
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY COURT OF COMMON PLEAS

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2020-CP-04-00008

Appellate Case No. 2021-000834

Wanda Human, as Personal Representative of the Estate of Evelyn Marie Wood.....*Respondent,*

v.

AnMed Health,.....*Appellant.*

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- A. Did the trial court abuse its discretion in ordering the production of the risk management worksheet and finding that it was not protected pursuant to S.C. Code Ann. §44-7-392?

Statement of the Case

Plaintiff/Respondent, Wanda Human, as Personal Representative of the Estate of Evelyn Marie Wood (hereinafter “Human”), initiated this action by filing a Summons and Complaint in the 10th Judicial Circuit on January 2, 2020. Human’s Complaint includes causes of action for Wrongful Death and Survival Action, and essentially sounds in negligence. On February 6, 2020, the Defendant/Appellant, AnMed Health (hereinafter “AnMed”), filed an Answer in which it denied liability and asserted affirmative defenses. AnMed amended its Answer to assert additional affirmative defenses, including comparative negligence and intervening negligence, on June 24, 2021.

The parties exchanged written discovery. AnMed produced a privilege log on April 22, 2020 in which it identified as privileged/protected “AnMed Health Risk Management Worksheet Confidential Information Midas report/Chrissy Shortridge statement”) (hereinafter “Risk Management Worksheet”). The privileges asserted included peer review and work product.

On March 29, 2021, Human filed a Notice of Motion and Motion to Compel AnMed Health’s Discovery Responses in which she asserted that the Risk Management Worksheet was not a protected or privileged document. Appellant filed Defendant’s Memorandum in Opposition to the Plaintiff’s Motion to Compel on June 11, 2021. The Honorable R. Lawton McIntosh presided over a hearing on the Plaintiff’s Motion to Compel on June 23, 2021. During the hearing, Judge McIntosh ruled from the bench that he was granting the Motion to Compel. The Court entered a Form 4 order consistent with the verbal ruling on June 23, 2021, directing counsel for the Respondent to prepare a formal order. The Court entered the formal order drafted by counsel for the Respondent on July 12, 2021.

Statement of Facts

On June 21, 2017, Evelyn Wood (hereinafter “Wood”) fell in the entranceway of the admitting area at AnMed. She struck her head and unfortunately succumbed to her injuries two days later. The fall was captured on video surveillance, a copy of which has been provided to the Respondent. The aftermath of the fall was witnessed by an AnMed employee, Chrissy Shortridge, RN.

After completing her care of Ms. Wood, Ms. Shortridge completed a Risk Management Worksheet in AnMed’s electronic risk management system called Midas, wherein she provided a brief description of what she witnessed. “Confidential information” is written just below the title at the top of the risk management worksheet. The worksheet concludes with the following language, “CONFIDENTIALITY STATEMENT: This document is protected against unauthorized disclosure/dissemination in the course of discovery by one or more of the following: 1. The contents of this document were prepared at the direction of an attorney in anticipation of litigation, constituting a ‘PRIVILEGED ATTORNEY-CLIENT COMMUNICATION’; 2. This document was prepared as a part of a bona fide quality assurance, peer review, or risk management function of AnMed Health pursuant to 40-71-10 et sec., 44-7-390 etc., and 38-33-300.”

Argument

- I. The risk management worksheet is protected from discovery pursuant to S.C. Code Ann. §44-7-392, and, therefore, the Court abused its discretion in ordering that the risk management worksheet is discoverable.**

Respondent contends that the risk management worksheet is not afforded the protections promulgated by the South Carolina legislature and codified at S.C. Code Ann. §44-7-392. The trial Court agreed. Appellant contends that the risk management worksheet is explicitly protected from discovery by S.C. Code Ann. §44-7-392(A)(1)(h).

On June 26, 2012, S.C. Code Ann. §44-7-392, a statute regarding the confidentiality of hospital proceedings, data, documents, and information, was signed into law. This statute applies to any and all investigations undertaken to examine an event that occurred after the statute's effective date. §44-7-392 (A)(1) provides that “[a]ll proceedings of, and . . . information prepared . . . by a hospital licensed under this article . . . relating to the following are confidential: (h) incident or occurrence reports and related investigations, unless the report is part of the medical record.” The statute goes on to prescribe in Section (A)(2) that “[t]hese proceedings and data, documents, and information in subsection (A)(1) *are not subject to discovery*, subpoena, or introduction into evidence in any civil action unless the hospital and any affected person who is a party to such action waives the confidentiality in writing.” S.C. Code Ann. §44-7-392 (A)(2) (emphasis added).

A cardinal rule of statutory construction is that the Court must ascertain and effectuate the legislature's intent. *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (1989); *Sumter Police Department v. Blue Mazda Truck*, 330 S.C. 371, 498 S.E.2d 894, 896 (Ct.App. 1998). “All rules of statutory construction are subservient to the one that the legislative intent must prevail if it reasonably can be discovered in the language used, and the language must be construed in the light of the intended purpose of the statute.” *Sumter Police Department* at 896.

The language of §44-7-392 is clear and explicit. It is evident on the face of the statute that the legislature intended that all proceedings of, and all data, documents, records, and information prepared or acquired by, a hospital, relating to incident reports, occurrence reports, and related investigations, remain confidential unless such reports are made a part of the medical record. While the term “incident or occurrence report” is not defined within the Act, common sense dictates that the risk management worksheet is an “incident or occurrence report” as contemplated by the

statute. It is a report that was completed by an AnMed employee related to an incident at AnMed; thus, it is an incident or occurrence report. Even if not an “incident or occurrence report,” it is certainly a document related to an investigation conducted by the hospital, and thus protected by the same statute. Moreover, the confidentiality statement on the face of the risk management worksheet makes it clear that it was intended to be protected by this very statute. The language reads as follows:

“CONFIDENTIALITY STATEMENT: This document is protected against unauthorized disclosure/dissemination in the course of discovery by one or more of the following: 1. The contents of this document were prepared at the direction of an attorney in anticipation of litigation, constituting a ‘PRIVILEGED ATTORNEY-CLIENT COMMUNICATION’; 2. This document was prepared as a part of a bona fide quality assurance, peer review, or risk management function of AnMed Health pursuant to 40-71-10 et sec., 44-7-390 etc., and 38-33-300.”

Because the risk management worksheet is an incident or occurrence report, or alternatively a document prepared or acquired by the hospital related to an investigation, and was not made a part of the medical record, it is absolutely privileged and confidential and is not subject to production in discovery unless AnMed waived the protection, which it did not.

While a trial court’s rulings in matters related to discovery will generally not be disturbed on appeal in the absence of an abuse of discretion, *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989), where the trial court’s order is controlled by an error of law or when there is no evidentiary support for the trial court’s conclusions, it may be overturned. *Sundown Operating Co. v. Intedge Indust., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). Here, the Court’s ruling that the risk management worksheet be produced runs directly contrary to the statutory protections afforded to healthcare entities by S.C. Code Ann. §44-7-392. Accordingly, the trial court abused its discretion by compelling the production of the risk management worksheet and that decision should be overturned.

Conclusion

Based upon the foregoing authorities and arguments, the Appellant respectfully submits that the trial court improperly granted the Plaintiff's motion to compel, which order should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Appellant’s Final Brief complies with Rule 211(b),
SCACR and the Supreme Court’s Order regarding personal identifiers and sensitive information.

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