

2020 WL 250460

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District Court of Appeal of Florida, Fifth District.

Rebecca G. BARNES and George M. Barnes,
Petitioners,
v.
Samantha C. SANABRIA, Respondent.

Case No. 5D19-1461

Opinion filed January 17, 2020

Synopsis

Background: Motorist brought negligence action against other motorist following motor vehicle accident and subsequently served interrogatories and requests for production seeking information regarding the financial relationship between defendant's liability insurer and counsel vis-a-vis her medical experts. The Circuit Court, 7th Judicial Circuit, Volusia County, [Randell H. Rowe, J.](#), denied defendant's objections, motion for protective order, and motion for reconsideration, and ordered defendant to respond to pretrial discovery. Defendant petitioned for certiorari review, seeking to quash the trial court's pretrial discovery order.

The District Court of Appeal, [Edwards, J.](#), held that trial court did not depart from essential requirements of the law when it overruled defendant's discovery objections and denied related motions.

Petition denied and question certified.

Procedural Posture(s): Petition for Writ of Certiorari; Motion for Protective Order; Motion for Reconsideration.

Petition for Certiorari Review of Order from the Circuit Court for Volusia County, [Randell H. Rowe, III](#), Judge.

Attorneys and Law Firms

[Kansas R. Gooden](#), of Boyd and Jennerette, P.A., Miami, for Petitioners.

[Daniel Morgan](#), of Morgan and Morgan, P.A., Orlando,

for Respondent.

Opinion

[EDWARDS, J.](#)

*1 Petitioners, Rebecca G. Barnes and George M. Barnes, request this Court to issue a writ of certiorari to quash the trial court's pretrial discovery order that requires these individual defendants to provide information regarding the financial relationship between Petitioners' liability insurer and their counsel vis-à-vis two medical experts retained by Petitioners' counsel who would provide medical evaluations of Respondent, Samantha C. Sanabria. Although we agree that Petitioners present a compelling argument that current Florida law does not treat personal injury plaintiffs and defendants equally when it comes to compelling disclosure of ongoing or repeated litigation-oriented relationships between those providing medical evaluations and those who represent the parties in litigation, we must deny the petition as we are bound to follow the Florida Supreme Court's opinion in [Worley v. Central Florida Young Men's Christian Ass'n](#), 228 So. 3d 18 (Fla. 2017). However, as we have done in other similar cases,¹ we certify a question as one of great public importance regarding the apparent disparate treatment of litigants as a result of [Worley](#).²

This case arises out of a motor vehicle accident. Respondent filed a negligence action against Petitioners, alleging that Petitioner Rebecca G. Barnes negligently operated a motor vehicle—with permission of its owner, Petitioner George M. Barnes—so that it collided with Respondent's motor vehicle, causing Respondent to suffer bodily injuries and lost wages. Petitioners' counsel retained Dr. Hawthorne to perform a compulsory medical examination of Respondent and disclosed Dr. Stanley as a medical expert witness. Respondent served interrogatories on Petitioners seeking to discover the amount of fees paid to each of these doctors by Petitioners' liability insurer and/or by Petitioners' counsel, and also requesting disclosure of information regarding all cases in which each of those doctors was retained by Petitioners' liability insurer and/or Petitioners' counsel within the past three years.

*2 Respondent served requests for production on Petitioners seeking documentation related to the subject matter of those interrogatories. Respondent also requested production from Petitioners of redacted copies of all compulsory medical examination reports, record reviews, reports, evaluations, and MRI or X-ray re-read reports

issued by Dr. Hawthorne and/or Dr. Stanley within the past three years.³ Because Respondent's counsel advised the trial court that it was no longer seeking these documents related to the evaluation of non-parties, we find those discovery requests were withdrawn and we need not further consider that specific issue.

Petitioners objected and filed a motion for protective order, requesting that the trial court preclude the subject discovery concerning Dr. Hawthorne's and Dr. Stanley's relationships with Petitioners' insurance company and Petitioners' counsel's law firm. Petitioners argued that such discovery requests were improper because neither their insurance company nor their counsel's law firm were parties to the action. Relying on *Worley*, Petitioners maintained that *Boecher*⁴ discovery cannot be sought from non-parties, such as their insurance company and/or their counsel's law firm.

Petitioners argued that applying *Worley* to protect non-parties on only a plaintiff's side from this type of discovery but requiring defendants to disclose such information obtained from their non-party counsel and insurer would constitute a denial of equal protection under the law, a deprivation of due process, and a denial of access to courts. After the trial court denied Petitioners' objections and motion for protective order, they filed a motion for reconsideration, asserting that the subject discovery sought information protected by the attorney-client privilege and would result in the invasion of non-parties' rights to privacy if the requested reports had to be produced. Those objections and the motion for reconsideration were also denied.

We need not dwell on the evolution of Florida law regarding discovery of financial information and testimonial track records from physicians involved in litigation, as that was well-covered in our opinion in *Younkin*, 44 Fla. L. Weekly at D550, — So.3d at —. Based on the current state of Florida law, the trial court did not depart from the essential requirements of the law in overruling Petitioners' objections and in denying Petitioners' motion for protective order. Accordingly, we

are compelled to deny the petition for writ of certiorari. However, we certify the following question to the Florida Supreme Court as one of great public importance:

WHETHER THE ANALYSIS AND DECISION IN *WORLEY* SHOULD ALSO APPLY TO PRECLUDE A DEFENDANT'S LIABILITY INSURER WHO IS PROVIDING A DEFENSE TO ITS INSURED OR THE RETAINED DEFENSE LAW FIRM, NEITHER OF WHOM IS A PARTY TO THE LITIGATION, FROM HAVING TO DISCLOSE THEIR FINANCIAL RELATIONSHIP WITH PHYSICIANS THAT PROVIDE EVALUATIONS OF PETITIONER'S MEDICAL CONDITION INCLUDING THOSE THAT PERFORM COMPULSORY MEDICAL EXAMINATIONS UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.360?

PETITION FOR WRIT OF CERTIORARI DENIED, QUESTION CERTIFIED.

EVANDER, C.J., and EISNAUGLE, J., concur.

All Citations

--- So.3d ----, 2020 WL 250460, 45 Fla. L. Weekly D135

Footnotes

¹ *Dhanraj v. Garcia*, 44 Fla. L. Weekly D785, D785, — So.3d —, —, 2019 WL 1302540 (Fla. 5th DCA Mar. 22, 2019); *Younkin v. Blackwelder*, 44 Fla. L. Weekly D549, D550, — So.3d —, —, 2019 WL 847548 (Fla. 5th DCA Feb. 22, 2019). The Florida Supreme Court has accepted jurisdiction of *Younkin* as to a very similar certified question. See *Younkin v. Blackwelder*, No. SC19-385, 2019 WL 2180625, at *1 (Fla. May 21, 2019).

² The potential for disparate treatment exists here as Respondent filed a motion in limine to prohibit both inquiry into and presentation of evidence regarding whether her lawyer referred her to any of her doctors for evaluation or treatment, relying upon *Worley*. See 228 So. 3d at 25 (finding that advice from plaintiffs' lawyers to their clients

regarding who should be consulted for medical evaluations protected by the attorney-client privilege). *Worley* provides no corresponding attorney-client privilege to personal injury defendants whose lawyers give advice about which doctors to consult regarding the medical evaluation of that same injured plaintiff. Respondent admits in her response to the petition that financial information concerning medical witnesses may be relevant to their bias in favor of a litigant.

³ Respondent's discovery requests defined "redacted" to mean the exclusion only of the name, social security number, or any other identifying information of the patient/claimant/plaintiff.

⁴ *Allstate Ins. Co. v. Boecher*, 733 So. 2d 993 (Fla. 1999).