

5-6-2011

Summary of Valley Health System v. District Court, 127 Nev. Adv. Op. No. 15

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Nevada Law Journal

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Recommended Citation

Johnson, Ryan, "Summary of Valley Health System v. District Court, 127 Nev. Adv. Op. No. 15" (2011). *Nevada Supreme Court Summaries*. Paper 271.

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CIVIL PROCEDURE - DISCOVERY

Summary

The Court hears a motion for a writ of mandamus to vacate a district court order. The district court order adopted a discovery commission report compelling production of requested documents.

Disposition/Outcome

The Nevada Supreme Court denied the writ of mandamus because the petitioner failed to raise the disputed issue before the discovery commissioner and only raised the issue before the district court judge. The court specifically held that failure to raise an issue presentable before the discovery commissioner constitutes waiver of the issue.

The Court then continued, strictly for the purposes of the opinion, holding that even if the petitioner had raised the issue before the commissioner, writ relief would not be warranted because the NRS 439.875(5) privilege only protects the patient safety committee's internally-generated documents from discovery.

Facts and Procedural History

In May 2008, Roxanne Cagnina entered Centennial Hills Hospital, one of five hospitals owned and operated by Valley Health, for treatment of seizures. Cagnina alleged that while in the hospital, Steven Farmer, a nurse's assistant, sexually assaulted her. Cagnina subsequently sued Valley Health and other defendants.

During discovery, Cagnina requested documents that recorded other incidents or complaints of improper conduct from Centennial Hills and the other Valley Health hospitals. Petitioner refused to comply with the request, and Cagnina filed a motion with the discovery commissioner to compel discovery. In response, petitioner argued only that the requested discovery was irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner did not argue for privilege protections under NRS 439.875.

After a hearing, the discovery commissioner issued a report and recommendation compelling Valley Health to deliver the documents. Valley Health filed an objection to the report and subsequently argued privilege under NRS 439.875 in the district court. The district court adopted the discovery commissioner's report and recommendation and ordered the discovery, after which Valley Health filed for a writ of mandamus from the Nevada Supreme Court directing the district court to modify its order.

¹ By Ryan Johnson

Discussion

The Nevada Supreme Court emphasized that writs of mandamus are extraordinary remedies granted solely within the discretion of that Court.² The Court will generally only issue a writ for discovery orders when those orders are blanket orders with no regard for relevance or if the order compels disclosure of privileged information. Writs are appropriate for privileged information because no adequate remedy at law could restore a document's privileged status once that document is disclosed.

Despite the appropriate application of a writ in such circumstances, the Court held that Valley Health could not argue that its documents were privileged because it waived this issue when it did not bring this argument before the discovery commissioner. In *Old Aztec Mine, Inc. v. Brown*, the Court held that "a point not urged in the trial court ... is deemed to have been waived and will not be considered on appeal."³ The Court then concluded that the same principle applies equally with issues brought before the discovery commissioner. A contrary holding would lead to inefficiencies and frustrate the purpose of having discovery commissioners.

The Court went on to hold that even if Valley Health had argued the issue before the discovery commissioner a writ would not be warranted. The court held that, under NRS 439.875(5), the record and proceedings of a patient safety committee are afforded the same protections against discovery as the quality of care and peer review committees under NRS 49.265(1). The scope of this discovery protection is limited to records internally produced by the committee and does not include reports submitted to the committee. Allowing protection of submitted reports would permit hospitals to immunize themselves from discovery by simply submitting reports to the committee: a process that would be against public policy.⁴ Since Cagnina did not request internal documents of the patient safety committee, she did not request privileged documents and Valley Health would not have been granted a writ.

Conclusion

Failure to raise an issue presentable before the discovery commissioner constitutes a waiver of that issue. Even if not waived, the NRS 439.875(5) privilege only protects the patient safety committee's internally generated documents from discovery and not reports submitted to that committee.

² *Smith v. Dist. Ct.*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

³ *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 53, 623 P.2d 916, 921 (1996).

⁴ *See Columbia/HCA Healthcare v. Dist. Ct.*, 113 Nev. 521, 936 P.2d 844 (1997).