IN THE COURT OF APPEALS OF IOWA

No. 8-719 / 07-2109
Filed February 19, 2009

STATE OF IOWA,
Plaintiff-Appellant,

vs.

ROSS IAN CASHEN,
Defendant-Appellee.

Appeal from the Iowa District Court for Marshall County, William J. Pattinson, Judge.

The State seeks discretionary review of two district court pretrial rulings related to disclosure of mental health records. **AFFIRMED IN PART AND REVERSED IN PART.**

Thomas J. Miller, Attorney General, Jean Pettinger, Assistant Attorney General, Jennifer Miller, County Attorney, and Suzanne Lampkin, Assistant County Attorney, for appellant.

Kelly T. Bennett of Bennett, Steffens & Grife, P.C., Marshalltown, for appellee.

Heard by Sackett, C.J., and Vaitheswaran and Potterfield, JJ.

SACKETT, C.J.

The State sought discretionary review of two district court pretrial rulings in the prosecution of the defendant-appellee, Ross Cashen, for domestic abuse and willful injury. The ruling on the State's motion in limine determined the medical and mental health records of the complaining witness were admissible for the limited purposes of providing "a basis for an expert's opinion on [the complaining witness's] violent propensities and/or her ability to accurately observe, recall, and relate events." The State contends the defendant did not show a compelling need for the evidence that outweighed the witness's privacy interest. The court's order on discovery mandated that the State obtain waivers from the complaining witness for release of her medical records. The State contends the court lacked authority to order it to obtain waivers from the witness, who is not a party to this case. We affirm in part and reverse in part.

I. SCOPE OF REVIEW.

The district court is vested with wide discretion in rulings on discovery matters. *Pierce v. Nelson,* 509 N.W.2d 471, 473 (Iowa 1993). Discovery rules are to be liberally construed to effectuate disclosure of all relevant and material information to the parties. *Hutchinson v. Smith Lab., Inc.*, 392 N.W.2d 139, 140-41 (Iowa 1986). We will not find an abuse of discretion unless the court's discretion was exercised on grounds or for reasons that are clearly untenable or to an extent clearly unreasonable. *State v. Blum*, 560 N.W.2d 7, 9 (Iowa 1997).

II. BACKGROUND FACTS AND PROCEEDINGS.

Cashen was charged with domestic abuse and willful injury. He claims he acted with justification. In order to support his defense, Cashen sought the mental health records of his former wife, Chastity Schulmeister, the complaining witness.[1] The State filed a motion in limine seeking to exclude evidence concerning Schulmeister's mental health history. The court ruled the mental health records were admissible "to the extent that they provide a basis for an expert's opinion on her violent propensities and/or her ability to accurately observe, recall, and relate events." Cashen filed an application to reconvene Schulmeister's deposition and to obtain her mental health and medical records. The district court ordered the State to "secure from its complaining witness a patient waiver" for the requested records. The court further ruled that Cashen could reconvene the deposition after receipt of the records.

The State contends the district court erred in ordering the disclosure of these records, arguing that Cashen failed to show a compelling interest that outweighed the complaining witness's privacy. Cashen responds that the records are necessary to establish Schulmeister's propensity for violence and thus strengthen his justification defense.

III. RELEASE OF MENTAL HEALTH RECORDS.

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[1] From the record, it appears Cashen obtained Schulmeister's medical records through a private investigator. The State alleges they were obtained by subpoena, but the record is unclear how the investigator obtained the records because he refused to answer questions about his methods, citing the Fifth Amendment.

Iowa protects the privacy of communications between patient and physician, including patient records. *McMaster v. Iowa Bd. of Psychology Exam'rs*, 509 N.W.2d 754, 758 (Iowa 1993). That privilege, however, is not absolute. *Id.* at 759. Limited disclosure of the privileged information is allowed when there is a "compelling need" for the evidence that outweighs the patient's privacy interest. *State v. Heemstra,* 721 N.W.2d 549, 563 (Iowa 2006) (citing *McMaster*, 509 N.W.2d at 759). Schulmeister has twice entered a guilty plea to a prior instance of domestic abuse. Cashen believes that this history combined with her admission of mental health problems will strengthen his justification defense.

In her deposition, Schulmeister was questioned about any sort of mental health diagnosis, she stated:

> A: Well, I have posttraumatic stress disorder, so they tell me, but I seem to be all right. And I have seen counselors and therapists since I was about 15. And I've been in abusive relationships my whole life, but they have never said I have, like, any mental health disorders or anything, but I have been through a lot, and I have seen counselor for that.
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> . . . .
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> Q: Any other diagnosis of which you're aware of? A: Well, I think that – I've seen a few different doctors, and I'm not really sure what's in my chart, and I don't know if they're even the same thing everywhere.
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> . . . .
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> Q: PTSD, does that usually come with, like, diagnoses of depression and anxiety as well? A: I have depression and anxiety.
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> Q: And there can be some—how do I tactfully put it—some impulse control issues with posttraumatic stress syndrome; correct? A: I have in the past been really impulsive, and I have reacted to things. I'm getting a lot better at controlling that.

Cashen asserts this testimony is indicative of Schulmeister's behavior and warrants access to her medical records in order to explore her impulsiveness and

violent tendencies in greater detail because they support his justification defense. Schulmeister responds that her testimony does not demonstrate a relation to any sort of mental health diagnosis or illness; she contends that many people get frustrated and act impulsively, yet do not have mental health problems.

Cashen relies heavily on *State v. Heemstra*, 721 N.W.2d 549, 563 (Iowa 2006), which allowed for the disclosure of medical records. The State contends the facts in *Heemstra* differ from the present case and make it distinguishable, arguing that *Heemstra* involved a criminal charge with a penalty of life in prison, and the subject of the privilege was deceased. Cashen argues that the penalty should not be a distinguishing factor, as his sentence could still require imprisonment for up to ten years.

In *Heemstra*, the court recognized a right to privacy in medical records, but suggested the use of a balancing test to determine whether a "compelling need" to obtain the evidence "override[s] the privacy interest." *Heemstra,* 721 N.W.2d at 563 (quoting *McMaster v. Iowa Bd. of Psychology Exam'rs*, 509 N.W.2d 754, 759 (Iowa 1993). Applying the balancing test to the circumstances before it, the supreme court allowed for limited disclosure of the medical records. *Id*. The court stated:

> The information sought might reasonably bear on the defendant's possibility of success in supporting his claim of self-defense. Specifically, he might be able to use this evidence, if it shows an explosive disposition on [the deceased's] part, to cross-examine [the deceased's] widow, who stated that [the deceased] sought medical treatment only for depression.

This conclusion did not waive the medical privilege, but only provided for an in-camera examination of the records, as the trial judge had ordered previously.

Cashen argues that he seeks Schulmeister's medical records only for the limited purpose of further investigating her propensity toward violence and to show her past volatile behavior. During the hearing on the pretrial motion, Cashen stated he would use Schulmeister's medical records for the limited purpose of expert testimony concerning her violent propensities. During trial, if Schulmeister denied her mental health diagnoses, then Cashen would "provide her a copy of her deposition and ask her if that information was true and correct when she provided it and ask her if she had been diagnosed." Only if she denied those two statements, would Cashen discuss her mental health records. The district court determined Schulmeister's medical records were admissible "to the extent that they provide a basis for an expert's opinion on her violent propensities and/or her ability to accurately observe, recall, and relate events."

Following the court's order that the records were admissible, Cashen filed an application to reconvene Schulmeister's deposition and an application "pursuant to Iowa Code section 622[2] and 42 U.S.C.A. section 290"[3] seeking "an order authorizing the defendant to obtain the medical records of the complaining witness and to do so at State expense." The State resisted both applications.

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[2] We note section 622.10 allows for a defendant to request and receive confidential mental health records of a plaintiff "[i]n a *civil action* in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party." (Emphasis added.) It does not appear to apply to criminal actions, nor to records of parties other than the plaintiff. "Generally, the statutes and rules of procedure governing proceedings under one docket have no applicability to proceedings under another docket." *Woodbury County Attorney v. Iowa Dist. Ct.*, 448 N.W.2d 20, 21 (Iowa 1989).

[3] 42 U.S.C. § 290 (2006) relates to the "National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances" and appears to have no applicability to the circumstances before us.

The district court resolved the "discovery dispute" by ordering the State to obtain from Schulmeister patient waiver forms for each healthcare provider that provided "care for emotional or psychiatric difficulties." The court placed the responsibility for obtaining the records on Cashen, and allowed for reconvening Schulmeister's deposition after Cashen obtained the records.

Depending on the unique circumstances of a case, limited disclosure of privileged information is allowed when a case presents "bona fide claim of compelling interest sufficient to require a limited disclosure of the privileged information." *Heemstra,* 721 N.W.2d at 563. In ruling on the motion in limine, the trial court allowed evidence regarding Schulmeister's previous arrests for domestic assault, indicating this was applicable to the decision. During her deposition, Schulmeister's admitted she had mental health issues in the past. Based on these facts, Cashen has a shown a compelling need for the mental health records.

We affirm the trial court's ruling to allow disclosure of the medical records and conclude Schulmeister's medical records may be admissible for the limited purpose of "an expert's opinion on her violent propensities and/or her ability to accurately observe, recall, and relate events."

IV. COURT AUTHORITY TO ORDER STATE TO OBTAIN WAIVERS.

The State contends the district court lacked authority to order it to obtain waivers from Schulmeister because she is not a party to this action. *See State v. Gabrielson*, 464 N.W.2d 434, 438 (Iowa 1990) (finding no constitutional, statutory, or common-law authority for a district court to order the victim of sexual

abuse to undergo a psychiatric evaluation). The supreme court gave two reasons for its determination:

> First, as discussed above, there is no statutory authority or common law precedent granting a trial court authority to order such psychiatric examinations of sexual abuse victims. Second, even if we were to create the authority for trial courts to order psychiatric examinations, courts would be left in the awkward position of having no method of enforcing such an order because neither the trial court nor the state has the power to compel a sexual abuse victim, a non-party to the case, to submit to a psychiatric examination ordered by the court.

Gabrielson, 464 N.W.2d at 438. The principle set forth in the second point suggests a similar, but distinct problem in the case before us. Schulmeister, the complaining witness, like the victim in *Gabrielson*, is not a party to this criminal case. Even if we were to hold the court had authority to order the State to obtain the waivers, we see no method of enforcing that order as it relates to a non-party.

Iowa Rule of Criminal Procedure 2.14(2)(*b*)(2) gives district courts the discretion to:

> order the attorney for the state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, *made in connection with the particular case*, or copies thereof, *within the possession, custody or control of the state*.

(Emphasis added.) The medical records at issue here were not made "in connection with" this case and are not within the State's "possession, custody, or control." Rule 2.14 does not provide authority for the court to order the State to obtain the waivers.

V. CONCLUSION.

The district court correctly applied a balancing test, weighing Schulmeister's privacy interest against the public interest in Cashen's right to seek out the truth in the process of presenting his justification defense. *See Heemstra*, 721 N.W.2d at 562-63. We affirm the court's determination that Schulmeister's medical records are admissible to the limited "extent that they provide a basis for an expert's opinion on her violent propensities and/or her ability to accurately observe, recall, and relate events." *See* Iowa R. Evid. 5.405(*a*) (allowing expert testimony to prove the violent nature of a complaining witness if relevant to the reasonableness of a defendant's response); *State v. Clay*, 455 N.W.2d 272, 273 (Iowa Ct. App. 1990). We affirm the district court's ruling on the State's motion in limine filed on November 26, 2007.

We reverse the district court's order filed on December 11, 2007, that ordered the State to obtain waiver forms from the complaining witness.

AFFIRMED IN PART AND REVERSED IN PART.