Summary of SC99650, *Kristine Hill and Dennis Hill v. The Honorable Stanley J. Wallach*
Proceedings in prohibition originating in St. Louis County
Argued and submitted October 26, 2022; opinion issued March 21, 2023

Attorneys: The Hills were represented by Patrick R. Dowd and Eric D. Holland of Holland Law Firm in St. Louis, (314) 241-8111. Mercy Rehabilitation Hospital was represented by Dennis S. Harms, Mary Anne Mellow and Timothy C. Sansone of Sandberg Phoenix & von Gontard PC in St. Louis, (314) 231-3332.

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 couple seeks a writ prohibiting discovery of settlement documents in their personal injury action against a hospital. In a unanimous decision written by Chief Justice Paul C. Wilson, the Supreme Court of Missouri quashes the preliminary writ. The couple waived any work product protection of the settlement release and e-mail correspondence when they disclosed those documents to an adversary.

Facts: In July 2017, Kristine Hill was a patient at Mercy Rehabilitation Hospital recovering from back surgery when her hospital bed allegedly malfunctioned, injuring her back and spine. Six months after the incident at Mercy, Hill was involved in a motor vehicle accident that allegedly aggravated those back and spine injuries. She filed a claim with the at-fault driver's insurance carrier, ultimately settling the claim for an undisclosed sum of money. In July 2019, Hill and her husband sued Mercy, alleging the hospital was negligent in failing to inspect, maintain or fix the hospital bed. Mercy asserted the affirmative defense of reduction (to reduce the potential amount of damages it might owe) under section 537.060, RSMo. To prove reduction, Mercy sought production of settlement documents relating to the motor vehicle accident. The Hills objected to production of the documents on various grounds, including that the requested documents were attorney work product immune from discovery. The Hills submitted a privilege log identifying as protected work product several documents, including a settlement release and e-mail correspondence between the Hills' counsel and the insurance company's claims adjuster. Mercy moved to compel production of those documents, and the circuit court sustained that motion. The Hills petitioned for a writ of prohibition in the court of appeals, which issued a preliminary writ. After briefing and argument, the court of appeals issued an opinion making the writ permanent. This Court then granted transfer.

PRELIMINARY WRIT QUASHED.

Court en banc holds: The circuit court properly concluded the settlement documents and related communications Mercy sought are not protected by the work product doctrine. The Hills waived any work product protection of the settlement release and e-mail correspondence when they disclosed those documents to an adversary (the insurance adjuster). The fact that the Hills disclosed the documents to a former adversary rather than their current adversary is irrelevant.