

SUPREME COURT OF TENNESSEE

James G. Thomas, Jr., Brother and Next of Kin of Karen G. Thomas
v. Elizabeth Oldfield, M.D. et al.

279 S.W.3d 259 (Tenn. 2009) · No. M2006-02767-SC-R11-CF · Decided February 2, 2009

SUMMARY

The Tennessee Supreme Court held that information concerning a defendant’s liability insurance coverage was not discoverable under Tennessee Rule of Civil Procedure 26.02 because it was inadmissible under Tennessee Rule of Evidence 411 and was not reasonably calculated to lead to the discovery of admissible evidence. The court affirmed the Court of Appeals’ reversal of the trial court’s order compelling production of the insurance information. The decision also discussed the history of Tennessee’s discovery rule and the court’s view that a rule amendment would be appropriate to permit such discovery prospectively.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Janice M. Holder, Chief Justice; Cornelia A. Clark, Justice; Gary R. Wade, Justice; William C. Koch, Jr., Justice; E. Riley Anderson, Special Justice
JURISDICTION	Tennessee
DECIDED	February 2, 2009
DOCKET	M2006-02767-SC-R11-CF
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Tennessee Supreme Court granted permission to appeal from the Court of Appeals' reversal of a trial court order compelling discovery of defendants' liability insurance coverage information.
STANDARD OF REVIEW	Interpretation of the Tennessee Rules of Civil Procedure is reviewed de novo with no presumption of correctness.
PRECEDENTIAL VALUE	published precedential opinion of the Tennessee Supreme Court
PARTIES	James G. Thomas, Jr., Brother and Next of Kin of Karen G. Thomas v. Elizabeth Oldfield, M.D. et al.

TOPICS

discovery dispute

insurance

civil procedure

interlocutory appeal

appellate procedure

PRACTICE AREAS

civil procedure

discovery

insurance

QUESTIONS PRESENTED

1. Whether information concerning a defendant's liability insurance coverage is discoverable under Tennessee Rule of Civil Procedure 26.02(1) when the information is inadmissible under Tennessee Rule of Evidence 411 and is not reasonably calculated to lead to the discovery of admissible evidence.

HOLDINGS

1. Information concerning the defendants' liability insurance coverage was not subject to discovery because it was inadmissible at trial under Tennessee Rule of Evidence 411 and did not appear reasonably calculated to lead to the discovery of admissible evidence.
2. Tennessee Rule of Civil Procedure 26.02(1) must be interpreted according to its language and history; the court could not judicially treat the rule as expressly authorizing discovery of liability insurance information when Tennessee had omitted the federal rule's express insurance-disclosure language.

KEY QUOTATIONS

“We construe Tennessee Rule of Civil Procedure 26.02(1) consistently with its federal counterpart and conclude that information concerning liability insurance coverage is “relevant to the subject matter” involved in the pending lawsuit.” (279 S.W.3d at 263)

“While we are constrained by both the language and the history of current Rule 26.02 from holding that information concerning the defendants’ liability insurance coverage is subject to discovery, we are convinced that the time has come to align Tennessee with the rules in forty-eight states and the federal rule in allowing discovery of this information.” (279 S.W.3d at 266)

“We hold that information concerning the defendants’ liability insurance coverage is not subject to discovery under Tennessee Rule of Civil Procedure 26.02 because it is neither admissible nor does it appear to be reasonably calculated to lead to the discovery of admissible evidence.” (279 S.W.3d at 267)

FACTUAL BACKGROUND

Karen Thomas died of sepsis after treatment at Crockett Hospital following abdominal surgery. Her brother, James Thomas, filed a wrongful-death action against several medical providers, including Dr. Charles Love and Emergency Coverage Corporation. Thomas sought information concerning the defendants' liability insurance coverage, but the defendants objected to producing it.

PROCEDURAL HISTORY

The trial court granted the plaintiff's motion to compel responses to interrogatories and requests for production concerning liability insurance coverage under Tennessee Rule of Civil Procedure 26.02 and permitted an

interlocutory appeal. The Court of Appeals accepted the appeal and reversed, holding that the insurance information was not relevant to the merits and was not reasonably calculated to lead to admissible evidence. The Tennessee Supreme Court granted permission to appeal, affirmed the Court of Appeals, and remanded for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the Court of Appeals was affirmed, and the case was remanded for further proceedings. Costs were taxed to the appellant and his surety.

CASES CITED

- Lacy v. Cox, 152 S.W.3d 480, 483 (Tenn. 2004)
- Crosslin v. Alsup, 594 S.W.2d 379, 380 (Tenn. 1980)
- Overstreet v. TRW Commercial Steering Div., 256 S.W.3d 626, 630 (Tenn. 2008)
- Houghton v. Aramark Educ. Res., Inc., 90 S.W.3d 676, 678 (Tenn. 2002)
- Green v. Johnson, 249 S.W.3d 313, 319 (Tenn. 2008)
- State v. Mallard, 40 S.W.3d 473, 480-81 (Tenn. 2001)
- Williamson County v. Twin Lawn Dev. Co., 498 S.W.2d 317, 320 (Tenn. 1973)
- Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351-52 (1978)
- Johaneck v. Aberle, 27 F.R.D. 272, 278, 280 (D. Mont. 1961)
- Hill v. Greer, 30 F.R.D. 64, 65-66 (D.N.J. 1961)
- Terry v. Fisher, 145 N.E.2d 588, 593 (Ill. 1957)
- Beal v. Zambelli Fireworks Mfg. Co., 46 F.R.D. 449, 450 (W.D. Pa. 1969)
- Clauss v. Danker, 264 F. Supp. 246, 249 (S.D.N.Y. 1967)
- Bisserier v. Manning, 207 F. Supp. 476, 479 (D.N.J. 1962)
- Langlois v. Allen, 30 F.R.D. 67, 68-69 (D. Conn. 1962)
- Brackett v. Woodall Food Prod., Inc., 12 F.R.D. 4, 5-6 (E.D. Tenn. 1951)
- Superior Ins. Co. v. Superior Court, 235 P.2d 833, 835-36 (Cal. 1951)
- Lucas v. District Court of County of Pueblo, 345 P.2d 1064, 1068 (Colo. 1959)
- Maddox v. Grauman, 265 S.W.2d 939, 942 (Ky. Ct. App. 1954)
- Di Pietruntonio v. Superior Court, 327 P.2d 746, 750-51 (Ariz. 1958)
- Ruark v. Smith, 147 A.2d 514, 515 (Del. Super. Ct. 1959)
- Brooks v. Owens, 97 So. 2d 693, 699 (Fla. 1957)
- Sanders v. Ayrhart, 404 P.2d 589, 592 (Idaho 1965)
- Jeppesen v. Swanson, 68 N.W.2d 649, 658 (Minn. 1955)

- Bush v. Elliot, 363 S.W.2d 631, 636-37 (Mo. 1963)
- Carman v. Fishel, 418 P.2d 963, 975 (Okla. 1966)
- Tuller v. Shallcross, 886 P.2d 481, 484 (Okla. 1994)
- Great Am. Ins. Co. v. Murray, 437 S.W.2d 264, 267-68 (Tex. 1969)
- Vilord v. Jenkins, 240 So. 2d 68, 68 (Fla. Dist. Ct. App. 1970)
- Szarmack v. Welch, 318 A.2d 707, 710 (Pa. 1974)
- Vythoulkas v. Vanderbilt Univ. Hosp., 693 S.W.2d 350, 355 (Tenn. Ct. App. 1985)

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