IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

STEVEN YOUNKIN,

Petitioner,

v. Case No. 5D18-3548

NATHAN BLACKWELDER,

Respondent.

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Opinion filed February 22, 2019

Petition for Certiorari Review of Order from the Circuit Court for Orange County, Kevin B. Weiss, Judge.

Kansas R. Gooden, of Boyd & Jenerette, PA, Jacksonville, for Petitioner.

Mark A. Nation and Paul W. Pritchard, of The Nation Law Firm, Longwood, for Respondent.

LAMBERT, J.

In this first-tier certiorari proceeding, Steven Younkin ("Petitioner") asks this court to apply the classic adage of "what is good for the goose is good for the gander"[1] and quash the discovery order entered by the trial court compelling his counsel and his

[1] *See Fridman v. Safeco Ins. Co. of Ill.*, 185 So. 3d 1214, 1225 (Fla. 2016) ("Truly, this is an appropriate example of the classic adage 'what is good for the goose is good for the gander.'").

counsel's law firm to disclose the amount of money it has paid to and the total number of times it has retained its expert witness used in this case over the last three years. Petitioner argues that under *Worley v. Central Florida Young Men's Christian Ass'n*, 228 So. 3d 18 (Fla. 2017), the disclosure of a financial relationship between a party's law firm and its expert witnesses is no longer discoverable. For the foregoing reasons, we deny the petition but certify a question of great public importance to the Florida Supreme Court.

Petitioner was sued for negligence by Nathan Blackwelder ("Respondent") for personal injuries and damages arising out of a motor vehicle accident. Petitioner was insured by Allstate Insurance Company, and Allstate provided him with counsel to represent him in the case. Counsel retained Dr. Craig Jones, an orthopedic surgeon, to perform a Compulsory Medical Examination ("CME") on Respondent under Florida Rule of Civil Procedure 1.360. Prior to the scheduled CME, Respondent sought information as to the frequency that Dr. Jones has been used by defense counsel during the prior three years and the fees it had paid to the expert during that time. *See Allstate Ins. Co. v. Boecher*, 733 So. 2d 993, 997 (Fla. 1999) (holding that information on the frequency of expert's testimony and payments to the expert was discoverable from the insurer). Petitioner objected and moved for a protective order, arguing that under either a "good faith reading" of the Florida Supreme Court's recent decision in *Worley*, or an "extension, modification, or reversal of existing law," disclosure of the financial relationship between a defense law firm and its expert witness is not discoverable. The trial court disagreed and entered the nonfinal discovery order from which Petitioner now seeks certiorari relief.[2]

[2] There is no transcript in our record of the hearing held on the motion for protective order.

Certiorari review 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). Here, Petitioner is not entitled to relief because he has failed to show that the trial court's order departed from the essential requirements of law. In *Vazquez v. Martinez*, 175 So. 3d 372, 373–74 (Fla. 5th DCA 2015), we acknowledged that the discovery of the type of financial information requested in this case is permissible "to assist counsel in impeaching examining physicians and other experts by demonstrating that the expert has economic ties to the insurance company or defense law firm." Thus, the instant order is consistent with, rather than a departure from, the essential requirements of law.[3]

Contrary to Petitioner's argument, the Florida Supreme Court's decision in *Worley* did not implicitly overrule *Vazquez* or other similar cases. The specific issue before the court in *Worley* was "whether the attorney-client privilege protects a plaintiff from disclosing that an attorney referred him or her to a doctor for treatment, or a law firm from producing documents related to a possible referral relationship between the firm and its client's treating physicians." 228 So. 3d at 22. The court concluded that such information was protected by the attorney-client privilege. *Id.* at 25. The court in *Worley* distinguished its earlier decision in *Boecher*, where it determined that the extent of a party's financial relationship with a particular expert was discoverable, from the issue before it regarding the ability to discover a referral or other financial relationship between a plaintiff's law firm

[3] Petitioner raised other arguments for certiorari relief, which we deny without further discussion.

and the plaintiff's treating physician because, "[f]irst, and most obviously, the law firm is not a party to the litigation." *Id.* at 23. In the present case, Petitioner argues that this reasoning should equally apply to the order requiring the defense law firm, also not a party to the litigation, to disclose its relationship with an expert witness.

Our court has also noted the seemingly disparate treatment in personal injury litigation between plaintiffs and defendants regarding disclosure of this type of relationship. *See State Farm Mut. Auto. Ins. Co. v. Knapp*, 234 So. 3d 843, 845 n.1 (Fla. 5th DCA 2018) (observing that "*Worley* seems, as a practical matter, to permit full *Boecher* discovery only when it is directed to personal injury defendants and their insurers, while shielding injured plaintiffs from having to disclose information about similar repetitious referral relationships that exist between doctors and plaintiffs' counsel by invoking the attorney-client privilege"). For example, under *Worley*, a plaintiff law firm can refer 100 of its clients to the same treating physician, who may later testify as an expert witness at trial, without that referral arrangement being either discoverable or disclosed to the jury, yet if a defense firm sends each one of these 100 plaintiffs to its own expert to perform a CME under Florida Rule of Civil Procedure 1.360, and then later to testify at trial, the extent of the defense law firm's financial relationship with the CME doctor is readily discoverable and can be used by the plaintiff law firm at trial to attack the doctor's credibility based on bias. *See* § 90.608(2), Fla. Stat. (2016). Nevertheless, this appears to be the present status of the law.

In sum, we deny Petitioner's request that we quash the trial court's discovery order because there has been no departure from the essential requirements of law. Rather, in our view, the order furthers the "truth-seeking function and fairness of the trial," *Springer*

v. West, 769 So. 2d 1068, 1069 (Fla. 5th DCA 2000), because, as explained by the Florida Supreme Court, "[o]nly when *all* relevant facts are before the judge and jury can the 'search for truth and justice' be accomplished," *Boecher*, 733 So. 2d at 995 (quoting *Dodson v. Persell*, 390 So. 2d 704, 707 (Fla. 1980)). However, because Petitioner raises a compelling argument that the law in this area is not being applied in an even-handed manner to all litigants, we certify the following question to the Florida Supreme Court as one of great public importance:

> WHETHER THE ANALYSIS AND DECISION IN *WORLEY* SHOULD ALSO APPLY TO PRECLUDE A DEFENSE LAW FIRM THAT IS NOT A PARTY TO THE LITIGATION FROM HAVING TO DISCLOSE ITS FINANCIAL RELATIONSHIP WITH EXPERTS THAT IT RETAINS FOR PURPOSES OF LITIGATION INCLUDING THOSE THAT PERFORM COMPULSORY MEDICAL EXAMINATIONS UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.360?

PETITION FOR WRIT OF CERTIORARI DENIED; QUESTION CERTIFIED.

EDWARDS and HARRIS, JJ., concur.