

Court of Appeals, State of Michigan

ORDER

Holly Estlow v Greater Michigan Spine & Neurologic Institute PC

Docket No. 351026

LC No. 2017-003320-NH

James Robert Redford
Presiding Judge

David H. Sawyer

Jane E. Markey
Judges

Pursuant to MCR 7.205(E)(2), in lieu of granting the application for leave to appeal, the Court orders that the motion for peremptory reversal under MCR 7.211(C)(4) is GRANTED. Because plaintiff's counsel met with plaintiff's treating physicians and recorded those meetings in anticipation of litigation or for trial, the recordings of the ex parte meetings are discoverable only upon a showing by defendants that they have a substantial need for the recordings and are unable without undue hardship to obtain the substantial equivalent of the recordings. MCR 2.302(B)(3)(a). The trial court abused its discretion in determining that defendants satisfied the substantial need and undue hardship requirements. *D'Alessandro Contracting Group, LLC v Wright*, 308 Mich App 71, 76; 862 NW2d 466 (2014). Defendants' counsel had the same opportunity as plaintiff's counsel to learn the facts known and opinions held by plaintiff's treating physicians. The trial court entered a qualified protective order that allowed defendants' counsel to conduct ex parte interviews with plaintiff's treating physicians. Defendants' counsel subsequently met ex parte with the two treating physicians with whom plaintiff's counsel met. Additionally, nothing prohibited defendants from deposing the treating physicians. Accordingly, the September 20, 2019 and October 29, 2019 orders granting defendants' motion to compel production of ex parte meeting recordings are REVERSED and the case is REMANDED for entry of an order denying defendants' motion to compel. This order does not preclude defendants from arguing at trial that plaintiff may not use the recordings of the ex parte meetings to impeach the treating physicians.

The Court orders that the application for leave to appeal is DISMISSED as moot.

The Court also orders that the motion for immediate consideration of motion to seal part of the appellate court record is GRANTED. The motion to seal part of the appellate court record is GRANTED. The Court finds good cause to seal the copy of the recordings of the ex parte meetings between plaintiff's counsel and plaintiff's treating physicians because the recordings are protected by the work-product privilege, and determines there are no less restrictive means to adequately and effectively protect the interest asserted. MCR 7.211(C)(9)(e).

The Clerk shall disclose or provide copies of any order or opinion entered in this appeal, MCR 8.119(I)(5); MCR 7.211(C)(9)(c), but sealed pleadings or other contents of the file shall not be disclosed or made available for public viewing.

The Clerk is directed to forward a copy of this order to the Clerk of the Supreme Court and to the State Court Administrative Office. MCR 8.119(I)(7); MCR 7.211(C)(9)(c).

We do not retain jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 13 2019

Date


Chief Clerk