2025 IL App (4th) 240788-U

NO. 4-24-0788

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 5, 2025
Carla Bender
4th District Appellate
Court, IL

CHRISTINE A. JARRETT, Plaintiff-Appellee, v. WILLIAM I. BOND, M.D., and BOND EYE ASSOCIATES, S.C., a Corporation, Defendants-Appellants, and BRET P. COALE, CHARLES C. HUGHES, and HUGHES TENNEY POSTLEWAIT COALE, LLC, Counsel for Defendants, William I. Bond, M.D., and Bond Eye Associates, S.C., a Corporation, Contemnors-Appellants.	)	Appeal from the Circuit Court of Peoria County No. 18L52 Honorable Frank W. Ierulli, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court reversed, remanded for further proceedings, and vacated the trial court's contempt order, finding a hospital document containing the final recommendation of the peer-review committee was privileged under the Medical Studies Act (735 ILCS 5/8-2101 *et seq.* (West 2022)).

¶ 2 In March 2018, plaintiff, Christine A. Jarrett, brought a negligence action against defendants, William I. Bond, M.D., and Bond Eye Associates, S.C.. The matter proceeded to trial in August 2023. However, due to juror misconduct, the trial court declared a mistrial. Prior to a second trial commencing, Dr. Bond informed plaintiff that Carle Health Pekin Hospital and Carle Health Proctor Hospital had precautionarily suspended his admitting privileges in

September 2023. Plaintiff sought discovery of any and all materials related to the suspension.

¶ 3 In May 2024, the trial court reviewed, *in camera*, two documents pertaining to plaintiff's discovery request and found a letter dated September 15, 2023, was privileged under the Medical Studies Act (Act) (735 ILCS 5/8-2101 *et seq.* (West 2022)), whereas a letter dated September 21, 2023, was not. The court ordered the September 21 letter disclosed to plaintiff. Defendants filed a motion for friendly contempt, seeking to maintain their objections to the letter's discoverability. On May 10, 2024, the court held defendants in contempt of court and assessed a $100 fine. On appeal, defendants argue the court erred when it ordered the production of hospital credentialing material regarding the September 21 letter. Contemnor-appellants, Bret P. Coale and Charles C. Hughes, attorneys for defendants, argue the contempt order should be vacated because defendants and counsel for defendants acted in good faith to properly assert a claim of privilege.

¶ 4 For the reasons that follow, we reverse the trial court's order requiring defendants to produce the September 21 letter to plaintiff, remand for further proceedings, and vacate the court's contempt finding.

¶ 5 I. BACKGROUND

¶ 6 A. Factual Summary

¶ 7 Plaintiff was treated by Dr. Bond beginning in August 2011 through November 2013. Plaintiff, who was born with amblyopia (commonly referred to as "lazy eye") in her left eye predominantly relied on her right eye for visual acuity. Plaintiff also had hyperopia (commonly referred to as "farsightedness"). In January 2012, at Dr. Bond's recommendation, plaintiff underwent photorefractive keratectomy (PRK) surgery on both eyes. Plaintiff's visual acuity deteriorated following the PRK surgery. In December 2012, at Dr. Bond's

recommendation, plaintiff underwent a second PRK surgery, along with corneal collagen cross-linking. Following this procedure, plaintiff reported a "haze" in both eyes. The haze did not improve, and in January 2013, Dr. Bond prescribed a steroidal eye drop medication. In May 2013, Dr. Bond performed a superficial keratectomy to manually remove the haze from plaintiff's right cornea. Dr. Bond performed the same procedure on plaintiff's right eye in September 2013. He prescribed additional steroid medication.

¶ 8 In November 2013, plaintiff obtained a second opinion, wherein she was diagnosed with, *inter alia*, a cataract and was referred to a specialist for a corneal transplant. Plaintiff sought a third opinion that same month, wherein she received the same advice. In late November 2013, plaintiff consulted a fourth ophthalmologist, who also recommended cataract surgery and a corneal transplant to plaintiff's right eye. Plaintiff, ultimately, underwent a corneal transplant to her right eye.

¶ 9 In March 2018, plaintiff filed a four-count complaint against defendants, arguing, *inter alia*, Dr. Bond and Bond Eye Associates, S.C. (as *respondeat superior*) negligently recommended and performed the PRK surgeries and superficial keratectomy procedures. The matter proceeded to trial in August 2023 but ended with the trial court declaring a mistrial due to juror misconduct.

¶ 10 B. Documents at Issue

¶ 11 In June 2019, Dr. Bond was deposed by plaintiff. At the time, Dr. Bond testified he had never had his admitting privileges revoked or suspended at any institution. In March 2024, Dr. Bond supplemented his deposition testimony by informing plaintiff his admitting privileges had been suspended from September 21, 2023, through March 28, 2024, at Carle Health Pekin and Carle Health Proctor Hospitals. In April 2024, plaintiff filed a motion to

compel the production of documents related to Dr. Bond's suspension. Dr. Bond contended the information plaintiff sought was privileged under the Act. The trial court granted plaintiff's motion to compel in part and denied it in part. Specifically, the court ordered defendants to produce "the dates and nature of restrictions" by May 7, 2024.

¶ 12 On May 2, 2024, defendants filed a motion for an *in camera* review pertaining to the trial court's granting in part of plaintiff's motion to compel. Defendants argued the letter dated September 15, 2023, was responsive to the court's order, but it contained "information used in the course of an internal medical study of Carle Health." Additionally, the letter stated "on its face that it is not indicative of a final determination, but an interim step." A second letter, dated September 21, 2023, was argued to be "of a similar character," containing information for medical study, and was not a final determination. Furthermore, defendants argued the letters were too remote in time and character because they pertained to events that occurred 10 years after plaintiff was last treated by Dr. Bond.

¶ 13 On May 9, 2024, the trial court, after having reviewed both letters deemed responsive to plaintiff's motion to compel, stated, "The [Act] makes privilege[d] *** information that is used for quality control or patient care. It doesn't protect against disclosure of peer review recommendations after completion of the peer review process." The court noted the September 15 letter appeared subject to the Act because it was a "noticed letter of possible suspension of privileges and imposes a preliminary suspension pending further review." Regarding the September 21 letter, the court stated it was a "committee recommendation" that was not privileged and must be disclosed.

¶ 14 Counsel for defendants argued "some of the contents" of the September 21 letter concerned "the investigation itself," which were privileged under the Act. Counsel conceded

there was a "committee recommendation in [the] letter" but disputed the letter was a final determination because it was "subject to the decision of the hospital's board of directors." The trial court responded:

> "Well, my reading of the first paragraph indicates that, [']You are hereby notified of Carle Health Greater Peoria Medical Executive Committee's recommendation to revoke your clinical privileges from Proctor Hospital and Pekin Hospital.['] That sounds pretty final to me."

¶ 15 On May 10, 2024, defendants filed a "Motion for Order of Friendly Civil Contempt" to facilitate an appeal on the issue of privilege concerning the September 21 letter. The motion argued the letter contained a recommendation from the medical executive committee but was not a final determination. The letter stated the "Carle bylaws allow for further internal review." The letter contained information obtained during peer review and stated "the content of the peer review process, information that should remain confidential under the [Act]." Defendants also argued the letter provided nothing relevant to the issues in this case. Specifically, defendants asserted none of plaintiff's care took place at either hospital and occurred 10 years after plaintiff was last treated by Dr. Bond. Given the letter provided no probative value, defendants contended the information was prejudicial, could not lead to relevant evidence in the case, and would deprive defendants of a fair trial.

¶ 16 Plaintiff subsequently filed a motion for default and sanctions based on defendants' failure to comply with the trial court's order to produce the September 21 letter. On May 13, 2024, the court granted defendants' motion for friendly civil contempt and fined them $100. The court continued the May 13 scheduled second trial and reserved plaintiff's motion for default and sanctions.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendants argue (1) the trial court erred when it ordered production of the September 21 letter because it is privileged under the Act, (2) the court abused its discretion when it ordered production of the September 21 letter because the contents contained therein are too remote from the events at issue to possibly lead to relevant evidence, and (3) the contempt order from May 10, 2024, should be vacated because defendants and their counsel acted in good faith to properly assert a claim of privilege.

¶ 20 A. Applicable Law and Standard of Review

¶ 21 Section 8-2101 of the Act provides, in relevant part:

> "Information obtained. All information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential assessments of a health care practitioner's professional competence *** 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." 735 ILCS 5/8-2101 (West 2022).

The subsequent section provides, "Such information, records, reports, statements, notes, memoranda, or other data, 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." *Id.* § 8-2102. The purpose of the Act 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." *Roach v. Springfield Clinic*, 157 Ill. 2d 29, 40 (1993). The Act "encourage[s] candid and voluntary studies and programs used to improve hospital conditions and patient care or to reduce the rates of death and disease." *Niven v. Siqueira*, 109 Ill. 2d 357, 366 (1985).

¶ 22 There are limitations to what is privileged under the Act:

> "The Act does not protect 'all information used for internal quality control' [citation]; instead documents 'generated specifically for the use of a peer-review committee receive protection under the Act' [citation]. A document that 'was initiated, created, prepared, or generated by a peer-review committee' is privileged under the Act, 'even though it was later disseminated outside the peer-review process.' [Citation.] The reverse is not true, however. 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 'even though it later was used by a committee in the peer-review process.' " *Webb v. Mount Sinai Hospital & Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 825 (2004).

¶ 23 "The recommendations and internal conclusions of peer-review committees, which may or may not lead to those results, *are not discoverable*." (Emphasis in original.) *Ardisana v. Northwest Community Hospital, Inc.*, 342 Ill. App. 3d 741, 747 (2003). On the other

hand, the Act does not protect information that is generated either "before a peer-review process begins or after it ends." *Id.* at 748.

¶ 24 The party seeking to invoke the Act's protection carries the burden of establishing that a privilege applies. *Roach*, 157 Ill. 2d at 41. The party invoking the privilege may, as was done in the instant case, submit the purportedly privileged materials for an *in camera* inspection. *Nielson v. Swedish American Hospital*, 2017 IL App (2d) 160743, ¶ 39. Alternatively, a party may submit an affidavit sufficiently establishing the application of the privilege. *Id.* "The question of whether the Act's privilege applies is a question of law, which is reviewed *de novo*; however, the question of whether specific materials are part of an internal quality-control process is a factual question, on which the defendant bears the burden." (Internal quotation marks omitted.) *Id.* ¶ 28. We will not reverse a trial court's factual determination unless it is against the manifest weight of the evidence. *Id.* "A decision is against the manifest weight of the evidence if it is unreasonable, arbitrary, or not based upon the evidence." *Id.*

¶ 25 B. Privilege Claim

¶ 26 Defendants contend the September 21 letter was the recommendation of a peer-review committee and subject to the approval of the hospital's board of directors. As such, the letter is protected under the Act. Defendants primarily cite *Ardisana* and *Anderson v. Rush-Copley Medical Center, Inc.*, 385 Ill. App. 3d 167 (2008), in support of their contention.

¶ 27 In *Ardisana*, the plaintiff sought discovery of documents "pertaining to any conclusions or final recommendations for any peer review process." *Ardisana*, 342 Ill. App. 3d at 743. The defendant objected and was ordered to provide the documentation for an *in camera* inspection. *Id.* at 744. The defendant also supplemented the objection with an affidavit from its risk manager, averring the documents were prepared by and for the sole use of an improvement

auditing committee. *Id.* The trial court found the documents were the " 'results' " of a committee and, thus, were not privileged under the Act. *Id.* The appellate court determined the trial court's analysis was "flawed" because its definition of " 'results' " was too broad. *Id.* at 747. "*Results* of a peer-review committee take the form of ultimate decisions made or actions taken by that committee, or the hospital, and include the revocation, modification or restriction of privileges, letters of resignation or withdrawal, and the revision of rules, regulations, policies and procedures for medical staff." (Emphasis in original.) *Id.* "The recommendations and internal conclusions of peer-review committees, which may or may not lead to those results, *are not discoverable*." (Emphasis in original.) *Id.* The *Ardisana* court, accordingly, reversed the trial court's order. *Id.*

¶ 28 In *Anderson*, the plaintiff, on behalf of the decedent, sought discovery of documents pertaining to a mortality and morbidity hearing. *Anderson*, 385 Ill. App. 3d at 169. The defendant argued the documents were the subject of a peer-review committee and privileged under the Act. *Id.* As part of the committee's review, it conducted research involving the decedent's medical care, which culminated in the use of medical journal articles on the subject of the decedent's medical care. *Id.* at 170. The trial court concluded the medical journal articles were not privileged under the Act because they were not generated by the committee when formulating its recommendations. *Id.* at 171. The appellate court reversed, finding the articles were privileged because they were part of the committee's internal review process for information gathering and deliberations. *Id.* at 175. The *Anderson* court stated applying privilege to the articles would not "frustrate the Act's goal of improved patient care, because doing so would conceal any 'adverse facts' known to the defendant's medical staff about decedent's care." *Id.* at 177.

¶ 29 In response, plaintiff contends (1) there is no basis to conclude the September 21 letter was produced by a committee, (2) the letter suggests there were documents generated either before or after the committee was formed that are not privileged under the Act, (3) defendants failed to carry their burden to show the letter was privileged, and (4) defendants admit the letter "contains a conclusion," thereby showing it is not protected under the Act. Plaintiff cites *Lindsey v. Butterfield Health Care II, Inc.*, 2017 IL App (2d) 160042, and *Grosshuesch v. Edward Hospital*, 2017 IL App (2d) 160972, in support.

¶ 30 In *Lindsey*, the plaintiff was injured after falling while in the care of the defendant, a nursing home. *Lindsey*, 2017 IL App (2d) 160042, ¶ 3. A report was made following this incident. *Id.* The plaintiff sought this report through discovery. *Id.* The defendant sought to protect the report pursuant to the Act and the Long-Term Care Peer Review and Quality Assessment and Assurance Protection Act (Quality Assurance Act) (745 ILCS 55/1 *et seq.* (West 2014)). *Lindsey*, 2017 IL App (2d) 160042, ¶ 3. The trial court performed an *in camera* review of the report, which was also supported by affidavit. *Id.* ¶ 4. The trial court concluded the report was only factual in nature and did not contain any recommendations for improvement. *Id.* ¶ 5. Additionally, six witness statements were later discovered, which the trial court also ordered to be produced to the plaintiff. *Id.* ¶ 7. The appellate court construed the Quality Assurance Act in the same way as the Act. *Id.* ¶ 11. The *Lindsey* court was unpersuaded by the defendant's argument that the report was privileged because it was eventually reviewed by a quality assurance committee. *Id.* ¶ 16. Citing *Roach* and *Chicago Trust Co. v. Cook County Hospital*, 298 Ill. App. 3d 396 (1998), the appellate court in *Lindsey* noted the Act does not protect information generated before a peer-review process begins and, as such, a defendant cannot shield information under privilege simply by later providing it to a peer-review committee.

Lindsey, 2017 IL App (2d) 160042, ¶¶ 13-17.

¶ 31 In *Grosshuesch*, the plaintiff, whose newborn child had died shortly after birth, contacted the defendant-hospital's patient advocate to express concern over her and the decedent child's care. *Grosshuesch*, 2017 IL App (2d) 160972, ¶ 4. A liaison to a medical staff quality committee then consulted two expert peer reviewers. *Id.* The plaintiff sought the liaison's notes through discovery, and the defendant contended they were privileged pursuant to the Act. *Id.* ¶ 5. Following an *in camera* inspection by the trial court and a supporting affidavit, the documents were determined to be discoverable because they contained information acquired before any peer-review committee had met. *Id.* ¶ 8. The appellate court agreed with the trial court, finding the liaison's notes created before a quality-assurance committee's authorized investigation were not protected by the Act. *Id.* ¶ 16.

¶ 32 In the case *sub judice*, defendants have submitted both the September 15 and September 21 letters, under seal, for our review. The September 21 letter reveals the instant case is similar to that of *Ardisana* and distinguishable from *Lindsey* and *Grosshuesch*. The letter indicates the Carle Health Greater Peoria Medical Executive Committee met two days prior to the issuance of the letter to discuss its investigation into Dr. Bond. The committee recommended Dr. Bond's clinical privileges be revoked based upon its review of information gathered as part of its investigation. Because of the committee's action, Dr. Bond was informed he was entitled to a hearing pursuant to the Carle Health Greater Peoria peer review oversight policy. The letter provided to this court does not contain the policy but indicates it was attached to the letter. The letter states that should Dr. Bond not request a hearing, the committee's recommendation will be forwarded to the "Board for final action" and "[t]he Board's decision will be effective immediately and will not be subject to further review."

¶ 33 We agree with the trial court's finding that the September 21 letter was a final result of the committee; however, it was not a final result of the hospital's board of directors. We find the September 21 letter squarely fits within confines of protected documents under the Act: "The recommendations and internal conclusions of peer-review committees, which may or may not lead to those results, *are not discoverable*." (Emphasis in original.) *Ardisana,* 342 Ill. App. 3d at 747. Therefore, the trial court erred when it found the committee's final recommendation was not protected under the Act.

¶ 34 The cases plaintiff cites are not applicable. Both involved medical notes generated shortly after the respective incidents that led to the causes of action. In both cases, a committee later incorporated the notes into its investigation. However, the notes were generated prior to the respective committee investigations. Here, the September 15 letter, read in conjunction with the September 21 letter, does not suggest the committee's review and investigation pertained to any medical notes, reports, or other information generated prior to or related to plaintiff's cause of action. Because we find the September 21 letter is privileged under the Act, we need not address defendants' claim regarding whether its contents are too remote to possibly lead to relevant evidence.

¶ 35 C. Contempt Finding

¶ 36 Defendants request we vacate the trial court's contempt order because they refused to tender the September 21 letter in good faith. Defendants sought and obtained a friendly contempt order, which has been recognized as "a proper procedure to seek immediate appeal of a trial court's discovery order." (Internal quotation marks omitted.) *Anderson,* 385 Ill. App. 3d at 185.

¶ 37 Plaintiff argues defendants did not act in good faith. Plaintiff notes Dr. Bond's

deposition, where he denied his admitting privileges had ever been revoked or suspended, occurred in June 2019. Dr. Bond's privileges were suspended from September 2023 through March 2024, yet defendants did not seek to supplement Dr. Bond's responses until March 2024. Defendants' supplemental response occurred two months prior to retrial, and their motion for friendly contempt only sought to further delay retrial. We disagree.

¶ 38 The contempt order at issue in this case pertains to defendants' failure to disclose the September 21 letter, not defendants' timing regarding responses to supplement Dr. Bond's deposition testimony. At oral argument in this case, plaintiff conceded the issue of defendants' timing when supplementing Dr. Bond's deposition testimony was not raised before the trial court. Illinois courts have repeatedly held that arguments not raised in the trial court are forfeited and may not be raised for the first time on appeal. See *Bowman v. Chicago Park District*, 2014 IL App (1st) 132122, ¶ 59 (stating arguments raised for the first time on appeal are forfeited); see also *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 127 (2010) ("A reviewing court will not consider arguments not presented to the trial court."). Accordingly, we find plaintiff has forfeited this argument and will not consider it on appeal.

¶ 39 Ultimately, defendants sought review in good faith based on a sound legal argument. See *Flannery v. Lin*, 176 Ill. App. 3d 652, 655 (1988) ("[A] contempt citation is an appropriate method for testing the propriety of a discovery order."). Therefore, we vacate the trial court's May 10, 2024, order finding defendants in contempt of court and the imposition of a $100 fine.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we reverse the trial court's judgment ordering defendants to produce the letter dated September 21, 2023, and remand for further proceedings consistent with

this order. Additionally, we vacate the court's contempt order and imposition of a $100 fine.

¶ 42 Reversed and remanded; contempt order vacated.