

FLORIDA DISTRICT COURT OF APPEAL, SECOND DISTRICT

Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital v. Jackman

No. 2D2023-1987 (Fla. 2d DCA Mar. 19, 2025) · No. 2D2023-1987 · Decided March 19, 2025

SUMMARY

The Florida Second District Court of Appeal granted Tampa General Hospital's petition for certiorari and quashed discovery orders compelling production of documents in a medical malpractice action. The court held that the circuit court failed to conduct a hearing, address asserted privileges and statutory protections, or make findings supporting its rulings. The decision did not reach objections based on vagueness, overbreadth, or relevance.

CASE DETAILS

COURT	Florida District Court of Appeal, Second District
WRITING FOR THE COURT	Northcutt, J.; Villanti, J.; Smith, J.
JURISDICTION	Florida District Court of Appeal, Second District
DECIDED	March 19, 2025
DOCKET	2D2023-1987
DISPOSITION	quashed
PROCEDURAL POSTURE	Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital petitioned for certiorari review of two discovery orders entered by the circuit court in a medical malpractice action.
STANDARD OF REVIEW	Certiorari review is appropriate when a discovery order departs from the essential requirements of law, causes material injury throughout the remainder of the proceedings, and leaves no adequate remedy on appeal. Orders compelling disclosure of privileged or otherwise protected material may satisfy this standard because disclosure causes irreparable harm.
PRECEDENTIAL VALUE	Published and precedential Florida Second District Court of Appeal opinion, subject to revision prior to publication.
PARTIES	Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital v. Audrey Jackman, Keith Jackman, University of South Florida Board

of Trustees, Tampa Bay Hearing and Balance Center, P.L., Kyle Allen, M.D.

TOPICS

writ of certiorari

discovery dispute

appellate procedure

civil procedure

health law

PRACTICE AREAS

civil procedure

appellate procedure

health law

QUESTIONS PRESENTED

1. Whether certiorari relief was warranted because the circuit court compelled production of potentially privileged or otherwise protected documents without conducting a hearing, making findings, or demonstrating that it considered the hospital's privilege objections.
2. Whether the appellate court should decide the hospital's separate objections based on vagueness, overbreadth, or relevance.
3. Whether declining to reach the vagueness, overbreadth, and relevance objections established law of the case or precluded the hospital from raising those objections in the circuit court.

HOLDINGS

1. Certiorari relief was warranted because the circuit court departed from the essential requirements of law by compelling production of potentially privileged or protected documents without a hearing, findings, explanation, or in camera review addressing the asserted privilege claims.
2. The court did not reach the hospital's objections based on vagueness, overbreadth, or relevance because those issues were not appropriate for resolution in the certiorari proceeding.
3. The decision did not establish law of the case regarding the hospital's vagueness, overbreadth, or relevance objections and did not preclude the hospital from raising them or the circuit court from considering them.

KEY QUOTATIONS

“review by certiorari is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal.” (at 2)

“Orders requiring disclosure of 'cat out of the bag' material that is not subject to discovery by reason of privilege or by other valid reason for nondisclosure are commonly reviewed by certiorari petition because the harm caused by wrongly compelling the petitioner to disclose protected material is irreparable.” (at 2)

“simply left 'to guess at the basis for the discovery of each document.'” (at 3)

FACTUAL BACKGROUND

In a medical malpractice action brought by Audrey and Keith Jackman, the plaintiffs served discovery demands on Tampa General Hospital seeking hospital documents. The hospital asserted that the demands were vague, overbroad, and irrelevant and that the requested materials implicated statutory confidentiality, peer-review and quality-assurance protections, attorney-client privilege, and work-product protection. The circuit court compelled production without a hearing, findings, explanation, or in camera review, and denied the hospital's subsequent motion for reconsideration and protective relief on the same unexplained basis.

PROCEDURAL HISTORY

The circuit court compelled Tampa General Hospital to produce documents despite objections based on vagueness, overbreadth, relevance, statutory confidentiality, attorney-client privilege, and work-product protection. The circuit court entered the orders without a hearing, findings, explanation, or in camera review, and later denied the hospital's motion for reconsideration and/or to vacate and motion for protective order without a hearing. The Second District granted certiorari and quashed the orders.

DISPOSITION

quashed

REMAND INSTRUCTIONS

The discovery orders were quashed. The opinion does not provide further specific remand instructions, but leaves the hospital's vagueness, overbreadth, and relevance objections available for consideration by the circuit court.

CASES CITED

- Allstate Ins. Co. v. Langston, 655 So. 2d 91, 94 (Fla. 1995)
- Barker v. Barker, 909 So. 2d 333, 336-37 (Fla. 2d DCA 2005)
- Brinkmann v. Petro Welt Trading Ges.M.B.H, 324 So. 3d 574, 578-79 (Fla. 2d DCA 2021)
- Patrowicz v. Wolff, 110 So. 3d 973, 974 (Fla. 2d DCA 2013)
- E. Bay NC, LLC v. Estate of Djadjich, 273 So. 3d 1141, 1144 (Fla. 2d DCA 2019)
- Harborside Healthcare, LLC v. Jacobson, 222 So. 3d 612, 616 (Fla. 2d DCA 2017)
- Board of Trustees of Internal Improvement Trust Fund v. American Educational Enterprises, LLC, 99 So. 3d 450, 455-57 (Fla. 2012)
- Barker v. Barker, 909 So. 2d 333, 388 n.2 (Fla. 2d DCA 2005)

OPINION

FLORIDA HEALTH SCIENCES CENTER, INC. D/B/A TAMPA GENERAL HOSPITAL v.
JACKMAN, JACKMAN

PER CURIAM.

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

FLORIDA HEALTH SCIENCES CENTER, INC., d/b/a Tampa General Hospital, Petitioner, v. AUDREY JACKMAN and KEITH JACKMAN; UNIVERSITY OF SOUTH FLORIDA BOARD OF TRUSTEES; TAMPA BAY HEARING AND BALANCE CENTER, P.L.; and KYLE ALLEN, M.D., Respondents. No. 2D2023-1987 March 19, 2025 Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Melissa M. Polo, Judge. Dinah Stein and Sharon R. Vosseller of Hicks, Porter, Ebenfeld & Stein, P.A., Miami; and Mindy McLaughlin and Carissa Wheeler Brumby of Beytin, McLaughlin, McLaughlin, O'Hara & Bocchino, P.A., Tampa, for Petitioner. Martez Gordon of The Gordon Firm, LLC, Zephyrhills; and Zedrick Barber, II, of The Barber Firm, Palm Beach Gardens, for Respondents. NORTHCUTT, Judge. Florida Health Sciences Center, Inc. d/b/a Tampa General Hospital (TGH) petitions for certiorari review of two discovery orders entered in Audrey and Keith Jackman's medical malpractice action. We grant the petition and quash the orders. The subject orders compelled TGH to produce documents in response to the Jackmans' discovery demands notwithstanding TGH's objections to them. TGH had raised various complaints: the demands were vague, overbroad, and not reasonably calculated to lead to the discovery of admissible evidence; they violated statutory confidentiality of employee information, peer review, and quality assurance processes maintained by the hospital; and they invaded attorney-client privilege and attorney work product protection. The circuit court rejected these contentions without explanation and also disregarded TGH's assertion that it was entitled to a hearing on the discovery dispute. The court summarily entered the orders without setting forth reasons for its rulings. TGH filed a motion it styled as one for reconsideration and/or to vacate and motion for protective order. It argued that the circuit court had erred and violated TGH's right to due process by entering the orders without a hearing. It also requested entry of a protective order until TGH was "allowed a full and fair opportunity to be appropriately heard on its objections" because the materials sought were subject to "valid objections and privileges." The court denied that motion, too, without a hearing or explanation. "[R]eview by certiorari is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal." *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). "Orders requiring disclosure of 'cat out of the bag' material that is not subject to discovery by reason of privilege or by other valid reason for nondisclosure are commonly reviewed by certiorari petition because the harm caused by wrongly compelling the petitioner to disclose protected material is irreparable." *Barker v. Barker*, 909 So. 2d 333, 336–37 (Fla. 2d DCA 2005) (citing *Langston*, 655 So. 2d at 94). Our decision in *Brinkmann v. Petro Welt Trading Ges.M.B.H*, 324 So. 3d 574 (Fla. 2d DCA 2021), governs here. In *Brinkmann*, the petitioners had asserted attorney-client privilege, work product privilege, and other objections to a discovery request. There was a hearing, but the circuit court ultimately overruled the objections without making findings on the privilege and work product objections. *Id.* at 578. This court held that the failure to address whether the claimed privileges

applied, leaving the appellate court to guess at whether the circuit court considered them, warranted certiorari relief. *Id.* The Brinkmann panel was also concerned that the lower court had not conducted an in camera review of the disputed materials, which under the facts of that case further supported certiorari relief. *Id.* at 578–79; see also *Patrowicz v. Wolff*, 110 So. 3d 973, 974 (Fla. 2d DCA 2013) ("A party claiming that documents sought by an opposing party are protected by the attorney- client privilege is entitled to have those documents reviewed in camera by the trial court prior to their disclosure.").¹ 1 The Brinkmann decision is just a recent example of a line of cases in which this court has held that a lower court's failure to provide due process and findings demonstrating its consideration of privilege claims warrants certiorari relief. See *E. Bay NC, LLC v. Est. of Djadjich*, 273 So. 3d 1141, 1144 (Fla. 2d DCA 2019) (granting certiorari review where it was unclear whether the trial court considered statutory objections to discovery requests); *Harborside Healthcare, LLC v. Jacobson*, 222 So. 3d 612, 616 (Fla. 2d DCA 2017) (holding that "it may be a departure from the essential requirements of the law when the trial court requires production of documents—without explanation—despite objections that statutory protections apply"). 3 As was the case in *Brinkmann*, here we are "simply left 'to guess at the basis for the discovery of each document.' " *Brinkmann*, 324 So. 3d at 579 (quoting *E. Bay NC, LLC v. Est. of Djadjich*, 273 So. 3d 1141, 1144 (Fla. 2d DCA 2019)). Also as in *Brinkmann*, the circuit court entered the subject orders without conducting an in camera review of documents that may have been privileged. Indeed, here the circuit court did not even hold a hearing, let alone make any oral or written findings, and it did not otherwise demonstrate that it had considered the claims of privilege. We therefore must quash the orders. Note that we do not reach TGH's objections based on vagueness, overbreadth, or relevance. See *Bd. of Trs. of Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC*, 99 So. 3d 450, 455–57 (Fla. 2012) (holding that overbreadth is not a basis for certiorari relief from a discovery order). Thus, this decision does not establish law of the case with respect to those objections, and it does not preclude TGH from raising, or the circuit court from considering, any of them. See *Barker*, 909 So. 2d at 388 n.2 (recognizing that an appellate court does not create law of the case on an issue by refusing to grant relief on an issue that is not appropriate for certiorari review). Petition granted; orders quashed. VILLANTI and SMITH, JJ., Concur. Opinion subject to revision prior publication. 4