Summary of SC99024, *State ex rel. Kimberly Barks v. The Honorable Daniel Pelikan*
Proceeding originating in St. Charles County
Argued and submitted October 6, 2021; opinion issued March 1, 2022

Attorneys: Barks was represented by Jackie M. Kinder, Joshua R. Kolb and Clayton R. Diskin of Brown & James PC in St. Louis, (314) 421-3400. Sheila Spencer was represented by Nolan Drafahl of the Drafahl Law Firm in St. Louis, (314) 300-6260.

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 woman seeks a writ prohibiting disclosure of her medical records in a negligence action arising from a golf cart accident. In a unanimous decision written by Judge Robin Ransom, the Supreme Court of Missouri makes its preliminary writ permanent. The woman's medical records are protected by the physician-patient privilege, which she did not waive by asserting affirmative defenses that she otherwise would have forfeited had she not pleaded them.

Facts: In 2019, a golf cart driven by Kimberly Barks was involved in an accident in St. Charles. Sheila Spencer, a passenger in the golf cart, sued Barks following the accident. Spencer alleged she sustained personal injuries as a result of Barks negligently operating the golf cart while intoxicated. Barks denied the allegations and asserted the affirmative defenses of comparative fault and assumption of the risk. During discovery, Spencer sought Barks' medical records from the night of the accident. Barks objected, claiming the records were protected by the physician-patient privilege. The circuit court compelled Barks to disclose her medical records. Barks then sought a writ to prevent the disclosure. This Court issued a preliminary writ ordering the circuit court to take no further action in the underlying matter.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: The physician-patient privilege protects Barks' medical records from disclosure. 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 its medical condition in issue or shows a clear, unequivocal purpose to divulge confidential, medical information. Barks did not waive the privilege by asserting affirmative defenses, which must be pleaded or are forfeited. It would be illogical and unacceptable to require Barks to choose between waiving her physician-patient privilege or forfeiting her affirmative defenses of comparative fault and assumption of risk. Although Barks' medical records may establish quickly and definitively whether she was intoxicated, the mere fact that privileged medical records may be relevant does not mean that the medical records are discoverable. The very nature of an evidentiary privilege is that it removes from the scope of discovery evidence that is otherwise relevant and discoverable.