NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

SALLY TANNER and TROPICAL MUSIC SERVICES, INC.,	)	
Petitioners,	)	
v.	)	Case No. 2D20-1470
DANIELLE HART,	)	
Respondent.	)	

Opinion filed January 8, 2021.

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Martha J. Cook, Judge.

Kansas R. Gooden of Boyd & Jenerette, P.A., Miami, and Kevin D. Franz of Boyd & Jenerette, P.A., Boca Raton, for Petitioners.

Kristen M. Collins and Marc D. Matthews of McIntyre Thanasides Bringgold Elliott Grimaldi Guito & Matthews, P.A., Tampa, for Respondent.

LABRIT, Judge.

Sally Tanner petitions for a writ of certiorari as to an order compelling production of nearly ten years of her medical records. She contends the order departs from the essential requirements of law and causes material injury that cannot be

remedied on plenary appeal because it violates her constitutional right to privacy and requires disclosure of information that is irrelevant to the issues in litigation. We agree, grant the petition, and quash the order.

BACKGROUND

Respondent Danielle Hart sued Ms. Tanner in 2018, alleging negligence in connection with a 2014 automobile accident that occurred when Ms. Tanner was seventy-nine years old. In 2019 (five years after the accident), Ms. Hart sought to depose Ms. Tanner, who was then in hospice care and suffering memory loss associated with dementia, as confirmed by letters from two of her physicians.

After learning of Ms. Tanner's diagnosis and inability to be deposed, Ms. Hart sought production from Ms. Tanner's physicians of "any and all" of the following medical records:

> new patient information; office notes; medical reports; X-ray, MRI, CT scan, lab or other diagnostic reports; phone messages from patient; letters authored by any doctor, nurse, or nurse practitioner currently or previously employed by the practice to any third-party recipient; prescriptions; SOAP notes; narrative reports; nurse or nurse practitioner reports; discharge summary.

Ms. Tanner objected that these requests impinged upon her constitutional right to privacy, were overbroad, and sought information that was irrelevant to the issue framed by the pleadings—whether Ms. Tanner was negligent in 2014.

The trial court initially sustained these objections, finding that Ms. Tanner's medical condition was not at issue and concluding that disclosure of the medical records would violate her constitutional privacy rights. The trial court later granted Ms. Hart's request for reconsideration and directed production of the records for the time

period of December 2011 through April 2020. The trial court did not examine the records in camera but directed the parties to execute a confidentiality agreement.

Ms. Tanner moved for reconsideration, reiterating arguments she made in support of her objections to the document requests. To substantiate her overbreadth and relevance arguments, Ms. Tanner submitted the deposition of her son, who testified that Ms. Tanner's memory problems did not begin until 2016 (two years after the accident), when she was diagnosed with early onset of dementia. Mr. Tanner also was unaware of Ms. Tanner being involved in any other automobile accidents from 2009 until she stopped driving in 2016 or 2017. The trial court denied Ms. Tanner's motion for reconsideration and she timely filed her petition for certiorari directed to the order compelling production of the medical records.

ANALYSIS

A petition for certiorari may be granted only if the petitioner demonstrates "(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case[,] (3) that cannot be corrected on postjudgment appeal." Hett v. Barron-Lunde, 290 So. 3d 565, 569 (Fla. 2d DCA 2020) (alteration in original) (quoting Bd. of Trs. of Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC, 99 So. 3d 450, 454 (Fla. 2012)). The last two elements are jurisdictional and must be analyzed before the first element. See Rodriguez v. Miami-Dade Cnty., 117 So. 3d 400, 404 (Fla. 2013) ("The threshold question . . . is whether there is a material injury that cannot be corrected on appeal, otherwise termed as irreparable harm. Only after irreparable harm has been established can an appellate court then review whether the petitioner has also shown a departure from the essential requirements of law." (citations

omitted)).

"A patient's medical records enjoy a confidential status by virtue of the right to privacy contained in [article 1, section 23 of] the Florida Constitution." State v. Johnson, 814 So. 2d 390, 393 (Fla. 2002); see also Barker v. Barker, 909 So. 2d 333, 337 (Fla. 2d DCA 2005) ("Court orders compelling discovery of personal medical records constitute state action that may impinge on the constitutional right to privacy."). Thus, an order that compels production of a party's medical records satisfies the jurisdictional element of irreparable harm. See James v. Veneziano, 98 So. 3d 697, 698 (Fla. 4th DCA 2012) (stating that certiorari jurisdiction existed to review order directing the defendant in a negligence action to produce ten years' worth of medical records); see also Paylan v. Fitzgerald, 223 So. 3d 431, 434 (Fla. 2d DCA 2017) ("Orders that require disclosure of confidential medical information meet the irreparable harm requirement for certiorari review because once such information is improperly disclosed, the harm caused by that disclosure cannot be undone." (citing USAA Cas. Ins. Co. v. Callery, 66 So. 3d 315, 316 (Fla. 2d DCA 2011))). Because the order on review compels disclosure of confidential medical information, we are empowered to exercise certiorari jurisdiction.

The next inquiry is whether the order departs from the essential requirements of law. Discovery orders requiring "disclosure of claimed confidential information are reviewed with greater caution than those that are simply burdensome or costly due to overbreadth." Rousso v. Hannon, 146 So. 3d 66, 71 (Fla. 3d DCA 2014). And "[w]hen personal medical records are sought, the State's interest in fair and efficient resolution of disputes by allowing broad discovery must be balanced against

the individual's competing privacy interests to prevent an undue invasion of privacy." Barker, 909 So. 2d at 338 (citing Rasmussen v. S. Fla. Blood Serv., Inc., 500 So. 2d 533, 535 (Fla. 1987)). In this context, a trial court departs from the essential requirements of law by ordering production of medical records without inspecting the records in camera "to prevent disclosure of information that is not relevant to the litigation." Id.; see also Zarzaur v. Zarzaur, 213 So. 3d 1115, 1120 (Fla. 1st DCA 2017) (quashing order requiring production of medical records where trial court failed to conduct "mandatory" in camera inspection to "ensure that only relevant, timely documents are disclosed"); James, 98 So. 3d at 698 ("[W]hen a party challenges a discovery order concerning material to which the party asserts his or her constitutional right to privacy, the trial court must conduct an in camera examination to determine the relevance of the materials to the issues raised or implicated by the lawsuit." (emphasis added) (citing Bergmann v. Freda, 829 So. 2d 966, 967 (Fla. 4th DCA 2002))).

Ms. Hart argues that the medical records are relevant to Ms. Tanner's mental capacity at the time of the 2014 accident as well as her current capacity to be deposed. Some subset of the records may be relevant to those issues but requiring disclosure of "any and all" records from 2011 through the present casts too wide a net. See Scully v. Shands Teaching Hosp. & Clinics, Inc., 128 So. 3d 986, 988-89 (Fla. 1st DCA 2014) (holding that the trial court departed from the essential requirements of law by directing temporally broad production of "any and all" medical records without performing in camera inspection of medical records to determine their relevance); see also Barker, 909 So. 2d at 338 (determining that the trial court departed from the essential requirements of law by failing to examine medical records in camera "to

prevent disclosure of information that is not relevant to the litigation"); Poston v. Wiggins, 112 So. 3d 783, 785 (Fla. 1st DCA 2013) (noting that trial courts must "balanc[e] the right to broad discovery against an individual's competing privacy interests to prevent an undue invasion of privacy" (citing Barker, 909 So. 2d at 338)); McEnany v. Ryan, 44 So. 3d 245, 247 (Fla. 4th DCA 2010) (stating that the trial court must "determine whether there is good cause for disclosure, such that the need for the information outweighs the possible harm" associated with disclosure of private medical information (citation omitted)).

The trial court departed from the essential requirements of law by compelling disclosure of nearly ten years' worth of categorically inclusive medical information without first determining its relevance and balancing the need for such information against Ms. Tanner's constitutionally-protected privacy interests.[1] Accordingly, we grant the petition and quash the order.

Petition granted; order quashed.

LaROSE and SMITH, JJ., Concur.

---

[1]The requirement that the parties execute a confidentiality agreement limiting access to the documents to counsel and retained experts does not affect this conclusion. Medical records may not be disclosed to opposing parties or their counsel until after the trial court reviews the records in camera to determine their relevance. Zarzaur, 213 So. 3d at 1120. We are not unmindful of "the difficulty that such reviews pose for busy trial judges. Nevertheless, the protection of privacy interests is a significant constitutional issue, and despite the burden, it appears that it is the only way to protect a needless invasion of privacy." McEnany, 44 So. 3d at 248.