

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No. 3--10--0700

Order filed April 14, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

AMCORE INVESTMENT GROUP,	)	Appeal from the Circuit Court
Guardian of the Estate of	)	of the 14th Judicial Circuit,
MARTA VINSON,	)	Whiteside County, Illinois,
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 07--L--6ST
COLONIAL ACRES HEALTHCARE	)	
CENTRE, INC., an Illinois	)	
Corporation, doing business	)	
as NEW BEGINNING CARE CENTRE,	)	
	)	Honorable
Defendant-Appellant/ Contemnor.	)	Stanley B. Steines, Judge, Presiding.

---

JUSTICE LYTTON delivered the judgment of the court.  
Presiding Justice Carter and Justice Holdridge concurred in  
the judgment.

---

**ORDER**

*Held:* Where plaintiff requested personnel files of employees named in defendant's response to interrogatories and information in files might lead to admissible evidence, the trial court properly granted plaintiff's motion to compel and assessed sanctions when defendant refused to produce the files.

Plaintiff Amcore Investment Group, as guardian of the estate of Marta Vinson, moved to compel production of defendant's, Colonial Acres Healthcare Centre's, d/b/a New Beginning Care Centre (New Beginning), employee personnel files. The trial court held defendant in contempt for refusing to disclose the files and assessed sanctions. On appeal, defendant claims that (1) plaintiff's request was not narrowly tailored to lead to admissible evidence, (2) the trial court was obligated to conduct an *in camera* inspection of the files, and (3) the contempt order should be vacated because its decision not to produce the files was made in good faith. We affirm.

Plaintiff filed a complaint against defendant pursuant to the Nursing Home Care Act (Act) (210 ILCS 45/1-101 *et seq.* (West 2006)) for injuries Vinson sustained during her stay at New Beginning from July 11 through July 30 of 2005. In September 2007, plaintiff sent interrogatories to defendant seeking the identification of persons who (1) witnessed or claimed to have witnessed the care and treatment of Vinson, (2) were involved directly or indirectly in the care of Vinson, and (3) witnessed, reported, or acted upon any accident, incident or injury regarding Vinson. Plaintiff also requested the names and addresses of the nursing home administrator, assistant administrator, director of nursing, assistant director of nursing, medical records technician, wound care and treatment nurses, medical director, and wound care

physician for the period of July 10, 2005, to the present. New Beginning answered the interrogatories, identifying 29 employees who fell into one or more of the requested categories.<sup>1</sup>

Subsequently, plaintiff propounded a "Supplemental Request to Produce" on the nursing home containing 19 interrogatories. Interrogatories 7, 8 & 9 sought the personnel files, minus health information, of the 29 employees defendant listed in its initial response, including all evaluations, discipline reports, and criminal background checks. The nursing home objected to 13 of the 19 requests, including the requests to produce the personnel files.

In an effort to address defendant's objections, plaintiff's counsel sent a letter to defense counsel dated July 17, 2009. The letter sought to tailor the requests and resolve the concerns raised by defendant. Plaintiff's counsel requested the personnel files of the named employees and asked New Beginning's attorney to respond within 7 days. Defendant did not respond.

On July 30, 2009, plaintiff filed a motion to compel discovery. In response, defendant claimed that the request for

---

<sup>1</sup> Defendant states that plaintiff requested 34 personnel files. However, five employees that were listed in response to plaintiff's interrogatory 8 were also listed in response to interrogatory 9. Thus, plaintiff's subsequent request sought the production of only 29 employee files.

personnel files was not reasonably restricted to a relevant time period. Relying on *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635 (2002), it argued that the request for 34 personnel files was a "fishing expedition" and was not reasonably calculated to lead to discovery of any admissible evidence.

At the hearing on December 3, 2009, plaintiff asserted that the files were relevant for purposes of deposition and cross-examination of witnesses. Plaintiff noted that the files may contain prior convictions that could be used for impeachment and work or educational histories that would be relevant to the proper treatment of the facility's patients. The trial court found that the files were relevant and ordered defendant to produce them by January 6, 2010.

On January 6, 2010, defendant filed a response entitled "Notice of Compliance with Discovery Order," which stated that it had produced the items within its possession as ordered by the trial court except for the personnel files. Defendant refused to produce the files, again relying on *Fabiano*. Plaintiff moved for sanctions and asked the court to hold defendant in indirect civil contempt. Defendant moved to reconsider.

Defendant brought the personnel files to the hearing and asked the court to review them *in camera*. In the alternative, defense counsel requested a contempt finding to allow defendant to appeal the discovery order.

The trial court ruled that an *in camera* review of the files was unnecessary. The court denied the nursing home's motion to reconsider but issued a protective order over the files, barring their dissemination and requiring their return to defendant at the end of the case. In its written order, the court stated:

"As indicated, the issue of relevance for discovery purposes is more liberal than [sic] the standard for admissibility. Certainly not everything in those personnel files will be admissible at trial, but any information in those personnel files certainly is reasonably calculated to lead to the discovery of relevant evidence. A protective order is sufficient to protect the interests of any of the employees while providing a mechanism for plaintiff to conduct further discovery in this case. Any relevancy issues for purpose of admissibility at trial with regard to any specific items in the personnel files can be addressed with any further pre-trial motions when the Court would have more facts before it to make a determination as to relevance."

Defendant was given until July 6, 2010, to produce the files.

On July 6, 2010, defendant filed a motion for protective order, seeking protection from the court's earlier orders compelling production and asking the court to order the parties to mediation. The trial court denied the motion and found defendant

in indirect civil contempt. The trial court entered a finding of bad faith and ordered defendant to pay \$7,500 in attorney fees, plus a fine of \$10 per day.

## ANALYSIS

### I. Discovery Request

The Supreme Court Rules authorize discovery regarding any matter relevant to the issue involved in the pending action. Ill. S. Ct. R. 201 (eff. July 1, 2002); *Redelmann v. Claire Sprayway, Inc.*, 375 Ill. App. 3d 912 (2007). For discovery purposes, the concept of relevance is broader than it is for purposes of admitting evidence at trial; relevance in discovery includes not only what is admissible at trial but also that which leads to admissible evidence. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548 (1998). A trial court is allowed great latitude in determining the scope of discovery. *Bright v. Horizons Children's Centers, LLC v. Riverway Midwest II, LLC*, 403 Ill. App. 3d 234 (2010). The court's ruling on a motion to compel discovery will stand absent a manifest abuse of discretion affirmatively and clearly shown by the appellant. *Fabiano*, 336 Ill. App. 3d at 658.

#### A. Scope and Time

New Beginning first argues that the trial court erred in granting plaintiff's motion to compel discovery because plaintiff did not tailor its request to any relevant time period or to individuals who were employed at the nursing home during Vinson's

treatment.

In this case, plaintiff's request was sufficiently limited in scope and time to Vinson care at the nursing home. Contrary to New Beginning's claim, plaintiff did not aimlessly demand the personnel files of all the employees who worked at New Beginning. Plaintiff requested the names of those administrators who worked at the nursing home during and after Vinson's stay and the names of any employees who were directly or indirectly involved in Vinson's care. It was the nursing home's answers to those interrogatories that narrowed the scope of its employees to a list of 29. Plaintiff then requested the personnel files of those 29 employees. We find no abuse of discretion in the trial court's decision to compel the production of those files.

Defendant also argues, for the first time on appeal, that the scope of the request is too broad because 10 of the listed employees were not employed by defendant during Vinson's stay in the nursing home. New Beginning failed to raise this objection in its response to the motion to compel or in its motion to reconsider. Thus, it has forfeited the issue on appeal. See *Rounds v. Jackson Park Hospital and Medical Center*, 219 Ill. App. 3d 280 (2001) (failure to raise argument before trial court deems argument forfeited and reviewing court will not address it).

#### B. Admissible Evidence

New Beginning claims that plaintiff failed to present

sufficient evidence to show that the personnel files were reasonably calculated to lead to admissible evidence.

Relevancy at the discovery stage is more broadly interpreted than relevancy at trial. See *Whitley*, 295 Ill. App. 3d at 556. In this case, plaintiff established that the information contained in the employee personnel files was both relevant and discoverable.

Plaintiff brought her complaint against the nursing home and alleged negligent care of a resident. Nursing home employees are regulated by the Nursing Home Care Act. See 210 ILCS 45/1--101 *et seq.* (West 2006). Those responsible for any part of the care of residents must meet certain minimum requirements. 210 ILCS 45/3--202 (West 2006). To satisfy those requirements, a nursing home must include educational background, disciplinary actions and any prior criminal history in an employee's file. 77 Ill. Adm. Code 300.650(b) (2005); 77 Ill. Adm. Code 300.661 (2005). That information is relevant in determining whether Vinson received adequate care by the employees who treated and assisted her for purposes of discovery. The educational and disciplinary history of an employee may indicate the level of care provided. An employee's prior conviction record might be used to attack his or her credibility should the witness take the stand. Thus, the trial court properly ordered the disputed files produced to plaintiff.

### C. Application of *Fabiano*

New Beginning maintains that the holding in *Fabiano* controls

this case. We disagree. In *Fabiano*, a day care center operator was prosecuted for sexually abusing day care children and was subsequently acquitted. She filed a malicious prosecution claim against two police officers who were involved in her case. Prior to trial, the plaintiff requested that the officers produce their personnel files. The trial court denied the request. On appeal, the court noted that the plaintiff offered no argument as to relevance but instead "suggested" that the files "may" contain evidence relating to defendants' credibility or suggesting a pattern of misconduct. *Fabiano*, 336 Ill. App. 3d at 659. The appellate court affirmed the trial court's ruling, noting that the discovery requests were merely a "fishing expedition" conducted in the hopes of finding something relevant. *Fabiano*, 336 Ill. App. 3d at 658-59.

Here, relevancy of the discovery request to the subject matter of the case is not speculative. Plaintiff argued in its motion to compel that the employee files would contain job applications, disciplinary measures, employment histories, educational backgrounds, and prior criminal histories. Plaintiff maintained that this information would be relevant in determining the level of care Vinson received and assessing witness credibility. After reviewing plaintiff's motion, the trial court found that the request for such information was reasonably calculated to lead to the discovery of relevant evidence and entered a protective order

barring their dissemination. We cannot say the court's finding was an abuse of discretion.

The trial court granted plaintiff's motion to compel the production of 29 personnel files. It is defendant's responsibility on appeal to affirmatively and clearly show that the discovery ruling was an abuse of discretion. See *Fabiano*, 336 Ill. App. 3d at 658. Defendant has failed to meet that burden.

## II. *In Camera* Review

Next, defendant claims that the trial court was obligated, under *Youle v. Ryan*, 349 Ill. App. 3d 377 (2004), to conduct an *in camera* inspection of the personnel files before granting plaintiff's request to compel. We disagree.

Whether to conduct an *in camera* inspection is a matter of discretion for the trial court. *Youle*, 349 Ill. App. 3d at 380-81. In *Youle*, the plaintiff sought a copy of the defendant doctor's surgical database regarding his care and treatment of all prior patients. The appellate court questioned whether hundreds of medical records of third party patients would have any bearing on the plaintiff's malpractice claim. The court also noted the sensitive nature of the material contained in the medical documents and the potential applicability of privilege to the documents. In light of these uncertainties, the court held that the trial court should have conducted a thorough inspection of the disputed information to resolve both issues before ordering the defendant to

produce the document. *Youle*, 349 Ill. App. 3d at 382.

Here, plaintiff is not speculating as to the content of the files. It seeks to review the work history, educational background and other qualifications of the employees who had contact with Vinson. Moreover, plaintiff in this case is not requesting files containing privileged information. Plaintiff requested the files of 29 New Beginning employees, with all medical information redacted. The files sought are of employees that defendant identified as being directly or indirectly involved with Vinson's care. Thus, the circumstances that warranted an *in camera* review in *Youle* are absent here. The trial court did not abuse its discretion in ordering defendant to produce the files without conducting a detailed inspection.

### III. Finding of Contempt

Last, New Beginning maintains that the contempt order should be vacated for two reasons. First, defendant claims that the order must be vacated because the trial court did not specify its reasons in the written contempt order. A party who understands a court's order but still chooses to ignore it is guilty of contempt of court. *Killion v. City of Centralia*, 381 Ill. App. 3d 711 (2008). An order imposing sanctions under Rule 219(c) "shall set forth with specificity the reasons and basis of any sanction so imposed either in the judgment order itself or in a separate written order." Ill. S. Ct. R. 219(c) (eff. July 1, 2002). Reviewing courts have

relaxed the specificity requirement of Rule 219(c) where the sanctions were entered pursuant to a written motion. In such cases, the court assumes that the reasons for the sanctions were those set out in the motion. See *Illinois Emcasco Insurance Co. v. Nationwide Mutual Insurance Co.*, 393 Ill. App. 3d 782 (2009); *Chabowski v. Vacation Village Ass'n*, 291 Ill. App. 3d 525 (1997).

In this case, the grounds supporting the necessity of the sanctions were set out in plaintiff's motion, thoroughly briefed and argued by the parties before the trial court. The court provided the bases for its finding at the hearing on the motion. Thus, the written order did not need to state the reasons with specificity.

Second, defendant argues that the contempt order should be vacated because it did not act in bad faith by refusing to comply with the discovery order as a means of testing the propriety of the ruling of appeal. Where a party acts in good faith to challenge a discovery order, the contempt citation should be vacated even if the underlying discovery order is upheld. *Tomczak v. Ingalls Memorial Hospital*, 359 Ill. App. 3d 448 (2005). However, a contempt order is judged by the propriety of the underlying discovery order only if the refusal to comply is not designed to impede the progress of trial. *Bauter v. Reding*, 68 Ill. App. 3d 171 (1979). When a party acts in bad faith, the appellate court will not vacate the trial court's contempt citation. *Willeford v.*

*Toys "R" Us-Delaware, Inc.*, 385 Ill. App. 3d 265 (2008). A party acts in bad faith when it does not seek a friendly contempt finding until after the opposing party files a motion for sanctions. *Willeford*, 285 Ill. App. 3d at 277.

Defendant's conduct in this case does not support a reversal of the contempt order. The trial court stated that it entered the discovery sanctions based on its finding that defendant acted in bad faith. Our review of the record supports that finding. The trial court provided defendant numerous opportunities to comply with the discovery order and produce the personnel files. Rather than immediately seeking an order of contempt and filing an appeal, defendant continued to ignore the trial court's order and to impede the discovery process. Defendant's efforts to test the discovery order did not come until after plaintiff pressed the issue by seeking a finding of indirect civil contempt. Defendant's tactics led to several months of litigation concerning whether it was required to provide the personnel files of the employees it named in response to plaintiff's interrogatories. This conduct does not warrant a finding that it acted in good faith to challenge the discovery ruling. We therefore decline to vacate the contempt order.

#### CONCLUSION

The judgment of the circuit court of Whiteside County is affirmed.

Affirmed.