

**IN THE SUPREME COURT OF MISSOURI
EN BANC**

NO. SC 90364

**STATE ex rel.
WILLIAM A. STINSON,**

Relator,

v.

THE HONORABLE TED HOUSE,

Respondent.

**APPEAL FROM THE CIRCUIT COURT OF ST. CHARLES COUNTY,
MISSOURI
THE HONORABLE TED HOUSE, CIRCUIT JUDGE
CASE NO. 0511-CV05544
EASTERN DISTRICT COURT OF APPEALS NO. ED92283**

REPLY BRIEF OF RESPONDENT THE HONORABLE TED HOUSE

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I. JURISDICTIONAL STATEMENT.

Respondent adopts Relator's Jurisdictional Statement.

II. STATEMENT OF FACTS.

Following a paternity hearing in Respondent's court on July 13, 2009, Plaintiff was found to be the natural daughter of Ricky J. Young, deceased. She was ordered substituted as the proper party-plaintiff in this personal injury case, and authorized to proceed with the action as a Class 1 beneficiary under the Missouri Wrongful Death Act.

Plaintiff's Petition (Relator's Exhibit 4) seeks compensatory and punitive damages against Relator under Count I for his negligent and reckless operation of a motor vehicle which caused the death of her father, Ricky J. Young on August 14, 2004. In Count II, Plaintiff seeks damages from William B. Stinson, Janice M. Stinson and William B. Stinson & Sons, Co. d/b/a W.B. Select Auto Center for the negligent entrustment of a motor vehicle to William A. Stinson on August 14, 2004. William B. Stinson and Janice M. Stinson are the parents of William A. Stinson, as well as officers and agents of William B. Stinson & Sons, Co., a limited liability corporation which employed them and Relator William A. Stinson.

As reflected by the Missouri Highway Patrol Reconstruction and Accident Reports (Respondent's Exhibit 1), at the time of the fatal collision of August 14, 2004, Relator was operating a 2001 Lincoln automobile while under the influence of alcohol, driving on the wrong side of the road, and traveling at a speed estimated to have been between 107-121 miles per hour.

In the course of discovery, Plaintiff, as Intervenor, had served Relator with a Request for Production on August 13, 2007 (Relator's Exhibit 1) requesting "[A] signed and notarized medical and psychological records authorization in the form submitted herewith, authorizing

disclosure of all medical and psychological care, treatment and evaluation provided by any health care provided to you from January 1, 1990 to the present date.” This authorization was submitted to Relator in the form designated as Relator’s Exhibit 5 and only requests records pertaining to medical, psychiatric and psychological treatment rendered to Relator for drug, alcohol and substance abuse. Nearly two years after submission of the Request for Production, Relator filed his objection on June 16, 2009, designated as Relator’s Exhibit 2. Said objection reads as follows: “Defendant William A. Stinson objects to Request No. 3 on the basis that it is not reasonably calculated to lead to admissible evidence. It is outside the scope of discovery because Defendant has not put at issue his physical or mental condition and has not thereby waived the patient-physician privilege. It is irrelevant to his cause of action.”

On July 13, 2009, following oral argument, Respondent issued an Order compelling Relator to execute a medical authorization pertaining to medical, psychiatric and/or psychological care or treatment for alcohol and/or substance abuse. A copy of that Order has been designated by Relator as his Exhibit 3.

The Missouri Court of Appeals, Eastern District, after issuing its Provisional Order in Prohibition on August 5, 2009, quashed same and denied Petitioner’s Petition for Writ of Prohibition on August 19, 2009 (Relator’s Exhibit 7). Petitioner thereafter filed his Petition in this Court.

III. POINT RELIED ON.

THE RESPONDENT JUDGE DID NOT ABUSE HIS DISCRETION BY ORDERING RELATOR TO EXECUTE A MEDICAL AUTHORIZATION DISCLOSING HIS MEDICAL, PSYCHIATRIC, AND PSYCHOLOGICAL RECORDS OF CARE AND TREATMENT FOR ALCOHOL AND SUBSTANCE ABUSE, BECAUSE:

- A. THIS INFORMATION IS RELEVANT TO CO-DEFENDANTS' KNOWLEDGE OF RELATOR'S INCOMPETENCE TO OPERATE A MOTOR VEHICLE AND THEIR SUBSEQUENT NEGLIGENT ENTRUSTMENT OF A MOTOR VEHICLE TO HIM; AND**

- B. THIS INFORMATION DOES NOT VIOLATE THE POLICY UNDERPINNING THE PHYSICIAN-PATIENT PRIVILEGE SINCE IT WILL NEITHER BE USED TO PROVE RELATOR'S LIABILITY, NOR WILL IT CAUSE HIM ANY HUMILIATION THAT WILL JEOPARDIZE ANY NEED FOR MEDICAL CARE.**

Hallquist v. Smith, 189 S.W.3d 173 (Mo.App. 2006)

Lecave v. Hardy, 73 S.W.3d 637 (Mo.App. 2002)

State ex. rel. Maloney v. Allen, 26 S.W.3d 244 (Mo. App. 2000)

Virgin v. Hopewell Center, 66 S.W.3d 21 (Mo.App. 2001)

IV. ARGUMENT.

POINT RELIED ON

THE RESPONDENT JUDGE DID NOT ABUSE HIS DISCRETION BY ORDERING RELATOR TO EXECUTE A MEDICAL AUTHORIZATION DISCLOSING HIS MEDICAL, PSYCHIATRIC, AND PSYCHOLOGICAL RECORDS OF CARE AND TREATMENT FOR ALCOHOL AND SUBSTANCE ABUSE, BECAUSE:

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ARGUMENT

- A. Elements of a negligent entrustment cause of action.**

Under Missouri law, the requisite elements of a negligent entrustment claim are:

“(1) the trustee was incompetent by reason of age, inexperience, habitual recklessness or otherwise; (2) the entrustor knew or had reason to know of the trustee’s incompetence; (3) there was entrustment of the chattel; and (4) the negligence of the entrustor concurred with the conduct of the trustee to cause plaintiff’s injuries.” Hallquist v. Smith, 189 S.W.3d 173, 175-76 (Mo.App. 2006).

In short, Plaintiff must prove that Co-Defendants knew or had reason to know that Relator was incompetent to operate a motor vehicle prior to August 14, 2004. As such, his

driving convictions, suspensions, revocations, loss of insurance, as well as his alcohol and drug abuse/addiction would all be relevant evidence of incompetence. Lecave v. Hardy, 73 S.W.3d 637 (Mo.App. 2002).

Plaintiff will meet her burden of proof by demonstrating the scienter of Co-Defendants by their knowledge of facts contained in Relator's medical, psychiatric and psychological records pertaining to treatment for alcohol/drug abuse, services for which they have admittedly paid. It is also quite likely as the payors of said services that they had conversations with Relator's treating providers and have direct knowledge of the nature and severity of Relator's afflictions that render him incompetent to operate a motor vehicle. There is no question but that this information is not only relevant, but vital to Plaintiff's cause of action against Co-Defendants.

B. Relator's driving history.

From Respondent's attached Exhibits 2 (Missouri Driver's Record), 3 (Missouri Criminal History Record), and 4 (reports of 1/11/03 fatal crash), Plaintiff establishes the following driving/ criminal history of Relator William A. Stinson:

1. excessive blood alcohol conviction of 11/2/90;
2. DWI conviction of 5/93 for offense committed 12/30/91 - sentenced to one year confinement (suspended) and two years' probation;
3. DWI conviction of 5/95 arising out of offense committed 9/25/93 - sentenced to three years' confinement;
4. Convicted of involuntary manslaughter 9/05 arising out of fatal

collision of 1/11/03. Police reports reflect Relator's admission to use of methamphetamine, crack cocaine, marijuana, and alcohol. Police report shows Relator was operating a motor vehicle at a speed of 100 mph;

5. Convicted of involuntary manslaughter 9/05 arising out of 8/14/04 fatal accident that killed Ricky J. Young; police records (Respondent's Exhibit 1) reflect Relator's intoxication and driving speed of 107-121 mph. Relator sentenced to seven years and is presently incarcerated.
6. DWI conviction of 5/06 arising out of offense that occurred on 7/20/04.

The above alcohol-related offenses and collisions are only the most serious offenses committed by Relator. In addition, there are multiple other motor vehicle violations as well as license suspensions and revocations demonstrating Relator's habitual reckless driving.

Co-Defendants William B. Stinson and Janice M. Stinson have admitted payment of Relator's legal fees for representation in connection with numerous of his driving offenses as well as payment of the expenses arising out of at least two admissions for rehabilitation treatment due to Relator's alcohol and substance abuse problems.

C. Respondent's Order does not violate the policy underpinning physician-patient privilege.

“The policy behind this privilege is to protect the patient by allowing him to make full disclosure without fear that the information will be used **against him.**” Virgin v. Hopewell Center, 66 S.W.3d 21, 26 (Mo.App. 2001) [emphasis added].

Relator is currently incarcerated and serving a seven year sentence for involuntary manslaughter to which he has twice plead guilty, once arising out of a fatal collision that occurred on January 11, 2003 in the City of St. Louis, and the other involving the case out of which this death action arises. The negligence case against Relator is blatant and aggravated. Coupled with his guilty pleas, one would be hard-pressed to say that Relator has any chance of, or interest in, avoiding embarrassment or humiliation.

The only purpose for Plaintiff’s pursuit of Relator’s medical and psychiatric records is their anticipated use of the evidence contained therein against the Co-Defendants, in order to establish their prior knowledge of Relator’s incompetence to operate a motor vehicle. Evidence of Relator’s treatment for alcohol and drug abuse is therefore a critical element in Plaintiff’s proof of negligent entrustment. Missouri law does not hold that the physician-patient privilege is absolute. State ex rel. Maloney v. Allen, 26 S.W.3d 244, 247 (Mo.App. 2000).

In the instant case Plaintiff has no need, nor any intent to violate the Missouri policy underpinning the physician-patient privilege by using Relator’s medical data against him. The cases cited in Relator’s Brief are all distinguishable in that they involved attempts to utilize a defendant’s medical records to prove his liability. Here, the sole purpose behind Plaintiff’s discovery request is to use the data contained in Relator’s

medical records to prove her case against the Co-Defendants. The evidence is therefore admissible where its intended use is prove negligent entrustment by other defendants. Had Relator been concerned about the use of his medical records against himself, or any embarrassment or humiliation exposed thereby, one would think that he would have filed his objections to Plaintiff's discovery in less than two years. Relator's belated and feckless assertion of physician-patient privilege is no more than a smokescreen to shield his parents and employer from liability for negligent entrustment.

D. Petitioner's Brief violates Supreme Court Rule 84.04(h)(2).

Supreme Court Rule 84.04(h)(2) reads as follows:

“A party's brief shall contain or be accompanied by an appendix containing the following materials, unless the material has been included in a previously filed appendix: ...

(2) The complete text of all statutes, ordinances, rules of court, or agency rules claimed to be controlling as to a point on appeal; ...” (Respondent's Exhibit 5)

Relator has failed to submit the text of § 491.060(5) R.S.Mo. in either his brief or appendix. Although listed in Relator's Brief - Table of Authorities as being found on page 3, the statute is actually cited on pages 4 and 6, but without setting forth its text.

Accordingly, any references to this statute should be stricken.

V. CONCLUSION.

Respondent's Order compelling Relator to execute a medical authorization relating to his history of alcohol and substance abuse treatment did not violate physician-patient privilege. The policy behind this privilege is to permit the patient to make unfettered disclosure to his medical providers without fear that the information will come back to convict him of negligence.

The Respondent Judge, being aware of Relator's multiple convictions for alcohol- and drug-related driving offenses (including his incarceration for two manslaughter convictions), was well aware that Plaintiff needed no further medical information from Relator in order to prove his liability for the death of Ricky Young. Respondent Judge properly saw through Relator's belated attempt to assert the physician-patient privilege, merely to shield his parents and employer from liability for negligent entrustment.

Aside from being substantively deficient, Relator's Petition fails to set forth the text of the statute (§491.060 R.S.Mo.) upon which his argument relies.

Accordingly, Respondent respectfully requests this Honorable Court to quash its Preliminary Order of Prohibition issued on October 6, 2009, and denying Relator's Petition for Writ of Prohibition.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing reply brief includes the information required by Rule 55.03 and complies with the length limitations in Rule 84.06(b) and Local Rule 360 in that there are 1,940 words in the brief (excluding the cover, table of contents, table of cases, signature block, certificate of service, certificate required by Rule 84.06(c), and appendix, according to the word count of the word-processing system used to prepare the brief. The undersigned further certifies that the disks containing the brief have been scanned for viruses and are virus-free.

Certificate of Service

The undersigned hereby certifies that a hard copy and an electronic copy on CD-Rom in WordPerfect format which has been scanned for viruses and is virus-free of the foregoing Reply Brief of Respondent The Honorable Ted House was served this 7th day of January, 2010, on: Mr. Theodore G. Pashos, Niedner, Bodeux, Carmichael, Huff, Lenox & Pashos, LLP, 131 Jefferson Street, St. Charles, Missouri 63301, Attorneys for Relator William A. Stinson; Ms. Ann P. Hagan, Hagan, Hamlett & Maxwell, LLC, 210 East Love, Mexico, Missouri 65265, Attorneys for Co-Defendants William B. Stinson, Janice M. Stinson, William Stinson & Sons, Co.; and Respondent The Honorable Ted House, Circuit Judge - Division No. 1, St. Charles County Circuit Court, Court Administration Building, 300 North Second Street. St. Charles, Missouri 63301.
