

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

JANUARY TERM 2013

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

PAUL B. WALKER and BRIGHT HOUSE  
NETWORKS, LLC,

Petitioners,

v.

Case No. 5D12-1403

GARY RUOT and JENNIFER RUOT,

Respondents.

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Opinion filed April 19, 2013

Petition for Certiorari Review of Order  
from the Circuit Court for Seminole County,  
Alan A. Dickey, Judge.

Daniel S. Liebowitz and Sarah E. Wade,  
of Cruser & Mitchell, LLP, and Alan  
Stagmeier, Jr., of Morgan & Morgan P.A.,  
Orlando, for Petitioner.

Nicholas A. Shannin, of Page, Eichenblatt,  
Bernbaum & Bennett, P.A., Orlando, for  
Respondents.

PALMER, J.

Bright House Networks, LLC, filed a petition seeking certiorari relief from the trial court's discovery order compelling it to produce the personnel file of its former employee, Paul Walker. We grant the petition, concluding that the trial court departed from the essential requirements of law by requiring the production of the entire personnel file without first conducting an *in camera* review.

Gary and Jennifer Ruot filed an automobile negligence action against Bright House and Walker after the couple sustained injuries when Walker, while driving a Bright House van, rear-ended their vehicle. The Ruots served on Bright House a request to produce Walker's personnel file. Bright House objected on the grounds that the file contained irrelevant information and that production of the entire file would reveal Walker's confidential information and thus violate his privacy rights.

The Ruots filed a motion to compel. At a hearing held on the motion, the Ruots argued that information in Walker's file was discoverable because it might support claims for negligent entrustment, negligent hiring, and/or negligent retention. Further, they argued that the information might aid them in locating Walker to effectuate service of process. Bright House again objected on relevancy grounds, but properly conceded that it lacked standing to assert Walker's privacy rights.

Without conducting an *in camera* inspection, the trial court entered an order compelling the production of Walker's entire file, holding that the documents in the file were clearly relevant to the subject matter of the lawsuit. This petition timely followed.<sup>1</sup>

While Bright House lacked standing to assert Walker's privacy rights in his personnel file, it possessed standing to oppose the production of private information within the file on the ground that the information was not relevant to the litigation. Alterra Healthcare Corp. v. Estate of Shelley, 827 So. 2d 936, 945 (Fla. 2002). It is axiomatic that discovery in civil cases must be relevant to the subject matter of the case. See Fla.

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<sup>1</sup> Certiorari is the appropriate vehicle to review an interlocutory order requiring disclosure of allegedly private information. See Alterra Healthcare Corp. v. Estate of Shelley, 827 So. 2d 936, 945 (Fla. 2002).

R. Civ. P. 1.280(b)(1). "In exercising its discretion to prevent injury through abuse of the action or the discovery process within the action, trial courts are guided by the principles of relevancy and practicality." Friedman v. Heart Inst. of Port St. Lucie, Inc., 863 So. 2d 189, 194 (Fla. 2003).

Personnel files undoubtedly contain private information. See, e.g., Alterra, 827 So. 2d at 946 (referencing employees' privacy rights in their personnel files); Regan-Touhy v. Walgreen Co., 526 F.3d 641, 648-49 (10th Cir. 2008) (noting that, while not categorically out of bounds, personnel files contain sensitive personal information, and trial court was not unreasonable to be "cautious about ordering their entire contents disclosed willy-nilly"); Ladson v. Ulltra E. Parking Corp., 164 F.R.D. 376, 377 n.1 (S.D.N.Y. 1996) ("Legitimate privacy concerns exist with regard to personnel files."). Here, Walker was named as a defendant, but he had not been served with the complaint as his whereabouts were unknown, so he lacked the opportunity to personally assert a privacy objection. "This does not necessarily mean, however, that such important nonparty rights should not be considered, or that the right to privacy and the right to know should not be weighed, during the discovery process." Alterra, 827 So. 2d at 944. When privacy rights are implicated, discovery should be narrowly tailored to provide access to discoverable information while safeguarding privacy rights.

It is likely that Walker's personnel file contains information about his compensation, benefits, pension, and the like which would not be relevant to this lawsuit, but would be highly intrusive to Walker's privacy interests if disclosed. In contrast, any information regarding Walker's training, competence, abilities, and disciplinary history may be relevant to the underlying automobile negligence action.

The file may also contain discoverable information helpful in locating Walker. As such, the trial court erred in not conducting an *in camera* inspection of Walker's file in order to segregate the relevant documents which were discoverable from the irrelevant documents which were not. Cf. Alterra, 827 So. 2d at 945-46; Beverly Enters.-Fla, Inc. v. Deutsch, 765 So. 2d 778, 783 (Fla. 5th DCA 2000), disapproved on other grounds, Alterra, 827 So. 2d 936. Accordingly, the trial court departed from the essential requirements of law by ordering Bright House to disclose Walker's entire personnel file without first conducting an *in camera* inspection.

PETITION GRANTED.

COHEN and BERGER, JJ., concur.