No. 1-10-1588

FOURTH DIVISION
May 12, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CORA HILL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 08 L 2798
	)	
METROPOLITAN PROPERTY AND CASUALTY COMPANY, d/b/a METLIFE AUTO & HOME,	)	
	)	
Defendants-Appellees.	)	
	)	The Honorables
(Caren Schulman,	)	Daniel T. Gillespie and
	)	Ronald Bartkowicz,
Contemnor-Appellant).	)	Judges Presiding

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

O R D E R

Held: The circuit court did not err in holding that a legal services contract was not protected by the attorney-client privilege and that it was relevant to the case. Furthermore, contempt order was vacated where attorney requested to be held in contempt to challenge the validity of a discovery order.

This interlocutory appeal stems from a medical benefits claim dispute between plaintiff, Cora Hill, and defendant, MetLife Auto & Home (MetLife), the provider of her automobile

liability insurance policy. Plaintiff appeals from the circuit court's order of May 10, 2010, holding plaintiff's then-counsel, Caren Schulman, in civil contempt for her failure to comply with prior orders compelling production of the legal services contract between plaintiff and attorney A. Leo Wiggins, Jr. On appeal, plaintiff seeks to test the validity of the discovery order and vacate the contempt order against Schulman. For the reasons discussed below, we affirm the circuit court order compelling production of the legal services contract and vacate the contempt order.

I. BACKGROUND

On September 8, 2007, plaintiff was involved in an automobile accident in which she sustained minor injuries requiring medical treatment. At that time, plaintiff was the named insured of a automobile liability insurance policy issued by MetLife. Plaintiff individually initiated a claim for medical payment coverage with MetLife on or about September 11, 2007, and also spoke to a MetLife representative regarding the claim. MetLife subsequently began to process payments directly to plaintiff's medical providers from September to November 2007, pursuant to the phone conversation on September 11, 2007, and the terms contained in a letter sent to plaintiff on the same date.

After plaintiff had individually initiated her claim, she apparently retained the office of A. Leo Wiggins, Jr. to represent her. On September 19, 2007, Wiggins sent two notices of attorney's liens pursuant to section 1 of the Attorneys Lien Act (770 ILCS 5/1 (West 2006)) to MetLife in which he attempted to assert an interest in plaintiff's claims under the "medical payment coverage" of her policy as well as any potential underinsured motorist benefits. On

November 19, 2007, Wiggins sent a demand for medical payment benefits in the amount of $1,674.42 to MetLife, requesting that the payments be made payable to plaintiff and himself, and be sent to his office. MetLife, however, claims it did not receive the letter until November 24, 2007, by which time it had already processed and mailed certain payments to the medical providers. After a phone conversation between Wiggins and a MetLife representative on November 29, 2007, MetLife reissued checks for two remaining payments, made payable to plaintiff and Wiggins, and directed the checks to Wiggins office pursuant to his instructions.

The parties were nevertheless unable to agree to the extent of MetLife's obligation under plaintiff's policy and on March 12, 2008, this action was commenced. Plaintiff's complaint contained two counts: breach of contract and statutory damages based on MetLife's failure to pay plaintiff's claim. During discovery, MetLife propounded a request to produce pursuant to Supreme Court Rule 214 (Ill. S. Ct. R. 214 (eff. Jan. 1, 1996)), which requested, in pertinent part, "the complete original written legal services Contract between Plaintiff Cora Hill and attorney, A. Leo Wiggins, Jr. for inspection and/or duplication." MetLife also propounded requests to admit facts under Supreme Court Rule 216(a) (Ill. S. Ct. R. 216(a) (eff. May 30, 2008)), including: (1) whether Wiggins entered into a legal services contract with plaintiff prior to serving MetLife with an attorney's lien; and (2) whether the "legal services contract" details that Wiggins was retained to prosecute a "medical payments coverage benefits" claim on behalf of plaintiff.

Plaintiff refused to produce the legal services contract and objected to the request to admit facts, asserting attorney-client privilege. MetLife subsequently filed a motion to overrule

plaintiff's objections to the request to admit facts, and also sought to compel plaintiff to produce the legal services contract between her and Wiggins. On August 12, 2008, the circuit court granted MetLife's motion, prompting plaintiff to file a motion to vacate the order. The circuit court subsequently modified the August 12, 2008, order and granted plaintiff an opportunity to provide authority for her position or alternatively submit the legal services contract for an *in camera* inspection. Plaintiff did not submit the contract for inspection and instead chose to file a motion to reconsider the August 12, 2008, ruling. MetLife responded to the motion and the circuit court set a hearing for March 17, 2009. On that date, however, the circuit court transferred the matter to the municipal division, because the claimed damages did not meet the law division's jurisdictional minimum. In the municipal division, MetLife moved to enforce the August 12, 2008, order while plaintiff renewed her motion to reconsider. The trial court granted MetLife's motion to enforce, and on October 2, 2009, it ordered plaintiff to admit or deny the allegations in MetLife's request to admit facts and to produce the legal services contract at issue.

Instead of complying with the order, plaintiff's attorney at that time, Caren Schulman, filed a motion requesting she be held in contempt for her refusal to disclose the legal services contract pursuant to the October 2, 2009, order.[1] The circuit court granted plaintiff's request on May 10, 2010, and held Schulman in contempt, fining her $100. Plaintiff now timely appeals.

II. ANALYSIS

[1] Plaintiff had substitute legal counsel at the time because Wiggins' law license had been suspended due to a matter unrelated to this case.

Plaintiff first contends that the circuit court erred in ordering her to produce the legal services contract between her and Wiggins. She first argues that it is not discoverable because it is protected by the attorney-client privilege. Although discovery orders are generally reviewed for abuse of discretion, we review the trial court's determination of whether a privilege applies under a *de novo* standard. *Mueller Industries, Inc. v. Berkman*, 399 Ill. App. 3d 456, 463 (2010).

Supreme Court Rule 201(b)(2) provides in pertinent part:

> "All matters that are privileged against disclosure on the trial, including privileged communications between a party or his agent and the attorney for the party, are privileged against disclosure through any discovery procedure. Material prepared by or for a party in preparation for trial is subject to discovery only if it does not contain or disclose the theories, mental impressions, or litigation plans of the party's attorney." Ill. S. Ct. R. 201(b)(2) (eff. July 1, 2002).

The attorney-client privilege exists to encourage " 'full and frank consultation between a client and [counsel] by removing the fear of compelled disclosure of information.' " *Illinois Emasco Insurance Co. v. Nationwide Mutual Insurance Co.*, 393 Ill. App. 3d 782, 786 (2009) (quoting *Consolidation Coal Co. v. Bucyrus-Erie Co.*, 89 Ill.2d 103, 117-18 (1982)). Illinois, however, has a strong policy of encouraging disclosure and thus we construe the attorney-client privilege " 'within its narrowest possible limits.' " *Id.* at 786 (quoting *Waste Management, Inc. v. International Surplus Lines Insurance Co.*, 144 Ill.2d 178, 190 (1991)).

To be clear, the question plaintiff poses before us is whether a legal services contract or

retainer agreement is *per se* protected from discovery by the attorney-client privilege. We hold that it is not. Our supreme court has stated that the attorney-client privilege generally protects communications, made in confidence, which seek legal advice. *Fischel & Kahn, Ltd. v. van Straaten Gallery, Inc.*, 189 Ill. 2d 579, 584 (2000). In our view, the usual contents of a retainer agreement are not the sort of communications the attorney-client privilege seeks to protect. The fact that an attorney-client relationship is created and the general information incidental to the attorney-client relationship, such as the payment of fees, simply does not amount to legal advice protected by the attorney-client privilege. See, *e.g.*, *People ex rel. Ulrich v. Stukel*, 294 Ill. App. 3d 193, 203-04 (holding that information regarding a client's fees is not a confidential communication between an attorney and client protected by the attorney-client privilege). While confidential communications relating to legal advice will naturally arise from a retainer agreement or perhaps during negotiations in the creation of the agreement, the agreement itself is not such a communication. Other jurisdictions have held the same for similar reasons. See, *e.g.*, *Nguyen v. Excel Corp.*, 197 F.3d 200, 206 (5th Cir. 1999) ("Inquiry into the general nature of the legal services provided by counsel does not necessitate an assertion of the privilege because the general nature of services is not protected by the privilege"); *Finol v. Finol,* 869 So. 2d 666 (2004) (attorney-client privilege does not protect retainer agreements or billing and payment records); *Gold Standard, Inc. v. American Barrick Resources Corp.*, 801 P.2d 909, 911-12 (1990) (holding that retainer agreements are not generally protected by the attorney-client privilege).

We acknowledge, however, that confidential communications which are generally not

included in a retainer agreement but might nevertheless appear in an agreement would be independently protected by the attorney-client privilege. The party claiming the attorney-client privilege, however, bears the burden of presenting factual evidence establishing the privilege. *Rounds v. Jackson Park Hospital and Medical Center*, 319 Ill. App. 3d 280, 285 (2001). To that end, that party must "show that the statement originated in confidence that it would not be disclosed, was made to an attorney acting in his legal capacity for the purpose of securing legal advice or services, and remained confidential." *Id.* at 285-86. In the case at bar, however, plaintiff has not provided anything more than a conclusory statement asserting the legal services contract at issue is confidential. Plaintiff also had declined the opportunity to submit the contract to the circuit court for an *in camera* inspection to determine whether any attorney-client privilege was applicable. Our own review of the record reveals nothing that would persuade us that the attorney-client privilege would preclude discovery of the contract at issue or the contents therein pursuant to circuit court's order.

In the alternative, plaintiff argues that the legal services contract is not discoverable because it is not relevant to any issue raised in the underlying action. As this argument is an ordinary challenge to the circuit court's discovery ruling, we will review the circuit court's order for an abuse of discretion. *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 516 (2010). "The broad scope of permitted discovery requires production of evidence if it would be sufficiently relevant and material to be admissible at trial or if it leads to such relevant and material evidence." *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 394 Ill. App. 3d 870,

879 (2009).

To briefly summarize the relevant facts, shortly after the underlying automobile accident, plaintiff individually initiated her claim against MetLife which began processing payments directly to plaintiff's medical providers. Attorney liens were then issued by plaintiff's subsequently retained attorney, who began pursuing various claims against MetLife. Count II of plaintiff's complaint alleged that MetLife's conduct during the claims process was unreasonable and vexatious for a host of reasons, including that it "[i]mproperly paid health care providers directly despite having been liened pursuant to [770] ILCS 5/1." MetLife has since intimated that the nature of the claims and associated attorney liens appears "unusual" because MetLife had allegedly never denied plaintiff her claimed benefits and had been promptly paying them. As part of its defense to the claims brought against it, MetLife has questioned the agency relationship between plaintiff and her attorney and, consequently, the validity of the attorney liens. For these reasons, MetLife submitted a discovery request for plaintiff's legal services contract.

Under Supreme Court Rule 201(b)(1), a matter can be relevant and discoverable where it relates to the "defense of the party seeking disclosure." Ill. Sup. Ct. R. 201(b)(1) (eff. July 1, 2002). Here, while we agree with plaintiff that the validity of the attorney liens would not necessarily affect the monetary amount of the claimed damages, a factor of MetLife's alleged misconduct includes its refusal to comply with said attorney liens as alleged in count II of plaintiff's complaint. Besides establishing the validity of the attorney's liens, the legal services contract is also relevant to the extent MetLife has questioned the circumstances of the underlying

complaint and has challenged plaintiff's attorney's scope of authority as her legal counsel. Given these circumstances, we find that it was within the circuit court's discretion to find that the legal services contract was relevant and discoverable. Accordingly, we affirm the circuit court's discovery order compelling plaintiff to produce the legal services contract.

Plaintiff next contends that the contempt order of May 10, 2010, should be vacated. We agree. A contempt proceeding is an accepted and appropriate method of testing the validity of a discovery order. *Puterbaugh v. Puterbaugh*, 327 Ill. App. 3d 792, 796 (2002). After a review of the record, it is clear the Schulman's refusal to comply with the discovery order was based on legitimate arguments that the retainer agreement was protected by attorney-client privilege or was alternatively not discoverable due to a lack of relevance. The circuit court itself acknowledged that the purpose of the contempt order was to allow an appeal on the discovery order. Although plaintiff's appeal was unsuccessful, the lack of success with her arguments is not indicative of a lack of good faith. *Id*. Accordingly, we vacate the contempt citation and the associated fine.

III. CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed in part and vacated in part.

Affirmed in part and vacated in part.