IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CT-409

National Collegiate Athletic Association,
Appellant

–v–

Jennifer Finnerty, et al.,
Appellees

Argued: November 2, 2021 | Decided: July 19, 2022

Interlocutory Appeal from the Marion Superior Court
No. 49D01-1808-CT-33896
No. 49D01-1901-CT-2954
No. 49D01-1905-CT-21770
The Honorable Heather A. Welch, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-CT-1069

Opinion by Chief Justice Rush

Justices David, Massa, Slaughter, and Goff concur.

Rush, Chief Justice.

Depositions are central to the discovery process, often serving as the factual arena where a majority of litigation takes place. Our trial rules allow parties to depose anyone with information relevant to the lawsuit. But they also give trial courts discretion to issue a protective order to protect a deponent from annoyance, harassment, or embarrassment.

Here, the NCAA twice moved unsuccessfully for a protective order to prevent the plaintiffs from deposing three of its high-ranking executives. Following the court's second denial order, the NCAA sought discretionary interlocutory review under Indiana Appellate Rule 14(B), asking whether Indiana should adopt the apex doctrine. This doctrine can prevent parties from deposing top-level corporate executives absent the requesting party making certain initial showings. The plaintiffs, citing existing protections under our trial rules, contend that adopting the apex doctrine is unnecessary. And as a threshold issue, the plaintiffs, characterizing the NCAA's second motion as either a repetitive motion or a motion to reconsider, maintain the appeal is untimely.

Addressing these claims requires us to resolve two issues of first impression. We first hold that a trial court's order on a repetitive motion or a motion to reconsider is an "other interlocutory order" under Rule 14(B) and, thus, this appeal is properly before us. Then, though we decline to adopt the apex doctrine, we establish a framework that harmonizes its underlying principles with our applicable trial rules to assist courts in determining whether good cause exists to limit or prohibit the deposition of a top-level official in a large organization. We ultimately remand for the trial court to evaluate the NCAA's second motion for a protective order with the benefit of this guidance.

Facts and Procedural History

Headquartered in Indianapolis, the National Collegiate Athletic Association (NCAA) is a nonprofit organization that regulates collegiate athletics nationwide. Though the organization was founded "to keep college athletes safe," in recent years, former college football players have filed "more than 500 class action lawsuits" against the NCAA, many of which

contend that, during the athletes' competitive years, the NCAA failed to implement "proper policies for preventing, diagnosing, or managing football head injuries."

Here, three lawsuits have been brought on behalf of former college football players Cullen Finnerty, Andrew Solonoski Jr., and Neal Anderson (the "Athletes"). The Athletes competed at different NCAA member-institutions and at different times: Finnerty at the University of Toledo and Grand Valley State University between 2001 and 2006; Solonoski at North Carolina State University between 1966 and 1970; and Anderson at the University of Illinois between 1960 and 1964. During their participating years, each athlete sustained several concussive and subconcussive injuries. Following their collegiate careers, the Athletes suffered from various physical and mental conditions, ranging from headaches, motor impairment, and loss of impulse control to memory loss, paranoia, anxiety, rage, and depression. Ultimately, all three men were diagnosed with chronic traumatic encephalopathy (CTE)—a neuro-degenerative disease linked to repetitive brain trauma. Finnerty, Anderson, and Solonoski passed away in 2013, 2018, and 2021, respectively.

The Athletes' legal representatives claim that despite being aware of the consequences of repetitive head trauma, the NCAA failed to implement reasonable concussion-management protocols to protect the Athletes. The trial court consolidated the three lawsuits for pretrial discovery purposes.

Near the beginning of the discovery phase, the Athletes issued deposition notices for three NCAA executives: Mark Emmert, President; Donald Remy, Chief Legal Officer and Chief Operating Officer; and Brian Hainline, Chief Medical Officer. The NCAA responded by filing a motion for a protective order to quash the depositions, relying in relevant part on the apex doctrine, which generally shields high-level executives from depositions unless the requesting party shows (1) the executive possesses unique or personal knowledge relevant to the issues being litigated and (2) the information cannot be obtained through a less intrusive discovery method.

The NCAA claimed—with supporting affidavits—that the executives possessed neither "first-hand personal knowledge" nor "unique or superior knowledge" about the Athletes themselves or the NCAA's awareness of CTE

during the Athletes' respective competitive years. In response, the Athletes maintained that the NCAA failed to show the requisite good cause for a protective order, claiming each executive possesses relevant information and less intrusive methods were inadequate.

After a hearing, the trial court issued an order granting in part and denying in part the NCAA's motion for a protective order. Specifically, the court imposed topical restrictions for the Emmert and Remy depositions but not for the Hainline deposition. About a month later, the NCAA filed a motion to certify the trial court's order for discretionary interlocutory appeal under Indiana Appellate Rule 14(B). But because the court did not rule on that motion within thirty days, it was deemed denied. *See* Ind. Appellate Rule 14(B)(1)(e). A few weeks later, the trial court belatedly granted the NCAA's motion for certification. The NCAA, however, believing it was time barred, did not file a motion requesting the Court of Appeals to accept jurisdiction over the matter.

The NCAA later filed a second motion for a protective order which, again, sought to quash the three depositions. In addition to attaching the executives' affidavits, the NCAA included excerpts from the depositions of two lower-level employees that the Athletes conducted after the trial court's decision on the first motion. Pointing to these depositions, the NCAA asserted that the Athletes had less intrusive discovery methods that should be exhausted before deposing the three executives. Alternatively, the NCAA requested that the trial court certify its decision for interlocutory appeal if it decided not "to prohibit the depositions at this juncture." The Athletes asked the court to deny both requests, characterizing the NCAA's motion as a "repetitive motion" or a "motion for reconsideration" which, under Indiana Trial Rule 53.4(A), cannot "delay the trial or any proceedings in the case."

The trial court summarily denied the NCAA's second request for a protective order but certified that order for discretionary interlocutory appeal pursuant to Appellate Rule 14(B). On the NCAA's timely request, the Court of Appeals accepted jurisdiction over the matter. *Nat'l Collegiate Athletic Ass'n v. Finnerty*, 170 N.E.3d 1111, 1117 (Ind. Ct. App. 2021). The panel did not address the protective-order issue, however, because a majority held the NCAA had forfeited its right to appeal. *Id.* at 1120.

Specifically, the majority concluded the NCAA's second motion for a protective order was "nothing more than a motion for the trial court to reconsider its earlier ruling seeking a renewed opportunity to" appeal the issue. *Id.* Thus, relying on Trial Rule 53.4(A), the majority held the trial court's order on that motion could not extend the time within which to seek a discretionary interlocutory appeal. *Id.*

The NCAA petitioned for transfer, which we granted, vacating the Court of Appeals opinion. App. R. 58(A).

Discussion and Decision

We first address a threshold issue: whether the trial court's second order denying the NCAA's motion for a protective order can be certified for discretionary interlocutory review under Appellate Rule 14(B). The Athletes argue that the NCAA's second motion was nothing more than a reconsideration motion that cannot extend the time for seeking appellate review. The NCAA disagrees, contending that "no category of interlocutory orders is ineligible for Rule 14(B) certification."

We hold that Appellate Rule 14(B) broadly permits review of "other interlocutory orders," including an order on a repetitive motion or a motion to reconsider. Such an appeal is proper so long as the trial court timely certifies the order, and the Court of Appeals accepts jurisdiction. Because the NCAA satisfied both conditions, this appeal is properly before us.

We next consider whether to adopt the apex doctrine. In recognition that executives who are at the "apex" of a corporation's hierarchy can be vulnerable to repetitive or harassing depositions, the apex doctrine—or apex-deposition rule—generally shields such officials from depositions unless the requesting party makes two showings. *See, e.g.*, *Crown Cent. Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995). First, it must show the official possesses superior or unique information relevant to the litigated issues; and second, it must show the information cannot be obtained by less intrusive discovery methods. *See id.* The NCAA urges us to adopt the apex doctrine, while the Athletes maintain that our trial rules adequately address the doctrine's concerns.

Though we ultimately decline to adopt the apex doctrine, we establish a legal framework that harmonizes its underlying principles with our existing discovery rules. When a party seeks to limit or prohibit the deposition of a high-ranking official, our trial courts should use this framework to determine whether good cause exists for issuing a protective order.

I. Appellate Rule 14(B) allows for discretionary appeals of a trial court's order on a repetitive motion or a motion to reconsider.

The authority of our appellate courts is "generally limited to appeals from final judgments." *Ball State Univ. v. Irons*, 27 N.E.3d 717, 720 (Ind. 2015) (quoting *Ramsey v. Moore*, 959 N.E.2d 246, 251 (Ind. 2012)). However, the Indiana Rules of Appellate Procedure also confer appellate jurisdiction over nonfinal—interlocutory—orders through Appellate Rule 14. *See* App. R. 9(A)(2). Relevant here, Rule 14(B) allows a party to appeal "other interlocutory orders" if that party clears two discretionary judicial hurdles. App. R. 14(B). The party must first timely move the trial court to certify an order for interlocutory appeal. App. R. 14(B)(1). Then, if the court certifies the order, the party must timely and successfully move the Court of Appeals to accept jurisdiction over the appeal. App. R. 14(B)(2).

Here, the NCAA did not clear both hurdles for the trial court's order denying its **first** motion for a protective order;[1] but it did clear them for the court's order denying its **second** motion. Nevertheless, the Athletes characterize the NCAA's second motion as either a repetitive motion or a motion to reconsider and, relying on Trial Rule 53.4(A), argue that the appeal is untimely. Rule 53.4(a) instructs that such motions "shall not delay the trial or any proceedings in the case, or extend the time for any further required or

[1] The NCAA timely moved to certify the first order, but that motion was deemed denied because the trial court did not rule on it within thirty days. *See* App. R. 14(B)(1)(e). Though the court belatedly granted the motion, the NCAA, seemingly time barred from seeking an appeal, did not file a motion requesting the Court of Appeals to accept jurisdiction. *Cf. Wise v. State*, 997 N.E.2d 411, 413 (Ind. Ct. App. 2013) (finding that a trial court cannot resuscitate a motion for certification under Rule 14(B) "by belatedly granting it after it had been deemed denied").

permitted action, motion, or proceedings under these rules." Ind. Trial Rule 53.4(A). The Athletes thus claim that the NCAA's second motion cannot extend the time within which to seek interlocutory appeal under Rule 14(B). In their view, the NCAA is merely attempting to circumvent Rule 14's deadlines for appealing the court's order on the first motion.

Even assuming the NCAA's second motion for a protective order is a repetitive motion or a motion to reconsider, we hold that the trial court's order denying that motion falls within Appellate Rule 14(B)'s broad ambit.[2] The plain language of the rule allows a party to appeal "other interlocutory orders." App. R. 14(B). In this context, we discern the scope of "other" by looking at the rule in its entirety. Rule 14(A) identifies nine specific categories of interlocutory orders from which an appeal may be taken as a matter of right; Rule 14(C) permits an interlocutory appeal of a court's order on class action certification; and Rule 14(D) allows for interlocutory appeals that are expressly authorized by statute. App. R. 14. For interlocutory orders that do not fall within these three categories, Rule 14(B) provides the procedural path for parties to obtain appellate review. And we find no basis for excluding from Rule 14(B)'s scope interlocutory orders that do not fall under sections (A), (C), or (D)—which, as is relevant here, may include an order on a repetitive motion or a motion to reconsider.

Trial Rule 53.4(A) does not undermine our conclusion. Though we are mindful of Rule 53.4(A)'s mandate that repetitive motions and motions to reconsider cannot delay proceedings, it explicitly applies to delays or extensions "under these rules," T.R. 53.4(A), i.e., the Indiana Rules of Trial Procedure. By contrast, interlocutory appeals are governed by our appellate rules. *See* App. R. 9(A)(2), 14. Yet, assuming without deciding that Trial Rule 53.4(A) is relevant to interlocutory appeals, we find it was not designed to prohibit the type of delay caused by a discretionary interlocutory appeal.

Parties seeking review under Appellate Rule 14(B) cannot unilaterally extend or delay the proceedings. Instead, delay results only upon the

[2] For purposes of our holding, we make no distinction between a motion to reconsider and a repetitive motion.

satisfaction of two conditions, both of which are matters of judicial discretion. First, the trial court must—in its sole discretion—determine whether to certify the order for interlocutory appeal. App. R. 14(B)(1). Then, if certified, the Court of Appeals must—in its sole discretion—determine whether to accept jurisdiction over the appeal. App. R. 14(B)(2). And even when both hurdles are cleared, Rule 14(H) mandates that the appeal "shall not stay proceedings in the trial court unless the trial court or a judge of the Court of Appeals so orders." App. R. 14(H).

We also note that trial courts "certify *orders* for interlocutory appeal, not *issues*." *Butler Univ. v. Est. of Verdak*, 815 N.E.2d 185, 192 (Ind. Ct. App. 2004). Thus, for purposes of Rule 14(B) review, whether the issues decided in an interlocutory order are based on a repetitive motion or a motion to reconsider is irrelevant.

In all, a trial court's order on a repetitive motion or a motion to reconsider is an "other interlocutory order" under Appellate Rule 14(B).[3] A discretionary interlocutory appeal is proper so long as the party timely and successfully moves (1) the trial court to certify the order and (2) the Court of Appeals to accept jurisdiction over the appeal. Because the NCAA cleared both discretionary hurdles, we now turn to the merits: whether Indiana should adopt the apex-deposition rule.

II. A deponent's apex status is relevant in determining whether there is good cause to limit or prohibit a deposition.

Among the various discovery devices, "[d]epositions are the factual battleground where the vast majority of litigation actually takes place." *Hall v. Clifton Precision*, 150 F.R.D. 525, 531 (E.D. Pa. 1993). Depositions afford parties the opportunity to explore the strengths and weaknesses of their case, obtain testimony of witnesses who may be unavailable for trial, and unearth

[3] We disapprove of opinions holding otherwise. *See Kroger Ltd. P'ship I v. Lomax*, 141 N.E.3d 46, 49–50 (Ind. Ct. App. 2020); *State v. L.B.F.*, 132 N.E.3d 480, 484–85 (Ind. Ct. App. 2019), *trans. denied*.

facts that can enable settlement or support pretrial motions. *Soliz v. State*, 97 S.W.3d 137, 144–45 (Tex. Crim. App. 2003). But due to their potential for pervasive use on top-level executives, some courts have imposed heightened protective measures to make it more difficult for parties to depose such officials. *See, e.g.*, *Crown Cent.*, 904 S.W.2d at 128. This case presents our first opportunity to consider whether we should do the same.

Depositions in Indiana are governed by our trial rules, which are meant to facilitate liberal discovery. *See, e.g.*, *Ramirez v. State*, 186 N.E.3d 89, 94 (Ind. 2022). Generally, parties can take the deposition of any person with information relevant to the subject matter in the underlying litigation. T.R. 26(B)(1), 30(A). While our trial rules do not include heightened protections for any class of individuals, *see* T.R. 30(A), parties can seek relief from the demands of a deposition by moving for a protective order under Trial Rule 26(C). On a motion establishing "good cause," the trial court may limit or prevent a deposition "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." T.R. 26(C).

In recent years, hundreds of former athletes have filed concussion-related lawsuits against the NCAA, some of which have been consolidated into federal multidistrict litigation, others taking the form of class actions or individual lawsuits. Based on this magnitude of litigation, the NCAA contends that heightened discovery protections are needed in Indiana to protect its top-level executives from being repeatedly and unnecessarily deposed. In particular, the NCAA urges us to adopt the apex doctrine.

The apex doctrine generally prevents high-ranking public officials or corporate executives from being deposed unless the requesting party shows that the official or executive has unique, superior information that cannot be found through other discovery mechanisms. *See, e.g.*, *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602, 606 (Mo. 2002) (en banc). Though no Indiana appellate court has ever expressly mentioned the doctrine, our Court of Appeals has previously applied its principles in a case involving a high-ranking government official. *See Hunt v. State*, 546 N.E.2d 1249, 1252 (Ind. Ct. App. 1989). Before determining whether to adopt the apex-deposition rule, we begin with an overview of its general application and examine its prevalence nationwide.

A. The apex doctrine generally prevents high-ranking officials from being deposed unless the requesting party makes initial showings.

At its core, the apex doctrine is intended "to balance the competing goals of limiting potential discovery abuse and ensuring litigants' access to necessary information." *In re Amend. to Fla. Rule of Civ. Proc. 1.280*, 324 So. 3d 459, 461 (Fla. 2021). A hallmark of this doctrine is its burden-shifting framework. When a high-ranking official files a motion for a protective order accompanied by an affidavit establishing a lack of relevant information, the burden is on the party requesting the deposition to show that the executive has "unique or superior personal knowledge of discoverable information." *Crown Cent.*, 904 S.W.2d at 128. If the requesting party fails to make this showing, the court grants the protective order and requires the party "to attempt to obtain the discovery through less intrusive methods." *Id.* After making a good-faith effort to exhaust such methods, the requesting party can attempt to show (1) the executive's deposition is reasonably calculated to lead to the discovery of admissible evidence and (2) the less intrusive discovery methods were "unsatisfactory, insufficient or inadequate." *Id.* If these showings are made, the court should then modify or vacate the protective order. *Id.*

The NCAA claims that "[a]n overwhelming number of jurisdictions nationwide have adopted the apex doctrine," but our research belies this assertion. To be sure, some federal district courts have adopted the doctrine. *See, e.g.*, *Tierra Blanca Ranch High Country Youth Program v. Gonzales*, 329 F.R.D. 694, 697–98 (D.N.M. 2019); *Sun Cap. Partners, Inc. v. Twin City Fire Ins. Co.*, 310 F.R.D. 523, 527–28 (S.D. Fla. 2015). But its application is not uniform; for example, many district courts split on which party bears the ultimate burden of persuasion. *See Anderson v. Cnty. of Contra Costa*, No. 15-cv-01673, 2017 WL 930315, at *3 (N.D. Cal. Mar. 9, 2017) (collecting cases). And "the apex doctrine does not rule the roost in all federal courts." *BlueMountain Credit Alts. Master Fund L.P. v. Regal Ent. Grp.*, 465 P.3d 122, 131 (Colo. App. 2020) (collecting cases in support); *see also Serrano v. Cintas Corp.*, 699 F.3d 884, 901–02 (6th Cir. 2012) (finding the district court improperly relied on the apex doctrine in preventing the deposition of a CEO). Indeed, several district

courts have declined to utilize the doctrine, opting instead to harmonize its principles with Federal Rule of Civil Procedure 26. *See Gonzales*, 329 F.R.D. at 697 (collecting cases); *see also Todd v. Ocwen Loan Servicing, Inc.*, No. 2:19-cv-00085, 2019 WL 8272621, at *3 (S.D. Ind. Dec. 13, 2019).

Recognizing the federal district courts' inconsistent application of the apex-deposition rule as well as its sparse prevalence in state courts, one court recently observed "that the apex doctrine's influence has reached its zenith and has begun to decline." *BlueMountain*, 465 P.3d at 132. In fact, only five state courts have adopted the doctrine: four through common law and one through codification into its procedural rules. *Crown Cent.*, 904 S.W.2d at 128; *Liberty Mut. Ins. Co. v. Super. Ct.*, 13 Cal. Rptr. 2d 363, 365–67 (Cal. Ct. App. 1992); *Alberto v. Toyota Motor Corp.*, 796 N.W.2d 490, 494–96 (Mich. Ct. App. 2010); *State ex rel. Mass. Mut. Life Ins. Co. v. Sanders*, 724 S.E.2d 353, 364 (W. Va. 2012); *In re Amend. to Fla. Rule of Civ. Pro. 1.280*, 324 So. 3d at 461. Most state courts to consider the apex-deposition rule—several within the last few years—have declined to adopt it, citing existing protections under, or conflicts with, their discovery rules. *See Gen. Motors, LLC v. Buchanan*, --- S.E.2d ----, 2022 WL 1750716, at *7 (Ga. June 1, 2022); *Andrews v. Devereux Found.*, No. 109 EDA 2021, 2021 WL 3465051, at *3 n.2 (Pa. Super. Ct. Aug. 6, 2021); *BlueMountain*, 465 P.3d at 131; *Ex parte Willimon*, 299 So. 3d 934, 940 (Ala. 2020); *Bradshaw v. Maiden*, No. 14 CVS 14445, 2017 WL 1238823, at *4 (N.C. Super. Ct. Mar. 31, 2017); *Netscout Sys., Inc. v. Gartner, Inc.*, No. (FS1) FSTCV146022988S, 2016 WL 5339454, at *6 (Conn. Super. Ct. Aug. 22, 2016); *Crest Infiniti II, LP v. Swinton*, 174 P.3d 996, 1003–04 (Okla. 2007); *Messina*, 71 S.W.3d at 607.

A recurring concern expressed by these state courts is the doctrine's presumption—in conflict with their respective discovery rules—that a high-ranking official should not be deposed unless the requesting party first establishes a necessity for the deposition. *See, e.g.*, *Buchanan*, 2022 WL 1750716, at *8. We share this concern; our trial rules allow for the deposition of anyone with discoverable information—high-level executive or otherwise—absent a showing of the requisite good cause. T.R. 26(B), (C), 30(A). Recognizing the apparent conflict between the apex doctrine's presumption and our broad discovery rules, the NCAA asserts that the doctrine "does not change who must show good cause to avoid a

deposition—it simply clarifies what qualifies as good cause when the deposition target is a high ranking executive." The Athletes respond that our "discovery rules already address the concerns to which the apex doctrine is purportedly directed."

Though we decline to adopt the apex doctrine, we find its principles relevant in determining whether good cause exists for a protective order to limit or prevent the deposition of a high-ranking official.

B. We establish a legal framework for determining whether good cause exists to limit or prohibit the deposition of a high-ranking official.

Our discovery rules are designed to minimize court involvement in the discovery process. *Chustak v. N. Ind. Pub. Serv. Co.*, 259 Ind. 390, 288 N.E.2d 149, 152–53 (1972). Nevertheless, when "good cause" is shown "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," trial courts have discretion to limit or altogether quash a party's discovery request. T.R. 26(C). Importantly, however, the burden of establishing good cause lies with the party opposing discovery—not the party seeking it. *See id.*

When, as here, a party seeks to depose a high-level official and that official moves for a protective order to limit or prohibit the deposition, trial courts should apply the framework outlined below. And we encourage courts to issue findings and conclusions when rendering their decisions.

1. The court must determine whether the deponent qualifies as an apex official before relying on that status in deciding whether good cause exists.

As a threshold matter, the party seeking a protective order must show that the deponent qualifies as an apex official. To do so, the party needs to establish by affidavit and specific factual support that the executive occupies a position at the corporation's "apex." Generally, apex officials serve in an organization's highest supervisory roles—such as presidents, vice presidents, or other executive officers. But because corporate structures vary, it makes little sense to establish a bright-line test as to whether an official

occupies an apex status. This fact-sensitive inquiry will instead turn on a variety of factors including the organization's size; the official's rank or title and supervisory power; the extent of the official's authority to exercise judgment and discretion when making executive decisions; and the nature and scope of the official's functions, responsibilities, and duties related to the matters involved in the litigation.

If the party seeking protection makes this apex showing, the trial court must then determine whether there is "good cause" to protect the official from annoyance, embarrassment, oppression, undue burden, or expense. T.R. 26(C). We recognize that high-ranking officials can be uniquely vulnerable to numerous, repetitive depositions and that parties may seek to depose these individuals for non-truth-seeking purposes, such as to annoy, harass, or coerce settlement. We also acknowledge that, by virtue of their status, those at the apex of a corporation's hierarchy may often be only peripherally—rather than personally—familiar with the subject matter of pending litigation. Accordingly, in evaluating good cause, the court must take into account circumstances relevant to the high-ranking official's status.

Consistent with Trial Rule 26, good cause exists if the apex official establishes, with specific factual support such as through affidavits, that (1) the executive lacks personal knowledge of relevant information greater in quality to that available elsewhere; (2) the information sought is obtainable through another, less burdensome method; (3) the deposition would be unreasonably cumulative or duplicative; or (4) the hardship accompanying the deposition outweighs its likely benefit. Importantly, general and conclusory statements will fall short of establishing good cause—the official must offer more than "[b]ald assertions of ignorance." *In re Amend. to Fla. Rule of Civ. Pro. 1.280*, 324 So. 3d at 463; *see also Crest Infiniti*, 174 P.3d at 1004–05. Rather, the official must convey how any accompanying responsibilities increase "the burden . . . imposed by the distraction of a deposition." *Buchanan*, 2022 WL 1750716, at *8 n.5.

If the trial court finds good cause and the party seeking the deposition did not file a responsive motion, the court should issue a protective order either prohibiting the deposition or otherwise limiting it under Trial Rule 26(C). But when the requesting party submits a responsive motion, the trial court

must determine whether either the executive's apex status or the good cause showing has been negated or rebutted.

2. The court must determine whether the requesting party has negated or rebutted either the official's apex status or the good cause showing.

When a party purports to establish the requisite showing for a protective order, our trial rules are silent as to whether, or how, a party can refute that showing. But nothing in our trial rules prohibits the party opposing the protective order from filing its own responsive motion. *See* T.R. 7(B). Thus, a party seeking to depose a high-ranking official may file a responsive motion to negate or rebut either the official's apex status or the good cause showing. Whether the motion negates or rebuts the basis for a protective order will dictate how a trial court should proceed.

A showing is "negated" when it is nullified or proven false through particularized factual support. *See Negate, Black's Law Dictionary* (11th ed. 2019). If the court determines the official's apex status is negated, then it must next consider whether the party requesting the protective order has established good cause without any consideration of circumstances relevant to high-ranking officials as identified above. And if the good cause showing is negated—with or without a consideration of the circumstances—the court should let the deposition proceed.

In contrast, a showing is "rebutted" when it is disputed or opposed through particularized factual support. *See Rebut, Black's Law Dictionary* (11th ed. 2019). For example, if the apex official asserts a lack of knowledge related to the litigation's subject matter, the party seeking the deposition may counter this allegation with specific facts demonstrating that the official has relevant, personal knowledge. Or if an apex official alleges that the information sought is available through less intrusive discovery methods, the party seeking the deposition could show that alternative methods are unavailable, inadequate, or already exhausted.

When confronted with a responsive motion that rebuts—rather than negates—the apex official's good cause showing, the court must use its discretionary authority to balance the parties' needs and impose a protective

order that (1) restricts the topical scope of the deposition or (2) requires the exhaustion of less intrusive discovery methods. *See* T.R. 26(B)(1), (C). Less intrusive methods may include deposing lower-level employees, deposing a corporate designee, or submitting to the corporation interrogatories and requests for production of documents. *See* T.R. 30, 33, 34. If the party seeking the deposition exhausts alternative methods to no avail, the court should modify the protective order upon the party establishing a specific, outstanding need for the deposition.

Turning to this case, the trial court did not have the benefit of this framework when it denied the NCAA's second motion for a protective order. Further, in that second order—the appealed order before us—the court summarily denied the NCAA's motion, leaving us unable to determine whether its reasoning comported with our guidance. We therefore remand to the trial court to evaluate the NCAA's motion in light of our guidance and encourage it to enter findings and conclusions supporting its decision.

Conclusion

For interlocutory orders that do not fall under the other sections of Appellate Rule 14, Rule 14(B) neither limits the type of order a trial court may certify for discretionary review nor restricts the appellate court's discretion to accept jurisdiction over the appeal. Thus, even if the appealed order before us is on a repetitive motion or a motion to reconsider, the NCAA did not forfeit its opportunity to obtain discretionary review. In conducting that review, we decline to adopt the apex doctrine and instead harmonize its principles with our trial rules in establishing a framework for trial courts to use to determine whether good cause exists to limit or prohibit the deposition of a high-ranking official. We remand for proceedings consistent with this opinion.[4]

David, Massa, Slaughter, and Goff, JJ., concur.

[4] We thank all amici for their helpful briefs.

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