

Summary of SC90364, *State ex rel. William A. Stinson v. The Honorable Ted House*
Writ proceeding arising in the St. Charles County circuit court, Judge Ted House
Argued and submitted Jan. 28, 2010; opinion issued July 16, 2010

Attorneys: Stinson was represented by Theodore G. Pashos and Scott E. Simpson of Niedner, Bodeux, Carmichael, Huff, Lenox and Pashos LLP in St. Charles, (636) 949-9300, and Ann P. Hagan of Hagan, Hamlett & Maxwell LLC in Mexico, (573) 581-8373.

This summary is not part of the opinion of the Court. It has been prepared by the 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 sued in a wrongful death case seeks a writ prohibiting the trial court from compelling him to sign an authorization permitting his medical and psychological records to be turned over to the plaintiff. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri makes permanent its writ of prohibition. The disclosure requested is barred by the physician-patient privilege and the policy underlying that privilege.

Facts: In August 2004, William Stinson was involved in a high-speed automobile collision that resulted in a death. A wrongful death suit was filed against Stinson alleging that he negligently operated the motor vehicle that caused the death and that he was under the influence of intoxicants at the time of the crash and was traveling in excess of the posted speed limit. The suit included Stinson's parents and their automobile dealership for negligently entrusting Stinson with the vehicle involved in the collision. The suit alleged the parents knew or should have known Stinson was addicted to alcohol and drugs that impaired his driving ability, that he had received medical treatment for such addictions, and that he had been charged with and convicted of numerous alcohol-related driving offenses prior to the August 2004 crash. In the course of discovery, Stinson received a request for production asking him to execute an authorization permitting the disclosure of all medical and psychological records pertaining to treatment he had received for alcohol, drug or substance abuse problems dating back to 1990. Stinson objected on the grounds that such records were protected by the physician-patient privilege, which he had not waived. The trial court overruled Stinson's objection and ordered him to execute the medical records authorization. Stinson now seeks this Court's writ prohibiting the trial court from compelling him to sign the authorization.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: The trial court abused its discretion by ordering Stinson to sign an authorization to disclose medical records that were protected by the physician-patient privilege. This privilege, established by section 491.060, RSMo 2000, applies to medical records and all aspects of discovery. Here, the medical records sought fall within the protective scope of the privilege, and there is no evidence in the record that Stinson placed any of his medical conditions in issue or took any other steps to waive his privilege affirmatively. The mere fact that he denied liability and is defending against the suit does not constitute a waiver of the privilege. Additionally, that the privileged medical records may be relevant to the claim for negligent entrustment does not alter the fact that the medical records are undiscoverable. The very nature

of an evidentiary privilege is that it removes from the scope of discovery evidence that otherwise is relevant and discoverable. Further, that the records are to be used against Stinson's parents does not alter the fact that the records are undiscoverable. The language of section 491.060 does not limit application of the privilege only to situations in which the confidential medical information will be used against the physician's patient. Rather, it applies to all circumstances in which a physician or psychologist is called on to give testimony or produce records concerning information that was acquired from a patient, regardless of whether the information will be used against the patient. The public policy of encouraging candid communication between patient and physician would be undermined if patients feared that their physicians or psychologists could disclose their confidential communications in any lawsuit, regardless of whether the information would be used against the patient or a third party. The disclosure requested fits squarely within the policy rationale underlying the physician-patient privilege.