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Quinn v. Eighth Judicial Dist. Ct., 135 Nev. Adv. Op. 5 (Feb. 8, 2018) (en banc)

Shaneka J. Malloyd

University of Nevada, Las Vegas – William S. Boyd School of Law

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Quinn v. Eighth Judicial Dist. Ct., 135 Nev. Adv. Op. 5 (Feb. 8, 2018) (en banc)¹

Civil Procedure: Discovery; Writ of Mandamus/Prohibition

Summary

The Court determined that (1) a writ of mandamus/prohibition is appropriate when a party does not have an adequate relief in the ordinary course of the law and it is necessary to prevent improper disclosure of privileged and confidential information; (2) a Nevada district court has no authority to compel an out-of-state non-party to appear in Nevada for a deposition; and (3) specifically, a Nevada district court does not have subpoena power over a non-resident attorney that has practiced law in Nevada.

Background

The Quinn Emmanuel attorneys, four California residents, represented Elaine Wynn in a pending litigation against Kimmarie Sinatra and Wynn Resorts from January 2016 to March 2017. The attorneys received pro hac vice admission in Nevada for their work in that litigation. In September 2017, Sinatra filed a counterclaim for “abuse of legal process” against Elaine Wynn alleging the process started when the Quinn Emmanuel attorneys represented Ms. Wynn. In October 2017, Sinatra requested deposition subpoenas for the Quinn Emmanuel attorneys in California pursuant to California’s Uniform Interstate Depositions and Discovery Act (UIDDA).² The attorneys objected to the subpoena, unsuccessfully participated in a meet-and-confer, and filed a petition to quash the subpoenas primarily due to concerns about privilege and work product.

Sinatra filed an ex parte application to compel the depositions and moved to shorten time in order to meet the November 3rd Nevada discovery deadline. The Emmanuel Quinn attorneys opposed the application and requested sanctions. On October 27, 2017, a California court denied Sinatra’s request because of the short notice, specifically noting that short notice was never appropriate in matters concerning attorney-client privilege. That court further noted that shorting time would deprive the Quinn Emmanuel attorneys of due process and would not provide the court time to “fully consider and prepare the motion.”

On October 30, 2017, Sinatra filed a motion to compel discovery and an order to shorten time with the Nevada district court claiming essentially that the Nevada court had personal jurisdiction over the attorneys because they practiced in Nevada. Therefore, the court had authority to compel discovery under NRCP 37(a)³ where the California court had refused to hear the pending discovery matter before the cut-off date. The Quinn Emmanuel attorneys opposed the motion for lack of jurisdiction. The Nevada district court granted Sinatra’s motion to shorten time.

At a November 6 hearing, the Quinn Emmanuel attorneys argued that they were all California residents issued California subpoenas; therefore, the Nevada court had no authority to compel the deposition because California already exercised jurisdiction over this matter under

¹ By Shaneka J. Malloyd.

² CAL. CIV. PRO. §§ 2029.100–900 (2018).

³ N.R.C.P. 37 (a) (2016).

the UIDDA, adopted by both Nevada and California.⁴ Nonetheless, the district court found that it had authority to compel discovery because the attorney's pro hac vice status in Nevada gave the court personal jurisdiction. The court ordered the Quinn Emmanuel attorneys to appear for depositions in Las Vegas. Additionally, the court entered a stay allowing the attorneys to file a writ petition with the Nevada Supreme Court.

After the Quinn Emmanuel attorneys filed a writ with the Court, the California court held a hearing and found that (1) it had jurisdiction over the subpoenas of the attorneys; (2) Sinatra could not meet the three-prong test to depose the attorneys;⁵ and (3) Sinatra's opposition to the attorney's petition to quash was not justified and ordered sanctions. Both parties stipulated to not enforce orders until the Court resolved the attorney's writ and Sinatra agreed to not appeal the California court's actions.

Discussion

Writ relief is appropriate

The Court found a writ of mandamus/prohibition was appropriate because the attorneys had no other adequate remedy because a pretrial order to compel the deposition of a non-party witness is not appealable. The Court further found that a writ of prohibition was necessary to protect the privileged and confidential information held by the attorneys. Also, a writ was appropriate to challenge the Nevada district court's jurisdiction to enter discovery orders against the attorneys.

The district court did not have authority to order an out-of-state non-party witness to appear in Nevada for a deposition

The Nevada Rules of Civil Procedure limit the geographic power to depose a non-party witness only within Nevada⁶ – it “does not extend beyond state lines.” Other states have similar limits on discovery.⁷ This limit reinforces traditional concepts of state sovereignty. Because states recognized they had limited subpoena power, many states adopted the UIDDA which allows a party to issue a discovery subpoena of a non-party in the state where they reside (discovery state) when it is not the same state where litigation is pending (trial state). It provides that (1) the party must get a subpoena in the trial state, (2) then submit the subpoena to the discovery state's court clerk, and (3) then the discovery state's court clerk reissues the subpoena in the discovery state. Under the UIDDA, the deposing party must bring all motions in the discovery state and the process is governed by the discovery state's laws.

The Court found that Sinatra, initially, properly followed the procedures of California's UIDDA; however, she improperly brought her motion before the Nevada district court to enforce

⁴ NEV. REV. STAT. §§ 53.100–.200 (2017); CAL. CIV. PRO. §§ 2029.100–.900 (2018).

⁵ The California test to depose an opposing party's counsel is similar to the Nevada test. The Nevada test mandates that the party seeking deposition must “demonstrate that the information sought cannot be obtained by other means, is relevant and nonprivileged, and is crucial to the preparation of the case.” *Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court*, 276 P.3d 246, 247 (Nev. 2012).

⁶ N.R.C.P. 45 (2016); N.R.C.P. 30 (a)(1) (2016).

⁷ *Colo. Mills, LLC v. SunOpta Grains & Foods, Inc.*, 269 P.3d 731, 732 (Colo. 2012); *Attorney Grievance Comm'n of Md. v. Mixer*, 109 A.3d 1, 9 (Md. 2015); *Craft v. Chopra*, 907 P.2d 1109, 1111–12 (Okla. Civ. App. 1995); see also Ryan W. Scott, *Minimum Contact, No Dog: Evaluating Personal Jurisdiction for Nonparty Discovery*, 88 MINN. L. REV. 968, 984 (2004).

the California subpoenas when California would not resolve the issue before discovery cut-off in Nevada. California jurisdiction never ended, and the Nevada court had no authority to compel discovery. Nevada law makes it clear that subpoena power rests in the state court where the deposition occurs.⁸

While making no decision on whether an attorney's pro hac vice admission subjects them to personal jurisdiction in Nevada, the Court clarified that personal jurisdiction must not be conflated with subpoena power. An attorney's pro hac vice admission in Nevada does not give a Nevada court power to order their deposition as a non-party witness in Nevada. The Nevada district court's reasoning to exercise subpoena power because it believed it had personal jurisdiction over the attorneys was erroneous. The Court concluded that simply because a non-party is an attorney, the court does not have unlimited authority to compel deposition under the court's inherent authority over the legal profession. Furthermore, there is no exception to the limited intrastate power of the district court's subpoena power when the non-party witness is an out-of-state attorney that has practiced in Nevada.

Conclusion

The Nevada district court had no authority to enforce the California subpoena issued to California non-party witnesses or to compel the out-of-state witnesses to appear in Nevada for a deposition, including when the out-of-state witnesses are attorneys that have practiced law in Nevada courts. The Court granted the attorney's writ with directions to the Court's clerk to issue a writ of prohibition directing the Nevada district court to vacate its order to compel depositions of the out-of-state attorneys.

⁸ Nev. Rev. Stat. §§ 53.100 –.200 (2017); N.R.C.P. 30 (a)(1) (2016).