

SUPREME COURT OF MISSISSIPPI

Powell v. McLain

105 So. 3d 308 (Miss. 2012) · Decided December 13, 2012

SUMMARY

The Mississippi Supreme Court reviewed an interlocutory appeal concerning discovery of an accident-related recorded statement and documents withheld based on privilege and relevance. The court held that the trial court abused its discretion by ordering production without analyzing work-product protection and by issuing a blanket discovery order without an item-by-item review. The order was vacated and the case remanded for detailed consideration of the asserted privileges and discovery requests.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Lamar, Justice; Carlson, P.J.; Randolph, J.; Pierce, J.; Kitchens, J.; Chandler, J.; King, J.; Waller, C.J.; Dickinson, P.J.
JURISDICTION	Mississippi
DECIDED	December 13, 2012
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendants petitioned for and obtained an interlocutory appeal from an order compelling discovery in an automobile-accident action.
STANDARD OF REVIEW	Discovery rulings are reviewed for abuse of discretion. Interlocutory review of discovery rulings is generally limited, but is available for privilege issues when later correction after disclosure would be futile.
PRECEDENTIAL VALUE	published opinion
PARTIES	Robert Powell, Continental Rails & Excavating v. Sheila McLain

TOPICS

- discovery dispute
- work product doctrine
- privilege
- appellate procedure
- civil procedure

PRACTICE AREAS

- civil procedure
- discovery
- evidence
- torts
- insurance

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by ordering production of Powell's recorded statement without determining whether it was prepared in anticipation of litigation and therefore protected work product.
2. Whether the circuit court erred by ordering defendants to produce a privilege log and other discovery materials without conducting an item-by-item analysis of relevance and privilege.
3. Whether Powell waived his medical privilege merely by being named as a defendant in the lawsuit.

HOLDINGS

1. The circuit court abused its discretion by ordering production of Powell's recorded statement without conducting the required detailed, case-specific analysis of whether the statement was prepared in anticipation of litigation rather than in the ordinary course of business.
2. If the recorded statement was prepared in anticipation of litigation, the circuit court must determine whether McLain has shown substantial need and inability to obtain the substantial equivalent without undue hardship; it must also protect portions revealing mental impressions, conclusions, opinions, or legal theories of counsel or the insurer.
3. A trial court may not compel blanket production or issue a discovery order without sufficiently analyzing each requested item and each asserted objection. The court must conduct an in-camera review of requested documents withheld on privilege grounds and make specific findings on the record identifying the basis for each decision.
4. A party does not waive medical privilege merely by being named as a defendant in a lawsuit. Medical privilege is waived only to the extent the party places a physical, mental, or emotional condition at issue.

KEY QUOTATIONS

"What is prepared with an eye toward litigation, and not in the ordinary course of business, is a matter which the trial court should consider in more detail using a case by case, item by item, approach." (105 So. 3d at 313)

"A party does not waive his medical privilege by virtue of being named a defendant to a lawsuit, and the circuit court cannot compel a party to produce documents covered by medical privilege." (105 So. 3d at 315)

"VACATED AND REMANDED." (105 So. 3d at 316)

FACTUAL BACKGROUND

Sheila McLain collided with the rear of a parked tractor-trailer owned by Continental Rails & Excavating and operated by its employee, Robert Powell. McLain alleged that the truck was parked in a lane of travel without warning devices and that Powell was napping; Powell testified that he had stopped and was placing warning devices. After McLain's attorney sent the insurer a representation letter, the insurer obtained a recorded statement from Powell, and McLain later sought that statement, Powell's employment-related drug and alcohol testing records, and other documents in discovery.

PROCEDURAL HISTORY

McLain sued Powell and Continental Rails & Excavating after an automobile accident. The Circuit Court of Simpson County ordered defendants to produce Powell's recorded statement to their insurer, a privilege log, drug and alcohol testing records, and other materials, without conducting an item-by-item privilege and relevance analysis. The Mississippi Supreme Court granted interlocutory review, vacated the discovery order, and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The circuit court must conduct a detailed case-by-case and item-by-item analysis of Powell's recorded statement, including whether it was prepared in anticipation of litigation, whether McLain has substantial need and cannot obtain its substantial equivalent without undue hardship, and whether any opinion work product must be protected. The circuit court must also conduct a careful and detailed in-camera review of documents withheld on privilege grounds, analyze each request and objection individually, and state specific findings and the applicable rule or exception on the record.

CASES CITED

- Mississippi United Methodist Conference v. Brown, 911 So. 2d 478, 481 (Miss. 2005)
- Boutwell v. Boutwell, 829 So. 2d 1216, 1223 (Miss. 2002)
- Haynes v. Anderson, 597 So. 2d 615, 616-619 (Miss. 1992)
- In re Knapp, 536 So. 2d 1330, 1333 (Miss. 1988)
- Sterling Drug, Inc. v. Harris, 488 F. Supp. 1019, 1026 (S.D.N.Y. 1980)
- Pete Rinaldi's Fast Foods, Inc. v. Great Am. Ins. Cos., 123 F.R.D. 198, 202 (M.D.N.C. 1988)
- Hewes v. Langston, 853 So. 2d 1237, 1245-1250 (Miss. 2003)
- Roman Catholic Diocese of Jackson v. Morrison, 905 So. 2d 1213, 1248 (Miss. 2005)
- Scott v. Flynt, 704 So. 2d 998, 1003 (Miss. 1997)