STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0071

Foreign Subpoena's Request for Jurisdictional
Subpoena's for Aaron Jordan and Dwight Walvatne

Filed August 21, 2017
Affirmed
Halbrooks, Judge

Grant County District Court
File No. 26-CV-16-163

David R. Sabby, Alamo, Georgia (pro se appellant)

Aaron Jordan, Stevens County Attorney and Special Assistant Grant County Attorney, Morris, Minnesota (attorney pro se and for respondent prosecuting authority)

Dwight Walvatne, Grant County Sheriff, Elbow Lake, Minnesota (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Pro se appellant argues that the district court abused its discretion by quashing two jurisdictional subpoenas and denying his motion to hold respondents in contempt. We affirm.

FACTS

In 2009, appellant David Sabby pleaded guilty to and was convicted of third-degree criminal sexual conduct involving his stepdaughter, A.H. In June 2012, Sabby was extradited to Georgia for trial related to similar allegations. He was convicted in Georgia as well.

Relevant to this appeal, Sabby challenged his convictions in Georgia by filing a petition for writ of habeas corpus, and, in March 2016, a trial court in Georgia issued two subpoenas that directed respondents Aaron Jordan and Dwight Walvatne to produce various documents related to the investigation that support Sabby's convictions. Because respondents both reside in Minnesota—Jordan is the Stevens County Attorney and Walvatne is the Grant County Sheriff—Sabby requested jurisdictional subpoenas in Minnesota. In June 2016, two Minnesota subpoenas were issued and served on respondents. Neither Jordan nor Walvatne responded to the jurisdictional subpoenas.

On August 1, 2016, Sabby moved in Minnesota district court to compel compliance with the subpoenas and hold respondents in contempt, and the district court scheduled a motion hearing. At the hearing, respondents argued that the documents sought are private data on individuals under the Minnesota Government Data Practices Act. *See generally* Minn. Stat. § 13.01-.90 (2016). The district court was concerned that respondents ignored properly served subpoenas but requested informal briefing to explain why they believed the documents sought need not be disclosed.

Following the hearing, respondents supplemented their argument with informal briefing and moved to quash the subpoenas. The district court quashed the subpoenas,

denied Sabby's motion to hold respondents in contempt, and denied Sabby's request for reconsideration. This appeal follows.

D E C I S I O N

I.

Sabby argues that the district court erred in granting respondents' motion to quash the jurisdictional subpoenas. We review a district court's decision to quash a subpoena for an abuse of discretion. *See In re Coleman*, 793 N.W.2d 296, 303 (Minn. 2011) ("We review a referee's decision to quash a subpoena and to allow a witness's deposition into evidence for an abuse of discretion."); *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009) ("A district court judge has wide discretion to issue discovery orders, and normally an order will not be overturned without clear abuse of that discretion." (quotations omitted)). A district court abuses its discretion if its findings are unsupported by the evidence or it improperly applied the law. *Underdahl*, 767 N.W.2d at 684.

Here, the district court found that Sabby sought "[a]ll medical reports associated to the interview of [A.H.] and Dr. Larry Eisinger." It concluded that Sabby was not entitled to the requested reports because they are classified as private data. Sabby had already litigated the same discovery issues in 2009 at which point the district court determined that the reports were discoverable but ruled that only Sabby's attorney could read the reports. Sabby was prohibited from seeing them.

A district court may quash or modify a subpoena if it "requires disclosure of privileged or other protected matter and no exception or waiver applies." Minn. R. Civ.

P. 45.03(c)(1). Sabby first argues that the district court erred in concluding that the reports sought are private medical data.

"All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute . . . as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential." Minn. Stat. § 13.03, subd. 1. Medical data are private "[u]nless the data is summary data or a statute specifically provides a different classification." Minn. Stat. § 13.384, subd. 3. "Medical data are data collected because an individual was or is a patient or client of a . . . medical center . . . ." *Id.*, subd. 1. We conclude that the district court did not err in concluding that the reports sought satisfy the statutory definition of private medical data and that no statute provides a different classification.

Next, we consider whether the district court erred in concluding that Sabby is not entitled to the medical reports. Unless an exception applies, a governmental entity shall not disseminate private data on an individual "for any purposes other than those stated to the individual at the time of collection." Minn. Stat. § 13.05, subd. 4. One exception permits a governmental entity to disclose medical data "pursuant to a valid court order." Minn. Stat. § 13.384, subd. 3(c). Where the government opposes disclosure of private data, we follow a two-part analysis. Minn. Stat. § 13.03, subd. 6. We must consider "whether the data sought is discoverable." *N. Inns Ltd. v. County of Beltrami*, 524 N.W.2d 721, 722 (Minn. 1994). Then, we balance "the benefit to the party seeking access against the harm to the confidentiality interests of those affected by discovery." *Id.*

Sabby argues that he is entitled to view the medical reports because the district court determined in 2009 that they were discoverable. But in 2009, the district court compelled limited disclosure of the reports only to Sabby's trial counsel. The order specifically stated, "This information may not be made available to [Sabby] . . . ."

Sabby contends that his trial counsel did not discuss the reports with him or even acknowledge that he received them. But the district court concluded that Sabby or his trial counsel have "had sufficient access to the information."

We conclude that the district court did not abuse its discretion in quashing the subpoenas and denying Sabby's motion to compel compliance with subpoenas seeking private medical data because it had already prohibited Sabby from personally accessing the reports. Because the data sought is not discoverable to Sabby, we need not weigh Sabby's benefit in accessing the reports against the government's interest in withholding disclosure.

II.

Sabby argues that the district court erred because it should have held respondents in contempt for failure to comply with the subpoenas. The district court has "inherently broad discretion to hold an individual in contempt." *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015), *review denied* (Minn. Dec. 15, 2015). We review a district court's decision to invoke its contempt powers for an abuse of discretion. *In re Welfare of J.B.*, 782 N.W.2d 535, 538 (Minn. 2010).

Upon receipt of a foreign subpoena, a district court shall "promptly issue a subpoena for service upon the person to which the foreign subpoena is directed." Minn. R. Civ. P. 45.06(b). Minnesota rules and statutes govern the compliance with a subpoena issued

in response to a foreign subpoena. Minn. R. Civ. P. 45.06(d). "Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court . . . ." Minn. R. Civ. P. 45.05. "The purpose of civil contempt proceedings is to induce future performance of a valid court order, not to punish for past failure to perform." *Zaldivar v. Rodriguez*, 819 N.W.2d 187, 196 (Minn. App. 2012) (quotation omitted); *see Hopp. v. Hopp*, 279 Minn. 170, 175, 156 N.W.2d 212, 217 (1968) (concluding that civil contempt "confinement should not be directed to compel a party to do something which he is wholly unable to do").

Here, the district court denied Sabby's motion to hold respondents in contempt because "their conduct was harmless." The district court also stated:

> While Mr. Sabby is not entitled to the production of the document requested, it is concerning to the Court that [respondents] failed to respond to the initial subpoenas in this case. Regardless of whether they thought they were valid or not, the appropriate course of action would have been to make a motion to quash or take some other action at the time the subpoenas [were] served. Filing any type of response at the time the subpoenas were served would have allowed this matter to be resolved in a timely manner instead of drawing things out over the course of several months.

Sabby argues that respondents should be held in contempt because their actions "are reprehensible" and constitute an ongoing "course of unethical and contemptuous conduct." But the purpose of civil contempt is "not to punish for past failure to perform." *Zaldivar*, 819 N.W.2d at 196. Because there was no longer a subpoena for the district court to enforce, we conclude that it did not abuse its discretion by denying Sabby's contempt motion.

Sabby also asserts that respondents should pay him $2,000 in compensatory and punitive damages. A district court may order a party who causes actual loss or injury in an action "to pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party's costs and expenses." Minn. Stat. § 588.11 (2016). But because Sabby suffered no actual loss or injury, we reject this argument.

Affirmed.