

2023 IL App (1st) 230073-U

No. 1-23-0073

September 29, 2023

Sixth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANNE VELTRI,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 21 L 678
)	
AMITA HEALTH ALEXIAN BROTHERS MEDICAL)	
CENTER,)	Honorable
)	Moira S. Johnson,
Defendant-Appellant.)	Judge, presiding.

JUSTICE C.A. WALKER delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Tailor concurred in the judgment.

ORDER

- ¶ 1 **Held:** The circuit court's order compelling production of three documents is reversed and vacated in part and affirmed in part because two of the documents are protected under the Medical Studies Act (735 ILCS 5/8-2101 *et seq.* (West 2020)).
- ¶ 2 Appellant Amita Health Alexian Brothers Medical Center (Amita) appeals from the circuit court's order compelling production of three documents in appellee Anne Veltri's suit for medical

malpractice. The court also found Amita in contempt for failing to produce the documents, and levied a \$500 sanction. On appeal, Amita claims the court erred because the documents are privileged. For the reasons below, we reverse and vacate in part, and affirm in part.

¶ 3

BACKGROUND

¶ 4 On February 16, 2021, Veltri filed her complaint against Amita (and other defendants later dismissed) arising out of medical treatment she received on November 20, 2019. She alleged that she was injured during a surgical procedure, in which her treating physicians (allegedly acting as Amita’s agents) negligently caused her to suffer a fractured left distal femur.

¶ 5 On April 13, 2021, Veltri served discovery requests including requests for document production, to which Amita responded on January 13, 2022. In its responses, Amita withheld three documents from production, and provided a privilege log containing basic descriptions of the documents. In the log, Amita contended that all three documents were privileged under both the Medical Studies Act (735 ILCS 5/8-2101 (MSA) (West 2020)) and the federal Patient Safety and Quality Improvement Act of 2005 (PSQIA) (42 U.S.C. § 299b-21 (2018)). The documents were titled: (1) November 21, 2019 Patient Safety Event Report (Veltri’s RL Datix Report); (2) November 22, 2019 Acesis Peer Review Committee Case 1811 Write Up (Acesis Report); and (3) December 18, 2019 SERT Safety Event Review Team Case Notes (SERT Notes).

¶ 6 On April 6, 2022, Veltri filed a motion to compel, arguing that none of the documents were privileged. Veltri contended that Amita did not establish the documents were privileged under the MSA because it failed to show the documents “were used, requested, or generated by any peer review committee, or its designee, in the course of an internal peer review process,” as required by the statute. Regarding the PSQIA, Veltri argued Amita did not establish the privilege because it did “not assert that the documents were generated strictly for submission to an approved” patient

safety organization (PSO), and the log actually implied “the documents were used for internal quality control and review separate and distinct from any PSO reporting.” The log also failed to “state that the documents *** were in fact transmitted to a PSO,” as the PSQIA requires.

¶ 7 On May 6, 2022, Amita responded to the motion to compel and submitted the affidavit of Anita Giuntoli, the Director of Patient Safety and Quality. In the motion, Amita explained that at the time of Veltri’s surgery, Amita had a Patient Safety and Quality Program (PSQP) “designed to improve the quality of care and patient safety.” Amita contended that when “an adverse event occurred,” a staff member was to “draft a Patient Safety Event Report” in an electronic reporting system called RL Datix (a “patient safety, quality, and performance software system”). Amita then provided these reports to the Alexian Health Patient Safety Organization (AHP SO). It argued that Veltri’s injury “automatically triggered” this process.

¶ 8 In the affidavit, Giuntoli averred that she is familiar with Amita’s quality and peer review process. She reviewed Veltri’s RL Datix Report, the Aceso Report, and the SERT Notes, and had knowledge on how each was “created and maintained.” She was also familiar with the PSQP.

¶ 9 Regarding the RL Datix system, she averred that Amita “used the RL Datix *** electronic reporting system within its designated Patient Safety Evaluation System and provides RL Datix reports to [the AHP SO].” Staff members are instructed to use RL Datix to create a report “if they observe or become aware of a potential safety event.” These reports are then screened, and if deemed qualifying, reviewed by the Safety Event Review Team (SERT) committee. The SERT Committee’s objective is to:

“promote a program of continuous quality improvement with a view to improve quality of patient care, collect and evaluate data as an assessment of the quality care, assess the delivery and outcome of care provided, resolve identified problems and search for ways

to enhance the level of care and integrate review and analysis of significant outcomes into the overall quality management program to improve the safety and quality of patient care.”

¶ 10 Giuntoli stated that another committee, the Medical Staff Quality Oversight Committee (MSQOC), shared this same objective. The MSQOC uses the Acesis electronic software system to “record, identify, and track activity related to the peer review process.”

¶ 11 Giuntoli further averred that after a staff member created Veltri’s RL Datix Report, an unnamed “patient safety specialist ***, as designee, determined that the underlying incident constituted a qualifying event and then initiated the SERT and MSQOC process.” Giuntoli continued,

“I can confirm that in this case, the SERT committee’s review and the MSQOC’s peer review was conducted solely by representatives of the hospital quality team and designees appointed for the purpose of evaluating particular incidents for the purpose of quality control and were kept confidential within the hospital quality process and PSQP. All of the documents described above are part of the Alexian Brothers Medical Center’s process of internal quality control and PSQP within the AHPSO. The process in general and the analysis contained in these documents were used solely for the purposes of reducing morbidity and mortality and for improving patient care.”

¶ 12 She further averred that the SERT Notes reflected “the analysis, deliberations, and conclusion of the SERT committee,” and, similarly, the Acesis Report reflected the “quality and peer review analysis of the MSQOC” and was “prepared by and for the exclusive use of the MSQOC.”

¶ 13 Amita argued that the affidavit established the SERT Notes and Acesis Report were privileged under the MSA, as explained in *Ardisana v. Northwest Community Hospital, Inc.*, 342

Ill. App. 3d 741 (2003), as documents self-evidently part of the “investigative and deliberative materials” of the SERT committee and MSQOC. Amita further argued that Veltri’s RL Datix report was privileged under the MSA’s provision protecting documents that reveal a peer-review committee’s internal review process. Finally, Amita contended Veltri’s RL Datix Report was also privileged under the PSQIA because Giuntoli’s affidavit showed that it “was created with the intent of use by the AHPSO to improve patient safety and quality.”

¶ 14 On May 19, 2022, Veltri replied in support of her motion to compel, arguing Giuntoli’s affidavit showed that the RL Datix system was used to record “potential” safety events, and thus “the documents at issue in the present case are connected to a standing request for all medical occurrences” pertaining to quality of patient care, “rather than an investigation into a specific incident.” Regarding the PSQIA, Veltri argued her RL Datix Report was not protected from disclosure pursuant thereto because it was submitted to the SERT committee and MSQOC, and thus used outside of a PSO.

¶ 15 On July 13, 2022, the circuit court ordered that Amita produce the three documents for *in camera* inspection, with which Amita complied.

¶ 16 On August 15, 2022, the circuit court granted Veltri’s motion to compel and ordered Amita to produce the documents within seven days. During a hearing on the motion, counsel for Veltri argued that Amita failed to establish that the SERT Notes and Acesis Report were privileged under the MSA because it did not identify the individual who initiated peer review, the date peer review was initiated, or the date it concluded. Regarding her RL Datix Report, Veltri argued the MSA did not apply because Giuntoli’s affidavit suggested it was created before the “initiation of any peer review process,” and neither did the PSQA because Amita did not show the report was “generated strictly for submission,” and was actually submitted, to the AHPSO.

¶ 17 Counsel for Amita argued that the SERT Notes and Acesis Report were both clear “on their face” that they were “peer review worksheets.” Regarding Veltri’s RL Datix Report, counsel argued “this is a document that’s created when there is a triggering event such as the adverse event that occurred in this case,” and its production would “reveal the internal review processes of both the MSQOC, as well as the SERT team.”

¶ 18 In granting Veltri’s motion, the circuit court stated, “The privileges are overruled because the Affidavit is insufficient to support findings that either of these documents fell under the [MSA] or the [PSQIA].” It continued, “It is the burden of the defendant in these cases to indicate or to prove when the Committees met and when they ended *** [and] [t]hat’s not found here in the Affidavit. So, therefore, I’m finding that these documents which were prepared prior to any Review Committee meeting or ending were made in the ordinary course of business.”

¶ 19 Amita did not immediately comply with the court’s order and on September 1, 2022, Veltri moved for sanctions against Amita for its refusal to produce the documents.

¶ 20 On September 6, 2022, Amita moved for reconsideration, arguing the circuit court failed to properly apply the law as stated in *Ardisana* when it found the SERT Notes and Acesis Report were not privileged under the MSA. Amita contended that, like the documents at issue in *Ardisana*, both the SERT Notes and Acesis Report established “through its content[s] that it served as an integral function of peer review information-gathering and decision-making process.” Regarding Veltri’s RL Datix Report, Amita argued it, too, was used and created for the purpose of internal quality control, and thus also privileged under the MSA, because it was “reviewed, used, and relied upon” by the MSQOC and SERT committee. It also argued the PSQIA protected Veltri’s RL Datix Report pursuant to *Daley v. Teruel*, 2018 IL App (1st) 170891, where the court ruled that occurrence reports created for submission to a hospital’s PSO constituted privileged material.

Amita argued Veltri's RL Datix Report fell under the same category because the reports "are utilized only for internal quality purposes and are not reported to or investigated by any other agency or organization that is not a part of the PSO."

¶ 21 On October 21, 2022, Veltri responded to the motion to reconsider, contending, "The documents at issue in the present case are connected to a standing request for all medical occurrences involving potential issues pertaining to the quality of patient care rather than an investigation in a specific incident." Regarding the PSQIA specifically, Veltri contended Giuntoli failed "to state the Patient Safety Event Report was created, assembled, developed and prepared solely *for the purpose* of reporting to the" AHPSO (Emphasis in original.).

¶ 22 On December 14, 2022, the circuit court entered an order in which it (1) denied Veltri's motion for sanctions, (2) denied Amita's motion for reconsideration, (3) found Amita in civil contempt pursuant to Illinois Supreme Court Rule 219(c) (eff. July 1, 2002) for refusing to produce the documents, and (4) imposed a \$500 penalty against Amita pursuant to the contempt finding. During a hearing that same day, counsel for Amita, regarding the PSQIA, maintained Veltri's RL Datix Report "was used only for internal quality control purposes and wasn't reported to or used by any organization that was not a part of the AHPSO."

¶ 23 This appeal followed.

¶ 24 JURISDICTION

¶ 25 Both parties assert, and we agree, that this court has jurisdiction pursuant to Illinois Supreme Court Rule 304(a)(5) (eff. Mar. 8, 2016). In relevant part, Rule 304 states that "an order finding a person or entity in contempt of court which imposes a monetary or other penalty" is immediately appealable without an additional special finding. Ill. S. Ct. R. 304(a)(5) (eff. Mar. 8, 2016). On December 14, 2022, the circuit court found Amita in contempt and imposed a \$500 contempt

penalty, and Amita timely filed its notice of appeal on January 9, 2023, giving this court jurisdiction. *Id.*; *Anderson Dundee 53 L.L.C. v. Terzakis*, 363 Ill. App. 3d 145, 154-55 (2005).

¶ 26

ANALYSIS

¶ 27 On appeal, Amita claims that the circuit court erred by ordering production of the three documents because each was protected by the MSA, and Veltri’s RL Datix Report was also protected by the PSQIA.

¶ 28 Typically, “[w]hether a discovery privilege applies is a matter of law, subject to *de novo* review.” *Mnookin v. Northwest Community Hospital*, 2018 IL App (1st) 171107, ¶ 23. Here, however, we must use a two-tiered standard of review, because the circuit court made findings of fact regarding the documents, and a reviewing court defers to the lower court’s factual findings unless they are against the manifest weight of the evidence. *Id.*

¶ 29

MSA

¶ 30 We start with Amita’s argument under the MSA. The purpose of the MSA “is to ensure that members of the medical profession will effectively engage in self-evaluation of their peers in the interest of advancing the quality of health care.” See *Roach v. Springfield Clinic*, 157 Ill. 2d 29, 40 (1993). The statute provides, in relevant part:

“All information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential assessments of a health care practitioner’s professional competence, or other data of the Illinois Department of Public Health, local health departments, the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), the Mental Health and Developmental Disabilities Medical Review Board, Illinois State Medical Society, allied medical societies, health maintenance organizations, medical organizations under contract

with health maintenance organizations or with insurance or other health care delivery entities or facilities, tissue banks, organ procurement agencies, physician-owned insurance companies and their agents, committees of ambulatory surgical treatment centers or post-surgical recovery centers or their medical staffs, or committees of licensed or accredited hospitals or their medical staffs, including Patient Care Audit Committees, Medical Care Evaluation Committees, Utilization Review Committees, Credential Committees and Executive Committees, or their designees (but not the medical records pertaining to the patient), used in the course of internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care or increasing organ and tissue donation, shall be privileged, strictly confidential and shall be used only for medical research, increasing organ and tissue donation, the evaluation and improvement of quality care, or granting, limiting or revoking staff privileges or agreements for services, except that in any health maintenance organization proceeding to decide upon a physician's services or any hospital or ambulatory surgical treatment center proceeding to decide upon a physician's staff privileges, or in any judicial review of either, the claim of confidentiality shall not be invoked to deny such physician access to or use of data upon which such a decision was based." 735 ILCS 5/8-2101 (West 2020).

¶ 31 Qualifying documents "shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency, or person." 735 ILCS 5/8-2102 (West 2020). The burden of establishing that a document is privileged pursuant to the MSA is on the party asserting the privilege. *Eid v. Loyola University Medical Center*, 2017 IL App (1st) 143967, ¶ 40. The proponent may demonstrate that documents are privileged by submitting an affidavit, submitting the documents to the circuit court for *in camera* review, or both. *Mnookin*,

2018 IL App (1st) 171107, ¶¶ 23-24. If an affidavit is un rebutted by the opposing party, the court must accept the facts averred therein as true. *Ardisana*, 342 Ill. App. 3d at 748.

¶ 32 The parties do not dispute that the documents at issue would fit within the MSA’s purpose, only whether the documents were “generated specifically for the use of a peer-review committee” such that they qualify for protection. See *Chicago Trust Co. v. Cook County Hospital*, 298 Ill. App. 3d 396, 402 (1998). The MSA’s protection does not extend to information generated either “before a peer-review process begins or after it ends.” *Ardisana*, 342 Ill. App. 3d at 748 (citing *Grandi v. Shah*, 261 Ill. App. 3d 551, 556 (1994)). If the document was generated before an investigation began, it does not then become protected under the MSA simply because it is later submitted to a committee, and/or a committee uses it in its decision-making process. See *Roach*, 157 Ill. 2d at 41-42. Instead, a document created “ ‘in the ordinary course of the hospital’s medical business, or for the purpose of rendering legal opinions or to weigh potential liability risk or for later corrective action by the hospital staff,’ is not privileged.” *Webb v. Mount Sinai Hospital and Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 825 (2004) (quoting *Chicago Trust*, 298 Ill. App. 3d at 406). The “timing of the peer review is a crucial fact” for courts determining whether this privilege applies *Id.* at 827-28. Illinois appellate courts have routinely held that a party cannot designate documents in advance as privileged under the MSA. See *Nielson v. SwedishAmerican Hospital*, 2017 IL App (2d) 160743, ¶ 75. Specific evidence of the date the investigation began may not be necessary, however, in instances where a document’s content (when provided *in camera*) demonstrates on its face that it could only have been created during the course of an investigation. *Ardisana*, 342 Ill. App. 3d at 748-49.

¶ 33 A brief review of the core cases discussed by both parties in the briefing will help frame our discussion. First, in *Ardisana*, this court clarified how a party asserting privilege under the MSA

can establish the timing of a document's creation. *Id.* There, the circuit court initially found that the documents at issue were discoverable because the defendant had "failed to establish that the documents *** were generated while the peer-review process was ongoing, as opposed to before or after the process took place." *Id.* at 748. This court reversed that finding, explaining that although the documents did not contain the dates the peer-review process began, and defendant failed to expressly state the dates in an affidavit, "each of the documents establish[ed], by its own content, that it served an integral function in the peer-review information-gathering and decision-making process," and was therefore privileged, even in absence of evidence of their creation date. *Id.* The court continued that the documents "self-evidently constitute[d]" materials generated by the committee while conducting the investigation. *Ardisana*, 342 Ill. App. 3d at 749.

¶ 34 In *Eid*, the court focused on an amendment to the MSA in 1995, which extended the privilege to information created by designees of the relevant committees. *Eid*, 2017 IL App (1st) 143967, ¶ 43. There, following the relevant incident, a nurse generated the documents at issue after being specifically requested to gather information by one member of the defendant's peer-review committee. *Id.* ¶ 53. This court found that the documents the nurse created after the request qualified as privileged under the MSA because the committee member "utilized his authority to commence the [committee's] investigation and directed [the nurse] as the [committee's] designee to gather information from an internal quality control perspective for the [committee]." *Id.* It noted that the defendant did not claim privilege over documents generated *before* the committee member directed the nurse to gather information. *Id.*

¶ 35 Finally, in *Nielson*, the second district considered a case arising from documents that were "completed pursuant to a general standing order" by the defendant's peer-review committee, but were not exclusively used by the peer-review committee. *Nielson*, 2017 IL App (2d) 160743, ¶ 48.

The defendant's policy and procedure manual stated that the documents were to be used to "communicate occurrences," and the record showed the documents were both transmitted to the risk-management department and used for peer review, but did not commence peer-review investigations in and of themselves. *Id.* ¶¶ 74-75. The *Nielson* court decided these documents were not privileged because they were "used for both quality-assurance and risk-management purposes," and concerned "both medical and non-medical occurrences." *Id.* ¶¶ 42, 75. The court distinguished between the current situation and *Eid*, highlighting the *Nielson* defendant's standing order, which meant the documents at issue were created automatically. *Id.* ¶ 69. The *Nielson* court reiterated that the MSA privilege only applied "to information of such a committee (or in this case, designee) where the committee (or designee) is *already investigating the incident at issue*." (Emphasis in original.) *Id.* ¶ 74.

¶ 36 Here, Amita submitted both an affidavit and the documents for *in camera* review. In the affidavit, Giuntoli averred regarding Veltri's RL Datix Report that Amita used the RL Datix system "within its designated Patient Safety Evaluation System and provides RL Datix reports to" the AHPSO. Amita generally required its employees to generate an RL Datix report if they viewed a potential safety event. Giuntoli further stated that the reports were then "screened," but did not further describe the screening process. Instead, she averred that after screening, if an event constituted a "qualifying event," it could then be reviewed and investigated by the SERT committee and/or the MSQOC, as occurred with Veltri's case. She continued, "In this case, the patient safety specialist ***, as designee, determined that the underlying incident constituted a qualifying event and then initiated the SERT and MSQOC process." According to Giuntoli's affidavit, the SERT Notes and Acesis Report contained the analysis of Veltri's incident by those committees after the patient safety specialist referred Veltri's case to those committees.

¶ 37 The three documents are also included in the record on appeal. Veltri’s RL Datix Report is dated November 21, 2019, at 3:17 pm. It contains only general information regarding the incident. The SERT Notes contain information denoted as “peer comment” that substantively analyzes the incident. The Acesis Report contains both analysis and conclusions of the MSQOC regarding the incident. Neither the SERT Notes nor the Acesis Report specifically list the date the committee investigation began.

¶ 38 The circuit court found that Amita failed to establish any of the documents were generated after the peer-review process began but before it ended, and thus the documents were not privileged.

¶ 39 Based on our review of Giuntoli’s affidavit and the documents themselves, we find that the SERT Notes and Acesis Report were created during, and pursuant to, an on-going peer-review investigation, and were an integral part thereof. Accordingly, we reverse the circuit court’s factual findings to the contrary as against the manifest weight of evidence. Additionally, based on the proper characterization of those documents, we hold they are privileged under the MSA, and vacate that part of the court’s order compelling their production. Finally, we affirm the court’s holding that Veltri’s RL Datix Report was not privileged under the MSA.

¶ 40 Giuntoli averred that a patient safety specialist referred the case to the MSQOC and SERT committee based on a review of Veltri’s RL Datix Report, and the committees then commenced investigations. While Amita did not specifically establish the dates those investigations began, the fact of the referral, considered alongside the content of the two documents, leads only to one conclusion—the MSQOC and SERT committee generated these documents after commencing their investigations of Veltri’s injury. Simply, the documents are clear on their face that they contain information gathered, and decisions made, while those investigations were on-going. *Id.*

This brings the SERT Notes and Acesis Report squarely into the category of documents protected by the MSA. See *Ardisana*, 342 Ill. App. 3d at 748 (holding documents were privileged under the MSA because each document established, “by its own content, that it served an integral function in the peer-review information-gathering and decision-making process”). We note that Giuntoli’s description of the process and the documents’ contents was not challenged by Veltri, and we must therefore accept those averments as true. *Id.* It follows that the circuit court’s factual finding that it could not determine whether the SERT Notes and Acesis Report were created before or during the peer-review committee investigations was manifestly erroneous, and based on the documents’ proper characterization, they are shielded from production by the MSA.

¶ 41 Veltri only points to the lack of firm dates regarding the SERT Notes and Acesis Report to support her argument that the MSA does not apply, basically tracking the reasoning of the circuit court. As explained above, though, this argument fails because it provides no explanation as to why *Ardisana* does not control here. *Id.*

¶ 42 The same conclusion regarding Veltri’s RL Datix Report, however, is not warranted. Giuntoli averred that RL Datix reports are generally created pursuant to an Amita protocol. Additionally, she averred that the SERT committee and MSQOC investigations of Veltri’s injury began *after* a patient safety specialist reviewed Veltri’s RL Datix Report. Giuntoli even described the patient safety specialist as the committee designee, *not* whomever authored Veltri’s RL Datix Report, precluding any application of the designee discussion in *Eid*. See *Eid*, 2017 IL App (1st) 143967, ¶ 44-53. Thus, the record is clear that Veltri’s RL Datix Report falls under that category of documents not protected by the MSA because, akin to the fact pattern in *Nielson*, it was created pursuant to a general protocol of Amita’s, and *before* the specific investigatory processes began. See *Nielson*, 2017 IL App (2d) 160743, ¶¶ 69-74.

¶ 43 Amita argues that Veltri’s RL Datix Report reveals the MSQOC’s and SERT committee’s deliberative process, and is protected by the MSA on this ground under *Eid* and *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167 (2008). In *Anderson*, the second district applied the MSA to protect medical journal articles considered by a peer-review committee, even though the articles were written before the investigation, with the court explaining that it was not the contents of the articles that were relevant, “but, rather, the manner in which the Committee used the medical journal articles and what their use would reveal about the Committee’s internal review process.” *Id.* at 178. This argument fails here, however, because it is clear on Veltri’s RL Datix Report’s face that it reveals no such information, and merely contains the most basic details of the incident. Indeed, Giuntoli’s affidavit itself reveals more information about the MSQOC and SERT committee’s deliberative processes than Veltri’s RL Datix Report.

¶ 44 **PSQIA**

¶ 45 This does not end our analysis of Veltri’s RL Datix Report, however, as Amita also contends it was privileged under the PSQIA. In short, the PSQIA designates certain documents as “patient safety work product,” and protects such documents from discovery. Relevant here, the PSQIA protects:

“any data, reports, record, memoranda, analyses (such as root cause analyses), or written or oral statements--

(i) which--

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization. 42 U.S.C. § 299b-21 (7)(A)(i)(I) (2018).

¶ 46 This is considered the “reporting pathway” of the PSQIA privilege. See *Daley v. Teruel*, 2018 IL App (1st) 170891, ¶ 37. Amita contends Veltri’s RL Datix Report is privileged based on the reporting pathway. To establish a document is privileged on this theory, the proponent must establish four elements: “(1) the information must be developed by a provider for the purpose of reporting to a patient safety organization; (2) that information must have the ability to improve patient safety and quality of health care; (3) that information must be reported to the patient safety organization ***, and (4) the information contains the date it was entered into the patient safety evaluation system.” *Id.* ¶ 38. There are exceptions to the application of the PSQIA privilege. As relevant here, the statute does not protect “information that is collected, maintained, or developed separately, or exists separate, from a patient safety evaluation system.” 42 U.S.C. § 299b-21(7)(B)(ii) (2018). This means that if the information was created for any purpose other than for reporting to a PSO, it is not privileged. See *Daley*, 2018 IL App (1st) 170891, ¶ 41. The *Daley* court explained, “the crux of the exceptions are that, where health care providers create records for more than one purpose, the records themselves do not qualify as patient safety work product.” *Id.* ¶ 42. We note that the circuit court here did not make any findings of fact about Veltri’s RL Datix Report with respect to the requirements of the PSQIA, and as such, our review of whether the document is privileged under the PSQIA is *de novo*. *Mnookin*, 2018 IL App (1st) 171107, ¶ 23.

¶ 47 *Daley* provides the clearest guidance on the PSQIA privilege provision. There, the court also considered documents allegedly privileged under the reporting pathway. *Id.* ¶ 37. The *Daley* court explained that, “Under the reporting pathway, the critical inquiry is the purpose of creating the information,” and the information will only be consider[ed] patient safety work product if it is created “for the purpose of reporting to a patient safety organization.” *Id.* ¶ 37. The *Daley* court found the documents at issue constituted protected patient safety work product because, in relevant

part, the defendant's affidavit stated that the documents were created solely for submission to the PSO. (Internal quotation marks omitted.) *Id.* ¶ 48. The court noted that the un rebutted affidavit foreclosed the application of the exception for documents collected, maintained, or developed for a purpose other than reporting to a PSO. *Id.* ¶ 55.

¶ 48 We find Amita has not demonstrated that Veltri's RL Datix Report is privileged under the PSQIA because Amita failed to show the document was created solely for reporting to the AHPSO. The report itself is silent as to whether such reports are generated specifically for the purpose of submission to the AHPSO, and Giuntoli fails to aver this. Instead, Giuntoli's affidavit states only that Amita "used the RL Datix electronic reporting system within its designated Patient Safety Evaluation System and provides RL Datix reports to [the AHPSO]." Indeed, the affidavit suggests referral to the AHPSO is not the only use, as the patient safety specialist analyzed it for referral to the SERT committee and MSQOC.

¶ 49 It appears Amita wants this court to accept that the MSQOC and SERT committee are subparts of the broader AHPSO, and that all RL Datix reports are only created for use within that broad AHPSO. The best support for this contention would be the passage in Giuntoli's affidavit which states, "All of the documents described above are part of Alexian Brother Medical Center's process of internal quality control and PSQP within the AHPSO." She does not elaborate further, and this opaque statement falls far short of establishing that RL Datix reports are created only for reporting to the AHPSO, or that the SERT committee and MSQOC are officially subparts of the AHPSO. Additionally, such conclusions are not apparent from the face of the documents. Compare this record to that in *Daley*, where the relevant affidavit flatly stated the documents at issue were generated solely for submission to the PSO. *Id.* ¶ 48. During the motion practice, Amita's attorneys argued that the RL Datix reports were only used within the PSO, but these arguments are not

evidence, and are not borne out by actual record. It may very well be the case that the committees discussed here are subparts of the AHPSO, and that the RL Datix system is only used to create reports for use within the AHPSO; but that is not established by the record created by Amita, and it was their burden to demonstrate that the privilege applied. *Eid*, 2017 IL App (1st) 143967, ¶ 40. Hence, we find Amita has not established that Veltri's RL Datix Report was created only for reporting to the AHPSO, and as such it is not privileged under the PSQIA.

¶ 50

Contempt

¶ 51 Finally, we find that the circuit court's contempt order against Amita must be reversed. As explained in *Ardisana*, "Requesting that a trial court enter a contempt order is a proper procedure to seek immediate appeal of a trial court's discovery order." *Ardisana*, 342 Ill. App. 3d at 749. The record is clear that this is what happened here, and Amita did not act in bad faith in refusing to produce the documents until resolution of this appeal; indeed, based on the result here, they were more than justified in withholding the documents. Accordingly, the contempt order is reversed.

¶ 52

CONCLUSION

¶ 53 The contents of the SERT Notes and Acesis Report demonstrate that they were privileged under the MSA, despite being undated, and thus we reverse the circuit court's factual findings regarding those documents and vacate that part of the court's order compelling their production. The court's ruling regarding Veltri's RL Datix Report, however, was appropriate because Amita failed to establish it was privileged under either the MSA or PSQIA. Accordingly, we affirm the circuit court's order compelling Amita to produce Veltri's RL Datix Report, and Amita is to produce this document in a timely fashion on remand. Finally, the court's contempt finding is reversed.

¶ 54 Reversed and vacated in part; affirmed in part; remanded with instructions.