

SUPREME COURT OF MISSISSIPPI

Hewes v. Langston

848 So. 2d 800 (Miss. 2003) · Decided June 19, 2003

SUMMARY

The Mississippi Supreme Court reviewed an interlocutory appeal concerning orders compelling production of documents claimed to be protected by the attorney-client privilege and work product doctrine. The court held that the crime-fraud exception did not apply, determined that the disputed materials were privileged, and reversed the orders compelling production. The case was remanded for further proceedings and the court reiterated that privilege disputes should be resolved item by item.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Justice; Pittman, C.J.; Smith, P.J.; Carlson, J.; Graves, J.; McRae, P.J.; Easley, J.; Waller, J.; Diaz, J.
JURISDICTION	Mississippi
DECIDED	June 19, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Mississippi Rule of Appellate Procedure 5 from orders of the Hinds County Circuit Court compelling production of allegedly privileged documents.
STANDARD OF REVIEW	Application of privilege is a mixed question of law and fact: factual findings are reviewed for clear error, and legal interpretation is reviewed de novo. Because the circuit court failed to make sufficient item-specific findings and conclusions, the Supreme Court conducted a de novo review of the documents.
PRECEDENTIAL VALUE	Published Mississippi Supreme Court opinion; precedential.
PARTIES	George P. Hewes, III, Brown & Williamson Tobacco Corporation v. Cynthia Langston

TOPICS

- discovery dispute
- work product doctrine
- attorney client privilege
- interlocutory appeal
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court erred by ordering production of 29 document items claimed to be protected by the attorney-client privilege or work product doctrine.
2. Whether the circuit court properly conducted an in camera review under the crime-fraud exception.
3. Whether the circuit court made sufficient item-specific findings of fact and conclusions of law to permit appellate review.
4. Whether the challenged documents were protected by the attorney-client privilege, the common-interest privilege, or the work product doctrine.

HOLDINGS

1. A party seeking disclosure need only present a factual basis sufficient to support a reasonable person's good-faith belief that an in camera review may reveal the applicability of the crime-fraud exception. Langston met that lower threshold, so the circuit court did not abuse its discretion by reviewing the documents in camera.
2. The crime-fraud exception did not apply because Langston failed to prove that a crime or fraud actually occurred and the documents did not support her claim that Hewes conspired with Miller to access her telephone records.
3. The challenged documents were protected by the attorney-client privilege, the common-interest privilege, or the work product doctrine, and therefore were not discoverable.
4. When a party objects to discovery of specific documents on privilege grounds, the trial court must consider and rule on each document or item individually and state the rule or exception supporting its decision.

KEY QUOTATIONS

"We reiterate that when objections to discovery of specific documents are made, the trial court should deal with each on an item-by-item basis, carefully considering each objection, deciding whether to allow discovery, and stating the rule or exception which provides the basis for the decision." (810)

"After reviewing the documents item by item, we conclude that all of the documents at issue fall within either the attorney-client privilege or the work product doctrine and thus it was error for the trial court to order them produced." (810)

FACTUAL BACKGROUND

Cynthia Langston represented plaintiffs in a tobacco-related wrongful-death action while undergoing a divorce from Mike Miller, a BellSouth manager whom she accused of improperly accessing her telephone records. Langston alleged that Miller contacted George Hewes, counsel for tobacco manufacturers, concerning alleged improper ex parte contact between Langston and the tobacco-case judge, and later obtained a letter accusing Hewes and others of communicating with Miller about her private telephone conversations. In her 1998 Hinds

County action, Langston sought documents from Hewes and Brown & Williamson that they claimed were protected by the attorney-client privilege or work product doctrine.

PROCEDURAL HISTORY

Langston sued BellSouth, Brown & Williamson, its parent corporations, the Brunini firm, Hewes, and Miller, alleging negligence, conspiracy to invade privacy, and negligent infliction of emotional distress. During discovery, the circuit court conducted an in camera review and ordered production of 30 of 68 document items, later leaving 29 items contested after withdrawals and clarifications. On the first interlocutory appeal, the Supreme Court remanded for item-specific findings and conclusions. After the circuit court again failed to provide sufficient item-specific explanations, the Supreme Court conducted a de novo review of the documents, reversed the production orders, denied the motion to compel, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court's orders compelling production of the 29 items are reversed, Langston's motion to compel production is denied, and the case is remanded for further proceedings consistent with the opinion.

CASES CITED

- United States v. Neal, 27 F.3d 1035, 1048 (5th Cir. 1994)
- Haynes v. Anderson, 597 So. 2d 615, 617, 619-20 (Miss. 1992)
- In re Knapp, 536 So. 2d 1330, 1333 (Miss. 1988)
- Upjohn Co. v. United States, 449 U.S. 383, 389, 400-02 (1981)
- United States v. Zolin, 491 U.S. 554, 562, 572 (1989)
- Barnes v. State, 460 So. 2d 126, 131 (Miss. 1984)
- Dunn v. State Farm Fire & Casualty Co., 927 F.2d 869, 875 (5th Cir. 1991)
- Hickman v. Taylor, 329 U.S. 495, 510-11 (1947)
- Shields v. Sturm, Ruger & Co., 864 F.2d 379, 382 (5th Cir. 1989)
- In re International Systems & Controls Corp. Securities Litigation, 693 F.2d 1235, 1242 (5th Cir. 1982)
- In re John Doe Corp., 675 F.2d 482, 492 (2d Cir. 1982)
- In re Grand Jury Proceedings, 604 F.2d 798, 803 (3d Cir. 1979)
- Nguyen v. Excel Corp., 197 F.3d 200, 206 (5th Cir. 1999)
- Clarke v. American Commerce National Bank, 974 F.2d 127, 129 (9th Cir. 1992)
- Chaudhry v. Gallerizzo, 174 F.3d 394, 403 (4th Cir. 1999)
- In re Horn, 976 F.2d 1314, 1317-18 (9th Cir. 1992)