

Summary of SC91706, *State ex rel. BNSF Railway Co. v. The Honorable Mark H. Neill*
Proceeding originating in the St. Louis city circuit court, Judge Mark H. Neill
Argued and submitted Nov. 2, 2011; opinion issued Dec. 20, 2011

Attorneys: The railway was represented by William A. Brasher, Thomas P. McDermott and Cynthia A. Masterson of Boyle Brasher LLC in St. Louis, (314) 621-7700; Michael Patton was represented by Leonard P. Cervantes, Phillip A. Cervantes and Jennifer L. Suttmoeller of Cervantes & Associates in St. Louis, (314) 621-6558.

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 defendant in a personal injury lawsuit asked the trial court in the underlying action to allow the defendant to obtain during the discovery process medical records held by a psychiatrist treating and prescribing medications to the plaintiff. The trial court prohibited the defendant from seeking this evidence from the psychiatrist because it believed psychiatric records could not be relevant to any issue in a case not alleging psychiatric injuries. In a 4-3 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri issues its permanent writ mandating that the trial court permit the requested discovery. The trial court abused its discretion in failing to consider the relevance of the requested records to the cause of the plaintiff's injuries, where, as here, the defendant showed medications prescribed for the plaintiff could have contributed to causing his injuries.

Judge Zel M. Fischer dissents in an opinion joined by one other judge. He would not grant or make permanent the Court's writ. It is well-settled that the trial court has broad discretion in controlling and managing discovery. Here, the trial court's ruling on the discovery request pending before it at the time it made its ruling – which is what this Court must consider – does not constitute an abuse of discretion and does not indicate a lack of careful consideration.

Judge Nancy Steffen Rahmeyer – a judge on the Missouri Court of Appeals, Southern District, who sat in this case by special designation in place of Judge George W. Draper III – also dissents in an opinion joined by one other judge. She would deny the writ. It is well-settled that the trial court has broad discretion in controlling and managing discovery. Here, in light of the railway's overbroad discovery request and the fact of the extensive discovery already undertaken in the case – including discovery regarding the records held by the psychiatrist – the trial court's decision was not arbitrary, unreasonable or indicative of a lack of careful consideration.

Facts: Michael Patton filed a personal injury action against the Burlington Northern and Santa Fe Railway Company alleging that the railway's negligence in requiring him to work in unacceptable conditions caused him to suffer various injuries, including reoccurring seizures and fainting spells. The railway disputes that its negligence caused Patton's injuries and argues instead that his injuries were caused by his abuse of, or withdrawal from, prescription medications or other preexisting problems. The railway sought medical records held by a psychiatrist who was treating and prescribing medications to Patton at the time of one of the injuries he claimed. The railway argued these medications could cause seizures if withdrawn suddenly or taken in improper dosages and thus review of these records is reasonably calculated to lead to the discovery of admissible evidence relevant to the nature and cause of Patton's injuries. The trial court denied the discovery request and issued a protective order preventing the

railway from obtaining access to Patton's records based on the court's belief that a psychiatrist's records categorically are not discoverable if a plaintiff claims only physical – and not psychological – injuries. The railway now seeks this Court's writ mandating that the trial court lift its protective order.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: The trial court abused its discretion in failing to consider the relevance of the requested material to the cause of Patton's injuries. Although a plaintiff does not place his or her psychological condition in controversy merely by alleging physical damage, the discoverability of medical records does not turn solely on the type of doctor who holds the records. Rather, under Rule 56.01, the pertinent inquiry instead is whether the requested material appears reasonably calculated to lead to the discovery of admissible evidence.

Here, the trial court abused its discretion in prohibiting discovery of Patton's psychiatric records simply because the doctor holding the records is a psychiatrist and because Patton did not allege psychiatric injury. The railway met its burden of showing that discovery of these records reasonably is calculated to lead to the discovery of admissible evidence as to the cause of Patton's injuries. The trial court should have considered whether there is merit to the railway's discovery request and now must do so. The trial court's concern that psychiatric records might be misused does not justify denying such discovery entirely. Rather, it can address this concern adequately by entering an appropriate protective order. Such an order could be one making discovery dependent on the trial court's finding, after a review in the judge's chambers, that the records indeed do contain information reasonably calculated to lead to the discovery of admissible evidence of (as alleged here) causation; limiting use or admissibility of any records found relevant; or requiring that certain matters be held confidential; or by another appropriate order.

Dissenting opinion by Judge Fischer: The author would not grant or make permanent the Court's writ. It is well-settled that the trial court has broad discretion in controlling and managing discovery. Here, the trial court's ruling on the discovery request pending before it at the time it made its ruling – which is what this Court must consider – does not constitute an abuse of discretion and does not indicate a lack of careful consideration.

Dissenting opinion by Special Judge Rahmeyer: The author would find no abuse of discretion and would deny the writ. It is well-settled that the trial court has broad discretion in controlling and managing discovery, and here there are a number of reasons the trial court might have ruled as it did. The railway's discovery request was too broad, which alone would have been a valid basis to deny the writ. Further, the record reveals extensive motions to compel discovery, numerous objections to interrogatories, and at least 10 other motions for sanctions, protective orders or authorizations. The order this Court reviews now, in fact, concerns the railway's third motion for reconsideration of the trial court's order regarding medical records held by the psychiatrist. In light of the fact that the psychiatrist did not treat Patton until after the initial injury, the tenuous allegation by the railway in an overbroad interrogatory that there might be something in the patient history that was relevant to causation, and the already extensive discovery, the author would find that the trial court's decision was not arbitrary, unreasonable or indicative of a lack of careful consideration.