

Summary of SC95606, *State ex rel. Jason H. Malashock v. The Honorable Michael T. Jamison*

Proceeding originating in the St. Louis County circuit court, Judge Michael T. Jamison
Argued and submitted September 29, 2016; opinion issued November 1, 2016

Attorneys: Malashock was represented by Bradley A. Winters, Vicki L. Little and Douglas J. Winters of Sher Corwin Winters LLC in St. Louis, (314) 721-5200; and Chesterfield Valley Sports was represented by Jessica A. Brasel and Donald J. Ohl of Knapp, Ohl & Green in Edwardsville, Illinois, (618) 656-5088.

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 plaintiff in an underlying personal injury suit seeks a writ prohibiting the circuit court from requiring an individual whose designation as an expert witness had been withdrawn from being deposed by the defense. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri makes permanent its preliminary writ. The expert's opinions and conclusions are protected from discovery because the plaintiff did not waive the work product doctrine by designating the individual as an expert witness, nor was there any disclosing event that waived the work product doctrine.

Facts: Jason Malashock sued Chesterfield Valley Sports Inc., alleging he was injured when his utility terrain vehicle overturned and its roof failed. He designated four expert witnesses expected to testify at trial, including Herbert Newbold. His designation stated the nature of Newbold's expected testimony but did not disclose Newbold's analysis or conclusions regarding any issues in the case. About two weeks later, Malashock notified defense counsel that he was rescinding his endorsement of Newbold as an expert witness. The defense then sought to depose Newbold. The circuit court granted the defense's request, finding Malashock had waived the protections afforded by the work product doctrine by designating Newbold as a defense. Malashock seeks relief from this Court.

PRELIMINARY WRIT MADE PERMANENT.

Court en banc holds: Because there was no disclosing event that waived the work product doctrine, Newbold's opinions and conclusions are protected from discovery by the work product doctrine. This doctrine precludes discovery of the mental impressions, conclusions, opinions or legal theories created or commissioned by counsel in preparation of litigation. To waive this doctrine with respect to Newbold, Malashock had to relinquish the doctrine's protections intentionally by disclosing Newbold's opinions or conclusions regarding the underlying case. Designating an expert as a trial witness does not waive the work product doctrine irrevocably. Rather, it is not waived until there is a "disclosing event" – an actual disclosure of the expert's opinions and conclusions. Malashock withdrew Newbold's designation as an expert well before trial and before there was any disclosure of Newbold's reports, opinions or conclusions.