

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WILLIAM W. KREEGER

Plaintiff-Appellant

-vs-

GARY L. HIRT, ET AL

Defendant-Appellee

JUDGES:

: Hon. W. Scott Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. Julie A. Edwards, J.
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: Case No. 02CA64
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: OPINION

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court
of Common Pleas, Case No. 02-339D

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: May 29, 2003

APPEARANCES:

For Plaintiff-Appellant
FRANK PISCITELLI, JR.
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Gwin, P.J.

{¶1} Plaintiff William W. Kreeger appeals a judgment of the Court of Common Pleas of Richland County, Ohio, overruling his motion for a protective order prohibiting defendants Gary L. and Karen Hirt, Hirt Publishing Company, and Hirt Media, Inc. from access to appellant's medical records and medical history. Appellant assigns a single error to the trial court:

{¶2} "THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION FOR PROTECTIVE ORDER AND PERMITTING THE APPELLEES ACCESS TO APPELLANT'S [SIC] MEDICAL RECORDS MEDICAL HISTORY."

{¶3} Generally, interlocutory orders are not appealable pursuant to R.C. 2505.02. However, when the discovery order deals with the physician-patient privilege and confidential communications, the Supreme Court has held a trial court order compelling disclosure of such information constitutes a final appealable order, see *Humphrey v. Riverside Methodist Hospital* (1986), 22 Ohio St. 3d 94, 488 N.E. 2d 877. Pursuant to R.C. 2317.02, patient medical records are considered confidential, and covered by the physician-patient privilege.

{¶4} The trial court found the scope of discovery under Evid. R. 26 is broader than mere admissibility at trial. The court held because the appellee had stated an arguably relevant purpose for the questions about appellant's medical history, the motion for protective order should be overruled.

{¶5} A trial court has discretion to decide the relevance of information sought during discovery, *Mid-American National Bank & Trust Company v. Cincinnati Insurance Company* (1991), 74 Ohio App. 3d 481, 599, N.E. 2d 699. The test for relevancy under

Civ. R. 26 is much broader than the test utilized for admissibility at trial. Only information which will not reasonably lead to discovery of admissible evidence is deemed irrelevant, *Tschantz v. Ferguson* (1994), 97 Ohio App. 3d 693, 647 N.E. 2d 507.

{¶6} Our standard of reviewing a trial court's decision on a protective order is the abuse of discretion standard. Absent an abuse of discretion, this court must affirm the trial court's disposition of discovery issues, *State ex rel. V Companies v. Marshall* (1998), 81 Ohio St. 3d 467, 692 N.E. 2d 198. The Supreme Court has repeatedly held an abuse of discretion connotes an unreasonable, arbitrary, or unconscionable decision, *Id.*

{¶7} We have reviewed the issue, and we find the trial court did not abuse its broad discretion in this instance. Accordingly, the assignment of error is overruled.

{¶8} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

By Gwin, P.J., and

Farmer, J., concur;

Edwards, J., dissents

Edwards, J., Dissenting Opinion

{¶9} I would find that the trial court did abuse its discretion in failing to issue a protective order regarding appellant's medical records.

{¶10} According to appellant's brief (there was no appellee's brief), this case involves the determination of the value of appellant's stock in HPC and HMC. Appellant

owned 20% of the HPC and HMC when he resigned from HPC. When appellant left his employment at HPC, he was to offer his shares of stock to HPC at fair market value.

{¶11} Appellees argued to the trial court that appellant's frequent absenteeism led to mismanagement of HMC and HPC and that benefits which appellant received during medical leaves were set off from the value of the companies.

{¶12} Assuming, arguendo, that appellant suffered physical and/or mental problems, and that his medical leaves cost the company a lot of money and/or led to mismanagement of the companies, a current fair market valuation of the company would reflect the current fair market value of the corporation after those things had happened. Surely, the parties can argue as to the appropriate current fair market value of the corporations without the use of appellant's medical records.