

SUPREME JUDICIAL COURT OF MAINE

McCain v. Vanadia

191 A.3d 1174 (Me. 2018) · Decided August 14, 2018

SUMMARY

The Maine Supreme Judicial Court addresses an interlocutory appeal from a discovery order issued during medical malpractice screening-panel proceedings. Because the parties completed the screening-panel process without producing the disputed nonparty medical records, the court held that the discovery order had become a nullity and remanded for any renewed discovery request to be considered by the Superior Court.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Alexander, J.; Gorman, J.; Humphrey, J.; Jabar, J.; Mead, J.; Saufley, J.
JURISDICTION	Maine
DECIDED	August 14, 2018
DISPOSITION	remanded
PROCEDURAL POSTURE	Vanadia and St. Joseph Hospital took an interlocutory appeal from a Superior Court order, entered while the court was acting as chair of a medical malpractice screening panel, compelling production of thirty redacted nonparty patient operative notes. McCain moved to dismiss the appeal under the rule that panel discovery orders are not ordinarily appealable and under the final judgment rule.
STANDARD OF REVIEW	The appellants bore the burden of demonstrating that an exception to the final judgment rule justified immediate appellate review. The court declined to reach the merits because the challenged order was no longer operative and therefore could not cause the irreparable loss required for the death-knell or collateral-order exceptions.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	John F. Vanadia, D.O., Bangor Surgical Associates, P.A., St. Joseph Hospital v. Dorothea B. McCain

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the interlocutory appeal from a discovery order entered during medical malpractice screening-panel proceedings was immediately reviewable under an exception to the final judgment rule.
2. Whether the discovery order remained operative after the screening-panel proceedings concluded without production of the records.
3. Whether the court should decide whether an order compelling discovery over a claim of privilege or confidentiality is immediately appealable.

HOLDINGS

1. Under the unique circumstances of this case, the discovery order lost its vitality, ceased to be the law of the case, and became a nullity without legal force or effect after the parties completed the screening-panel process without producing the records.
2. Neither the death-knell nor the collateral-order exception applied because the appellants could not demonstrate an irreparable loss of a claimed right from immediate nonreview of an order that had become a nullity.
3. The court declined to decide whether a Superior Court judge acting as a medical malpractice screening-panel chair may issue an immediately appealable order compelling discovery over a claim of privilege or confidentiality.

KEY QUOTATIONS

“Given the unusual procedural posture presented here, we hold that the discovery order issued during the course of the panel proceedings is now a nullity and therefore does not govern future proceedings in this case.” (191 A.3d at 1174-75)

“Now, however, the case has moved from the panel phase to the trial phase without any nonparty medical records having been produced, and we conclude that the order has lost its vitality.” (191 A.3d at 1177)

FACTUAL BACKGROUND

In November 2015, John Vanadia performed a laparoscopic cholecystectomy on Dorothea McCain and mistakenly cut her common bile duct, requiring corrective surgery. McCain filed a medical malpractice notice of claim and sought the operative notes from fifteen similar procedures performed by Vanadia before and fifteen after her procedure, with identifying information redacted. The Superior Court ordered production, but the parties completed the screening-panel process without producing any of the records.

PROCEDURAL HISTORY

McCain filed a medical malpractice notice of claim arising from a laparoscopic cholecystectomy performed by Vanadia. During the prelitigation screening-panel proceedings, the Superior Court ordered production of

redacted operative notes from thirty other laparoscopic cholecystectomies. The parties proceeded through the panel hearing without producing the records, the panel issued its findings, and McCain then filed a Superior Court complaint. The Supreme Judicial Court held that the discovery order had become a nullity and remanded for any renewed discovery request to be presented to the Superior Court.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The matter was remanded to the Superior Court. If McCain still sought the nonparty records, any discovery request had to be presented anew for analysis of the records' relevance and whether any privilege protected them.

CASES CITED

- Gafner v. Down E. Cmty. Hosp., 1999 ME 130, ¶ 12 & n.4, 735 A.2d 969
- Bd. of Overseers of the Bar v. Warren, 2011 ME 124, ¶ 19, 34 A.3d 1103
- Taylor v. Walker, 2017 ME 218, ¶ 8, 173 A.3d 539
- Estate of Cox v. E. Me. Med. Ctr., 2007 ME 15, ¶ 6, 915 A.2d 418
- Chretien v. Chretien, 2017 ME 192, ¶ 6, 170 A.3d 260
- In re Evelyn A., 2017 ME 182, ¶ 14, 169 A.3d 914
- Bond v. Bond, 2011 ME 105, ¶ 11, 30 A.3d 816