevada Supreme Court opinion
PARTIES	Ryan Mitchell, D.O. v. The Eighth Judicial District Court of the State of Nevada, in and for Clark County, The Honorable Kenneth C. Cory, District Judge

TOPICS

privilege

medical records privacy

statutory interpretation

appellate procedure

medical malpractice

PRACTICE AREAS

evidence

health law

medical malpractice

appellate procedure

QUESTIONS PRESENTED

1. Whether extraordinary writ relief was appropriate to review a discovery order requiring disclosure of allegedly privileged counseling and medical records.
2. Whether Nevada's doctor-patient privilege was waived or terminated under the patient-litigant exception when the plaintiff, rather than the defendant-patient, placed the defendant's condition at issue.
3. Whether Mitchell's drug addiction was an element of the medical-malpractice claim or the negligent hiring and supervision claims for purposes of NRS 49.245(3).
4. Whether the patient-litigant exception required in-camera review and limitations on production and use of the doctor-patient records.
5. Whether Mitchell's marital and family therapist-client privilege was waived or defeated under NRS 49.249(4).

HOLDINGS

1. Extraordinary writ relief is appropriate when a discovery order compels disclosure of allegedly privileged information that would lose its confidential character before a final judgment and ordinary appellate review would provide no effective remedy.
2. Under NRS 49.245(3), the patient-litigant exception does not require that the patient personally initiate the claim or defense placing the patient's condition at issue. The exception applies when the patient's condition is an element of a claim or defense, even if another party raised the issue.
3. Mitchell's drug addiction was not an element of the medical-malpractice claim against him. Medical malpractice requires proof of departure from the accepted standard of care, causation, and damages; the doctor's reason for the allegedly negligent conduct is not itself an element.
4. Mitchell's condition was an element of Ravella's negligent hiring and supervision claims because those claims required proof that the employer knew or should have known that Mitchell was unfit for his position.
5. The district court was required to conduct an in-camera review of the doctor-patient records and impose appropriate limitations on their production and use rather than order unrestricted disclosure.
6. Mitchell's and his wife's confidential communications with their marriage and family therapist remained privileged, and the district court was required to enter a protective order prohibiting discovery of those counseling sessions.

KEY QUOTATIONS

“A plain reading of the statute’s text does not support a requirement that the patient must place his condition in issue for the exception to terminate the privilege.” (7)

“We decline to read into NRS 49.245(3) a limitation it does not state.” (13)

“Relevance alone does not make a patient’s condition an element of a claim or defense.” (14)

“We therefore issue a writ of mandamus directing the district court to rescind its order rejecting the claims of privilege in this case” (18)

FACTUAL BACKGROUND

A seven-year-old child suffered cardiac complications after tonsillectomy surgery performed by Dr. Ryan Mitchell and required a pacemaker. The child’s guardian ad litem sued Mitchell for medical malpractice and his employer for negligent hiring and supervision, alleging that Mitchell’s misadministration of anesthesia caused the injury. Mitchell admitted that he had abused Ketamine and Valium and was addicted at the time of surgery, while denying that he operated while intoxicated; after the surgery he was arrested and convicted for domestic violence while high on drugs and for driving under the influence. The guardian subpoenaed Mitchell’s marital and family counseling records and substance-abuse treatment records.

PROCEDURAL HISTORY

A district court rejected Mitchell’s claims of doctor-patient and marriage-and-family-therapist-client privilege and ordered production of the subpoenaed records. Mitchell sought extraordinary writ relief. The Nevada Supreme Court, sitting en banc, conditionally granted the writ in part, directing in-camera review and protective limitations for the doctor-patient records and prohibiting discovery of the marital and family therapy records.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The district court must rescind its order rejecting Mitchell’s privilege claims, protect the confidential communications between Mitchell, his wife, and their marriage and family therapist, conduct an in-camera review of the doctor-patient substance-abuse records, and enter orders governing their production and use consistent with the opinion.

CASES CITED

- Clark County Liquor & Gaming Licensing Board v. Clark, 102 Nev. 654, 730 P.2d 443 (1986)
- Wardleigh v. Second Judicial District Court, 111 Nev. 345, 891 P.2d 1180 (1995)
- Hetter v. Eighth Judicial District Court, 110 Nev. 513, 874 P.2d 762 (1994)
- Diaz v. Eighth Judicial District Court, 116 Nev. 88, 993 P.2d 50 (2000)
- Ashokan v. State, Department of Insurance, 109 Nev. 662, 856 P.2d 244 (1993)
- Las Vegas Sands Corp. v. Eighth Judicial District Court, 130 Nev. Adv. Op. No. 69, 331 P.3d 905 (2014)

- Mill Spex, Inc. v. Pyramid Precast Corp., 101 Nev. 820, 710 P.2d 1387 (1985)
- Leavitt v. Siems, 130 Nev. Adv. Op. No. 54, 330 P.3d 1 (2014)
- Chung v. Legacy Corp., 548 N.W.2d 147 (Iowa 1996)
- Shamburger v. Behrens, 380 N.W.2d 659 (S.D. 1986)
- R.K. v. Ramirez, 887 S.W.2d 836 (Tex. 1994)
- State v. Worthen, 222 P.3d 1144 (Utah 2009)
- Hosey v. Presbyterian Church (U.S.A.), 160 F.R.D. 161 (D. Kan. 1995)
- Prabhu v. Levine, 112 Nev. 1538, 930 P.2d 103 (1996)
- Jaskolski v. Daniels, 427 F.3d 456 (7th Cir. 2005)