

OREGON SUPREME COURT

Ransom v. Radiology Specialists of the Nw., 363 Or. 552

425 P.3d 412 (2018) · Decided August 23, 2018

SUMMARY

The Oregon Supreme Court considers whether a plaintiff may depose radiologists who participated in her medical care about their present ability to interpret imaging studies they previously reviewed, despite their lack of independent memory of the original examinations. The court holds that the questions are relevant discovery under ORCP 36 B, do not constitute impermissible expert discovery, and do not invade the attorney-client privilege. The court directs issuance of a peremptory writ of mandamus.

CASE DETAILS

COURT	Oregon Supreme Court
WRITING FOR THE COURT	Walters, C.J.; Landau, S.J.; Nakamoto, J.; Balmer, J.; Duncan, J.
JURISDICTION	Oregon
DECIDED	August 23, 2018
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original mandamus proceeding arising from a medical negligence action. The Oregon Supreme Court issued an alternative writ after the trial court denied plaintiff's motion to compel deposition answers; the trial court declined to change its ruling, and the Supreme Court considered whether a peremptory writ should issue.
STANDARD OF REVIEW	The Supreme Court reviewed the trial court's discovery ruling in an original mandamus proceeding and interpreted the Oregon Rules of Civil Procedure and Oregon Evidence Code. Mandamus was appropriate because the court determined that the trial court's refusal to permit the deposition questions was legally erroneous.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential.
PARTIES	Ransom v. Radiology Specialists of the Northwest

TOPICS

- discovery dispute
- attorney client privilege
- medical malpractice
- civil procedure
- appellate procedure

PRACTICE AREAS

civil procedure

medical malpractice

appellate procedure

evidence

attorney-client privilege

QUESTIONS PRESENTED

1. Whether ORCP 36 B permits a party to question participating physician-radiologists about what they currently see in imaging studies they reviewed while treating the plaintiff.
2. Whether such questions constitute impermissible expert discovery under Oregon law.
3. Whether the possibility that the radiologists' current observations were affected by hindsight rendered the questions irrelevant or otherwise permitted counsel to instruct the witnesses not to answer.
4. Whether the attorney-client privilege under OEC 503 protected answers concerning what the radiologists currently saw in the plaintiff's imaging studies.

HOLDINGS

1. Under ORCP 36 B, a participating expert may be questioned about any matter relevant to the expert's direct involvement in the events at issue, including questions requiring application of the expert's knowledge and training to those events.
2. Questions about what participating radiologists could see in the plaintiff's 2013 imaging studies in 2016 were relevant and reasonably calculated to lead to admissible evidence about what the radiologists perceived and knew when they treated the plaintiff in 2013.
3. An objection that deposition answers may be affected by hindsight is not a permissible basis for instructing a deponent not to answer under ORCP 39 D(3).
4. OEC 503 does not protect deposition questions asking what radiologists currently see in medical images merely because their answers may have been affected by information received from defense counsel.

KEY QUOTATIONS

“Thus, under ORCP 36 B, a participating expert can be asked any questions relevant to his or her direct involvement in the events at issue.” (363 Or. at 567)

“Thus, OEC 503 does not provide a basis for the trial court's order denying plaintiff's motion to compel discovery.” (363 Or. at 572)

FACTUAL BACKGROUND

Plaintiff alleged that two radiologists negligently misread her 2013 CT scan, bone scans, and x-ray films, causing her cancer to be staged as Stage II rather than Stage IV. In 2016 depositions, the radiologists testified about the reports they had dictated in 2013 but stated that they had no independent memory of reviewing the images. Defense counsel nevertheless instructed them not to answer questions about what they could see in the images at the time of the depositions, unless they specifically remembered their 2013 interpretations.

PROCEDURAL HISTORY

Plaintiff sued Radiology Specialists of the Northwest for alleged negligence by two radiologists in interpreting her 2013 imaging studies. During 2016 depositions, defense counsel instructed the radiologists not to answer questions about what they could currently see in the studies, asserting that the questions sought nondiscoverable expert testimony and invaded attorney-client privilege. The trial court denied plaintiff's motion to compel. The Supreme Court issued an alternative writ, the trial court declined to alter its ruling, and the Supreme Court ordered a peremptory writ directing the trial court to allow the questioning.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The circuit court was directed to enter an order allowing plaintiff to ask the radiologists about their current knowledge and ability to read and interpret plaintiff's 2013 imaging studies.

CASES CITED

- Stevens v. Czerniak, 336 Or. 392, 84 P.3d 140 (2004)
- Gwin v. Lynn, 344 Or. 65, 176 P.3d 1249 (2008)
- Rogotzki v. Schept, 91 N.J. Super. 135, 219 A.2d 426 (1966)
- Hansen v. Bussman, 274 Or. 757, 549 P.2d 1265 (1976)
- Ritter v. Sivils, 206 Or. 410, 293 P.2d 211 (1956)
- Malila v. Meacham, 187 Or. 330, 211 P.2d 747 (1949)
- Carruthers v. Phillips, 169 Or. 636, 131 P.2d 193 (1942)
- Felske v. Worland, 63 Or. App. 442, 664 P.2d 427 (1983)
- Anderson v. Florence, 288 Minn. 351, 181 N.W.2d 873 (1970)
- Oleksiw v. Weidener, 2 Ohio St. 2d 147, 207 N.E.2d 375 (1965)
- Foxton v. Woodmansee, 236 Or. 271, 386 P.2d 659 (1963), reh'g denied, 236 Or. 271, 388 P.2d 275 (1964)
- Staloch v. Holm, 100 Minn. 276, 111 N.W. 264 (1907)