

SUPREME COURT OF COLORADO

Hoffman v. Brookfield Republic, Inc.

87 P.3d 858 (Colo. 2004) · No. No. 03SA361 · Decided April 5, 2004

SUMMARY

The Colorado Supreme Court reviewed a district court order compelling a personal-injury plaintiff to disclose extensive mental-health records. The court held that generic claims for pain, suffering, and emotional distress incident to physical injuries do not inject a plaintiff's mental condition into the case or impliedly waive the psychotherapist-patient privilege. The court made the rule to show cause absolute and reversed the discovery order.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Colorado                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Justice Rice                                                                                                                                                                                                                                                     |
| JURISDICTION          | Colorado                                                                                                                                                                                                                                                         |
| DECIDED               | April 5, 2004                                                                                                                                                                                                                                                    |
| DOCKET                | No. 03SA361                                                                                                                                                                                                                                                      |
| DISPOSITION           | writ_granted                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Hoffman sought review in an original proceeding under C.A.R. 21 of a district court discovery order compelling production of her pre-accident mental-health and psychotherapy records. The Supreme Court issued a rule to show cause and made the rule absolute. |
| STANDARD OF REVIEW    | The court reviewed through an original proceeding under C.A.R. 21 whether the district court abused its discretion, because disclosure of privileged records could cause irreparable harm that could not be remedied by an appeal from a final judgment.         |
| PRECEDENTIAL VALUE    | Published Colorado Supreme Court opinion; binding precedent in Colorado.                                                                                                                                                                                         |
| PARTIES               | Nancy L. Hoffman v. Brookfield Republic, Inc.                                                                                                                                                                                                                    |

TOPICS

- privilege
- discovery dispute
- writ of certiorari
- appellate procedure
- personal injury

## PRACTICE AREAS

civil procedure

evidence

torts

health law

## QUESTIONS PRESENTED

1. Whether the Colorado Supreme Court had original jurisdiction under C.A.R. 21 to review the district court's discovery order compelling disclosure of allegedly privileged mental-health records.
2. Whether a personal-injury plaintiff impliedly waives the psychotherapist-patient privilege by making a generic claim for pain and suffering and emotional distress incident to physical injuries.
3. Whether detailed descriptions of ordinary emotional distress in interrogatory responses and deposition testimony transform a generic emotional-distress claim into an injection of the plaintiff's mental condition sufficient to waive the privilege.

## HOLDINGS

1. The Supreme Court may review the district court's order in an original proceeding under C.A.R. 21 because disclosure of allegedly privileged records would cause harm that could not be remedied through an appeal after final judgment.
2. A plaintiff does not impliedly waive the psychotherapist-patient privilege merely by seeking damages for generic mental suffering, pain and suffering, or emotional distress that is incidental to physical injuries and does not exceed the suffering an ordinary person would likely experience in similar circumstances.
3. Providing detailed interrogatory and deposition descriptions of emotional distress does not, by itself, transform a generic emotional-distress claim into an implied waiver of the psychotherapist-patient privilege.

## KEY QUOTATIONS

*"We hold that Hoffman did not inject her mental condition into the case so as to impliedly waive her statutory psychotherapist-patient privilege merely by making a generic claim for "severe pain and suffering, and emotional distress" incident to the physical injuries sustained." (87 P.3d at 859)*

*"[B]are allegations of mental anguish, emotional distress, pain and suffering, and loss of enjoyment of life are insufficient to inject a plaintiff's mental condition into a case as the basis for a claim where the mental suffering alleged is incident to the plaintiff's physical injuries and does not exceed the suffering and loss an ordinary person would likely experience in similar circumstances." (87 P.3d at 863)*

*"Rather, the only inquiry is whether Hoffman, by seeking damages for mental suffering, injected her mental condition into the case." (87 P.3d at 864)*

## FACTUAL BACKGROUND

In July 2000, Hoffman was injured when she slipped and fell on an outdoor stone staircase owned and maintained by Brookfield. She claimed serious physical injuries and damages for generic pain and suffering and emotional distress incident to those injuries. Hoffman described the emotional effects of the accident in

discovery and at her deposition but did not seek damages for counseling expenses, did not pursue significant accident-related counseling, and did not intend to call a mental-health expert. Brookfield sought broad access to her mental-health records, including psychotherapy that had ended approximately ten years before the accident.

## PROCEDURAL HISTORY

Hoffman sued Brookfield for personal injuries arising from a slip-and-fall accident and sought damages for physical injuries, pain and suffering, and emotional distress. During discovery, Brookfield moved to compel production of mental-health records, arguing that Hoffman had impliedly waived the psychotherapist-patient privilege by placing her mental condition at issue. The district court granted the motion and ordered disclosure of records from the ten years before the accident and records of earlier psychotherapy. The Colorado Supreme Court accepted the original proceeding, reversed the discovery order, and made the rule to show cause absolute.

## DISPOSITION

writ\_granted

## REMAND INSTRUCTIONS

The rule to show cause was made absolute, requiring the district court's order compelling disclosure of Hoffman's mental-health and psychotherapy records to be vacated or withdrawn. No further remand instructions were stated.

## CASES CITED

- Johnson v. Trujillo, 977 P.2d 152 (Colo. 1999)
- Samms v. Dist. Court, 908 P.2d 520 (Colo. 1995)
- Kourlis v. Dist. Court, 930 P.2d 1329 (Colo. 1997)
- Clark v. Dist. Court, 668 P.2d 3 (Colo. 1983)
- People v. Sisneros, 55 P.3d 797 (Colo. 2002)
- Bond v. Dist. Court, 682 P.2d 33 (Colo. 1984)
- R.K. v. Ramirez, 887 S.W.2d 836 (Tex. 1994)
- Trujillo, 977 P.2d at 154