Summary of SC99139, *State ex rel. Darin Lutman v. The Honorable M. Brandon Baker*
Proceedings originating in the Henry County circuit court, Judge M. Brandon Baker
Argued and submitted October 6, 2021; opinion issued December 21, 2021

Attorneys: Lutman was represented by Warren E. Harris of Taylor, Stafford, Clithero & Harris LLP in Springfield, (417) 887-2020. The Murrell family was represented by Samuel M. Gonzalez and Andrew J. Gelbach of Andrew J. Gelbach PC in Warrensburg, (660) 747-5138.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man seeks a writ prohibiting the disclosure of his medical records in a wrongful death action resulting from an automobile accident. In a unanimous decision written by Judge Robin Ransom, the Supreme Court of Missouri makes its preliminary writ permanent. Because the man neither placed his medical conditions at issue nor took any action sufficient to waive the physician-patient privilege, the circuit court erred in ordering the disclosure.

Facts: In 2019, Darin Lutman was involved in an automobile accident in which the vehicle he was driving crossed the center line and stuck another vehicle. The other vehicle's driver, Sondra Murrell, died, and her grandson, D.M., was injured. Lutman told law enforcement officers he believed he blacked out or fainted while driving. In a letter to the Murrell family, Lutman expressed remorse and stated he felt like he was having a heart attack and was going to black out at the time of the accident. The Murrell family sued Lutman for wrongful death, subpoenaed his medical records from two healthcare providers and sought to depose the custodians of those records. Lutman moved to quash the notices of depositions and subpoenas, arguing he had not placed any medical conditions at issue. The circuit court overruled Lutman's motion and ordered the healthcare providers to comply with the subpoenas. On the day of the depositions, Lutman petitioned the court of appeals for a writ to prohibit the release of his medical records. Although the healthcare providers produced the records, opposing counsel agreed to treat the records as sealed while the writ was pending. When the court of appeals denied the writ, Lutman notified opposing counsel that he intended to file a writ in this Court. Opposing counsel indicated the records already had been sent to court reporters and other parties. Lutman then petitioned for a writ in this Court, which issued a preliminary writ.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: Lutman did not waive his physician-patient privilege. Section 491.060, RSMo, is construed as a privilege statute that protects from discovery any information a physician acquires while attending a patient and any resulting medical records, even when the medical records are otherwise relevant to a party's claim. The privilege, however, can be waived when a party places a medical condition in issue or shows a clear, unequivocal purpose to divulge confidential, medical information. Although Lutman told the investigating officers he believed he blacked out, fainted or had a heart attack, his statement did not contain privileged information and does not indicate a clear, unequivocal purpose to divulge medical information. The same is true of Lutman's letter to the Murrell family, as there is no reasonable way to construe his apology letter as an indication to share his medical records. Accordingly, the circuit court erred in ordering the disclosure of Lutman's medical records.