

MICHIGAN COURT OF APPEALS RULES DEFENDANT'S MEDICAL RECORDS ARE PRIVILEGED AND NOT DISCOVERABLE

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In a recent unpublished opinion, *Weis v. Eliot*, No. 279821, the Michigan Court of Appeals held that the trial court did not abuse its discretion by refusing to compel discovery of the defendant's medical records.

The plaintiffs were the parents of a nine-year-old girl who was riding a motorbike when she was struck and killed by a vehicle driven by the defendant. The defendants were the driver of the vehicle and her husband, who was a passenger at the time of the accident. The defendant-wife stated that she saw the tire of the motorbike entering the road and thereafter took her foot off the accelerator and prepared to brake. She also claimed that as she saw the bike enter the roadway and realized that it was not slowing down, she applied the brakes and veered her vehicle to the left. Despite these actions, the defendants' vehicle struck the motorbike.

The plaintiffs sought discovery of each defendant's counseling, psychological and psychiatric records. The plaintiffs argued that the defendant-wife suffered from depression and bipolar disorder and that her medical condition or prescription medication may have affected her ability to perceive and react to the events leading up to the accident. Furthermore, the plaintiffs argued that because both defendants sought counseling following the accident, the records of such counseling should be discoverable because the defendants may have discussed the specific events of the accident and their mental or physical condition on that day.

The defendants objected to this discovery request, arguing that the records were privileged from disclosure under both the physician-patient privilege under MCL 600.2157, and psychologist-patient privilege under MCL 333.18237. The trial court denied the plaintiffs' motion to compel discovery of the records and granted the defendants' motion for summary disposition. The plaintiffs appealed.

The appellate court first examined whether the trial court abused its discretion by denying the plaintiffs' motion to compel discovery of the defendants' medical records. The appellate court noted that the plaintiffs did not argue that the records were not privileged, but only that the records were relevant. The court noted that privileged records, even if relevant, are generally not subject to discovery. MCR 2.3029B)(1). The court then stated that the plaintiffs had provided no basis to conclude the trial court's denial of the motion to compel was outside the range of reasonable and principled outcomes and, therefore, the denial was not an abuse of discretion.

The appellate court also rejected the plaintiffs' argument that the trial court failed to enforce MCR 2.314(B)(2), which prohibits a party, who has argued that medical information is privileged, from later introducing evidence relating to the party's medical condition. The court noted that the plaintiffs' claims that the defendant-wife suffered from mental illness, for which she was prescribed medication, and that the defendant-husband was actually driving the vehicle while intoxicated at the time of the accident were purely speculative and not supported by evidence. The court also noted that the defendants' had not presented evidence relating to physical or mental conditions.

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