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

OSCEOLA COUNTY BOARD OF COUNTY COMMISSIONERS,

Appellant,

v.

Case No. 5D20-1267
5D20-1357

SAND LAKE SURGERY CENTER, LLC, LORI BLAKE, AND THYSSENKRUPP ELEVATOR CORPORATION, A FOREIGN PROFIT CORPORATION,

Appellees.

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Opinion filed May 21, 2021

Appeal from the Circuit Court for Osceola County, Michael Murphy, Judge.

Derek J. Angell and Joseph D. Tessitore, of Bell & Roper, P.A., Orlando, for Appellant.

Jeffrey L. Myers, of Law Office of Jeffrey L. Myers, Tarpon Springs, for Appellee, Sand Lake Surgery Center, LLC.

George H. Anderson, III, of Dan Newlin Injury Attorneys, Orlando, for Appellees, Lori Blake and Kristie Gilmore.

No Appearance for Appellee, Thyssenkrupp Elevator Corporation.

EDWARDS, J.

When a health care facility treats a personal injury plaintiff, the defendant being sued is entitled to discover the amount of the original medical bills and any discounts agreed upon when the health care facility sells plaintiff's unpaid accounts to a factoring company. That information is typically relevant when plaintiff seeks to recover reasonable medical expenses as part of a lawsuit against the defendant. The trial court erred here when it prevented Appellant, Osceola County Board of County Commissioners, from obtaining that information and related documents from Appellee, Sand Lake Surgery Center, LLC ("Sand Lake"). Accordingly, we quash the order sustaining Sand Lake's objections and remand for further proceedings including entry of an order compelling production of those documents and allowing Appellant to depose Sand Lake's designated corporate witness.

Background

Plaintiffs, Lori Blake and Kristie Gilmore, are suing Appellant, claiming they were injured when an elevator in the county's parking garage malfunctioned. Both were treated pursuant to letters of protection at Sand Lake.[1] Rather than wait for the outcome of the plaintiffs' cases, Sand Lake sold plaintiffs' accounts receivables to American Medical Funding ("AMF"), a factoring company.

Utilizing non-party production subpoenas, Appellant requested Sand Lake to provide documents related only to these plaintiffs, including inter alia, medical records, billing records, payments of plaintiffs' bills, and records relating to any sale of plaintiffs' outstanding accounts to third parties.[2] Neither plaintiff objected to Appellant's subpoenas. Sand Lake responded to Appellant's subpoena by advising it had sold plaintiffs' outstanding accounts to AMF and suggested that Appellant should obtain those records from AMF.

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[1] When a health care provider enters into a letter of protection related to providing treatment, it agrees to obtain payment from any recovery the patient receives through a claim or lawsuit, rather than demanding immediate payment. *Katzman v. Rediron Fabrication, Inc*. 76 So. 3d 1060, 1064 (Fla. 4th DCA 2011).

[2] The relatively narrow scope of documents requested here, among other factors, clearly distinguishes the present case from *Gulfcoast Spine Inst., LLC v. Walker*, 46 Fla. L. Weekly D308 (Fla. 2d DCA Feb. 5, 2021).

Appellant followed up by scheduling the deposition, via subpoenas duces tecum, of Sand Lake's designated corporate representative and requesting similar documents to those requested in Appellant's non-party production subpoenas. Again, neither plaintiff objected. Sand Lake retained counsel and responded to the subpoenas duces tecum by providing plaintiffs' medical treatment and billing records, but stating that Sand Lake was unable to provide documents related to payments made towards plaintiffs' bills, write-offs or discounts applied to plaintiffs' bills, or records reflecting the sale or transfer of any debt or bill owed by plaintiffs "because such information is subject to trade secret or confidentiality provisions which prohibit the disclosure of such information for th[ese] patient[s]." Sand Lake further responded by stating that, "[a] violation of such provisions in this deposition would subject Sand Lake to significant damages and therefore the information cannot be provided and the deponent cannot respond."

Appellant cancelled the deposition duces tecum and filed a motion seeking orders addressing Sand Lake's objections and to compel production of the requested documents. A hearing was held via telephone conference involving Appellant, Sand Lake, and AMF.[3]

[3] Although AMF participated below, it has not participated in any fashion in this Court. Plaintiffs' participation in this appeal has been limited to stating their position regarding what proof should be admissible regarding

During the hearing, Appellant advised that rather than require the court to review all the documents, including the agreement between Sand Lake and AMF, it would agree to a reasonable confidentiality order that would limit disclosure and use of the requested documents only as needed for plaintiffs' pending cases. Sand Lake was agreeable to that, but AMF protested that the documents were not discoverable.

Sand Lake's argument below and on appeal is simply that its contract with AMF prevents it from voluntarily disclosing the information or documents because of an undisclosed financial penalty attached to a breach of the non-disclosure provisions of its agreement with AMF.

None of the relevant documents were filed with the trial court or provided for its in-camera review. No evidence was offered to support AMF's claims that any document or information contained therein was in fact confidential or a trade secret.

During the hearing, the trial court stated that, "the status of the law, as I understand it now, is that [Appellant] is not entitled to that information now [but] between now and the trial, probably the Supreme Court will have changed their positions." Appellant suggests those comments refer to

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plaintiffs' medical bills once the case goes to trial but taking no position otherwise.

Worley v. Cent. Fla. Y.M.C.A., 228 So. 3d 18 (Fla. 2017), and subsequently filed matters, such as *Younkin v. Blackwelder*, 44 Fla. L. Weekly D549 (Fla. 5th DCA 2019), *rev. granted*, No. SC19-385, 2019 WL 2180625 (Fla. May 21, 2019), now pending before the Florida Supreme Court regarding the discoverability of ongoing financial relationships between health care providers and law firms representing injured plaintiffs. We agree with the parties that no such issues are involved in this appeal, beyond the possibility that the trial court's ruling was somehow mistakenly tied to that on-going dispute.

The trial court denied Appellant's motion, sustained Sand Lake's objections, and ordered that there would be no deposition duces tecum of Sand Lake. Appellant timely appealed.

Analysis

When a trial court addresses a non-party's objection to producing allegedly confidential or trade secret documents, it must "weigh the requesting party's need for those records against the privacy interests of the objecting non-party." *Bianchi & Cecchi Servs. v. Navalimpianti USA, Inc.*, 159 So. 3d 980, 982–83 (Fla. 3d DCA 2015) (citing *Rousso v. Hannon*, 146 So. 3d 66, 71 (Fla. 3d DCA 2014)). Stated somewhat differently, in such circumstances a trial court must generally follow a three-step process:

> (1) determine whether the requested production constitutes a trade secret;
> (2) if the requested production constitutes a trade secret, determine whether there is a reasonable necessity for production; and
> (3) if production is ordered, the trial court must set forth its findings.

Sea Coast Fire, Inc. v. Triangle Fire, Inc., 170 So. 3d 804, 807–808 (Fla. 3d DCA 2014) (citing *Gen. Caulking Coating Co. v. J.D. Waterproofing Inc.*, 958 So. 2d 507, 508 (Fla. 3d DCA 2007)). There is no indication that the trial court followed these procedures in this case.

Even if the trial court had followed the procedures described above, its order must be quashed. "The burden is on the party resisting discovery to show that the information sought is a trade secret." *Sea Coast Fire*, 170 So. 3d at 808 (citation omitted). Neither AMF nor Sand Lake offered any proof that the information sought by Appellant was in fact a trade secret. Because the agreement between Sand Lake and AMF was not provided to the trial court and is not part of the record on appeal, it cannot be considered as proof that the information Appellant sought was confidential. *See Atchiler v. State*, 442 So. 2d 349, 350 (Fla. 1st DCA 1983).

The documents sought by Appellant from Sand Lake were clearly relevant. A personal injury plaintiff has the burden of proving the reasonableness of his or her medical expenses. *Garrett v. Morris Kirschman*

& Co., 336 So. 2d 566, 571 (Fla. 1976). The reasonableness of medical expenses is relevant because patients are only obligated to pay a reasonable amount. *See A.J. v. State*, 677 So. 2d 935, 937 (Fla. 4th DCA 1996); *see also Giacalone v. Helen Ellis Mem'l Hosp. Found., Inc.*, 8 So. 3d 1232, 1235 (Fla. 2d DCA 2009). Several factors are relevant to the analysis of whether a medical provider's charges are reasonable, including explanations for pricing differentials such as "discounts associated with factoring of accounts receivable." *Lawton-Davis v. State Farm Mut. Auto. Ins. Co.*, No. 6:14-cv-1157-Orl-37DAB, 2016 WL 1383015 at *2 (M.D. Fla. Apr. 7, 2016).

In the absence of proof that the documents sought by Appellant are trade secrets or confidential in nature and given the apparent relevance of the documents, we quash the trial court's order that denied Appellant's motion and sustained Sand Lake's objections. We remand this matter for further proceedings, including entry of an order denying Sand Lake's objections and compelling Sand Lake to produce within a reasonable, specified time the documents requested by Appellant in its non-party subpoenas and its subpoenas for deposition duces tecum of Sand Lake's designated corporate witness. Given that Appellant and Sand Lake have consistently agreed to entry of an order limiting the distribution and use of those documents solely to this litigation, the trial court shall include a

reasonable provision to that effect in its order. Should Appellant wish to go forward with an actual deposition of Sand Lake's designated corporate witness it may follow normal procedures to do so.

REVERSED AND REMANDED WITH INSTRUCTIONS.

COHEN and WALLIS, JJ., concur.