

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 04/10/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

BRADFORD D. LUND,) No. 1 CA-SA 12-0059
)
Petitioner,) DEPARTMENT D
)
v.) Maricopa County
) Superior Court
THE HONORABLE ROBERT D. MYERS,) No. PB 2009-002244
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for) **DECISION ORDER**
the County of MARICOPA,)
)
Respondent Judge,)
)
DIANE DISNEY MILLER, an)
individual, et al.,)
)
Real Parties in Interest.)
_____)

This special action came on for conference on April 4, 2012, before Presiding Judge Peter B. Swann and Judges Michael J. Brown and Jon W. Thompson.

The special action challenges a trial court order in connection with the discovery of Petitioner Bradford Lund's medical records in this aggressively litigated guardianship and conservatorship case. The trial court ordered production of medical records without in camera review, subject to a limited protective order, after concluding that the privilege had been waived. The waiver of privilege is not before us. Rather,

Petitioner argues that the trial court abused its discretion when it failed to order in camera review and impose a more meaningful protective order that would prohibit the Real Parties in Interest from disseminating the information contained in the records to persons outside the underlying case. We agree with Petitioner.

The physician-patient privilege serves as a complete bar to disclosure of medical records. A.R.S. § 12-2235. But when waived, the privacy interests associated with medical information do not evaporate. In this case, certain medical records must be disclosed for the limited purposes of the litigation. But we see no reason to subject Petitioner's privacy to any greater diminution than the law requires.

To this end, we conclude that the trial court abused its discretion when it declined to subject the records to in camera review by the court-appointed special master to determine which of them bear on this litigation. Those documents whose disclosure will not with reasonable likelihood lead to the discovery of admissible evidence should not be produced to the Real Parties in Interest.

With respect to the protective order, the Real Parties in Interest contend that they "do not need to justify their decisions [not to stipulate to a meaningful protective order] to anyone." Though it is true that they were under no legal

obligation to stipulate to a protective order, it is difficult to discern a motive for that decision that is consistent with protection of the putative ward. The superior court bears a responsibility under the rules to protect parties from undue "annoyance, embarrassment [or] oppression." Ariz. R. Prob. P. 28(B); Ariz. R. Civ. P. 26(c). We note that the Guardian ad Litem does not oppose the imposition of a more comprehensive protective order than that adopted by the trial court. And the protracted and acrimonious history of this litigation convinces us that firmer measures are necessary to protect Petitioner from such harm. In the circumstances of this case, we conclude that it was an abuse of discretion to order production of the records without a protective order that (1) limits disclosure of the medical records to parties, their counsel, experts who agree to be bound by the protective order, the court and court appointees, (2) prohibits the disclosure of the information within the documents to persons other than those persons, and (3) requires that copies of, or references to, such documents in court papers be filed under seal.

For the foregoing reasons, we accept jurisdiction and grant relief in the form described above. Petitioner's motion to file Reply in Support of Petition for Special Action Under Seal is granted. The stay previously imposed is lifted. The documents shall be produced for in camera review by the special master

within two business days of the trial court's entry of a protective order that complies with this decision.

/s/

PETER B. SWANN, Presiding Judge