

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

BAYFRONT HEALTH, EDUCATION AND
RESEARCH ORGANIZATION, INC.

("HERO"), a Florida corp.

(a/a/o Smith, Dave),

Petitioner,

v.

Ref. No.: 16-000014-AP-88B

UCN: 522016AP000014XXXXCI

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Respondent.

ORDER AND OPINION

Petitioner challenges the trial court's Order on Defendant's Motion to Compel Plaintiff's Better Discovery Responses. For the reasons set forth below, the Petition is granted.

Facts and Procedural History

Petitioner performed emergency services on Dave Smith after a car accident and billed Respondent, his personal injury protection insurance company. Respondent allegedly paid 75% of all but one of the charges, and Petitioner, as assignee of Smith, brought a county court action against Respondent for the remainder. During discovery, Respondent requested that Petitioner produce "information or documentation evidencing what [Petitioner] accepted as payment from Medicare, Medicaid, Worker's Compensation, PPO, HMO, private insurance carriers . . . private pay or any other payor . . . for the CPT code(s) at issue." In its response to the request to produce, Petitioner objected to the request as irrelevant, confidential, business propriety trade secret, and unduly burdensome. Petitioner also filed a privilege log that identified the documents regarding agreements and contracts with other payors as trade secrets. Thereafter, Respondent

filed a motion to compel better discovery responses. After a hearing, the court orally granted the Motion to Compel and stated that it was requiring Petitioner to produce documents and information “as both to the reimbursement data, as well as the reimbursement amounts . . . accepted by the hospital.” The written order requires Petitioner to produce the reimbursement data and reimbursement amounts as instructed, but also requires “any and all contracts and agreements between [Petitioner and payors] that established or outlined charges or payments for the CPT codes at issue.” Petitioner filed the instant Petition for Writ of Certiorari asserting that it would suffer irreparable harm if it had to produce the required information.

Standard of Review

Circuit court certiorari review “is appropriate when a discovery order departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal.” *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995) (citation omitted).

Discussion

Petitioner contends that the lower court departed from the essential requirements of law by ordering the information to be produced despite Petitioner’s trade secret objections without first conducting an in-camera inspection, weighing the interests, making clear findings, and requiring appropriate protections. We agree. “Orders improperly requiring the disclosure of trade secrets or other proprietary information often create irreparable harm and are thus appropriate for certiorari review.” *Grooms v. Distinctive Cabinet Designs, Inc.*, 846 So. 2d 652, 654 (Fla. 2d DCA 2003). In *Bright House Networks, LLC v. Cassidy*, the Second District Court of Appeal discussed objections to discovery based on trade secrets:

The Florida Evidence Code contains a privilege against the disclosure of trade secrets. See § 90.506, Fla. Stat. (2012). When a party objects to the disclosure of a

trade secret, first a court must determine whether the requested information is, in fact, a trade secret. Usually this determination requires the trial court to perform an in camera review of the information.

Second, if the trial court determines that the information is a trade secret, then the court must determine if the party requesting the information has shown a reasonable necessity for the information. This court has explained that “[c]ompelled disclosure through discovery must be limited to items necessary for a court to determine contested issues.” If the court orders disclosure, it must make findings to support its determination. Furthermore, the trial court may need to order safeguards to prevent the unnecessary dissemination of the information.

129 So. 3d 501, 505–06 (Fla. 2d DCA 2014) (internal citations omitted). The court granted the petition for writ of certiorari because “the trial court ordered disclosure without an in camera review or making any findings regarding whether the disputed information was privileged as a trade secret or whether the [party requesting the information] had shown sufficient necessity to overcome the privilege.” *Id.* at 506.

In the instant case, the trial court erred by not conducting an in camera review of the requested materials and making the appropriate findings. If the trial court is unable to determine whether the requested materials are a trade secret during an in camera review, the court may need to conduct an evidentiary hearing. *See id.*; *Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, 170 So. 3d 804, 808 (Fla. 3d DCA 2014). “If the trial court finds that the information is a trade secret, then the court must balance the necessity for the information in the litigation against protecting the confidential information.” *Bright House Networks, LLC*, 129 So. 3d at 506 (citing *Grooms*, 846 So. 2d at 655). “[I]f disclosure is ordered, the trial court should take measures to limit any harm caused by the production.” *Sea Coast Fire, Inc.*, 170 So. 3d at 809; *see* § 90.506, Fla. Stat. (“When the court directs disclosure, it shall take the protective measures that the interests of the holder of the privilege, the interests of the parties, and the furtherance of justice require.”).

Furthermore, the Court notes that the written order departs from the essential requirements of law because it requires production of more material than the court ordered at the hearing, including “any and all contracts and agreements.” See *Hampton Manor, Inc. v. Fortner*, 141 So. 3d 1260, 1262 (Fla. 5th DCA 2014) (“To the extent there is a conflict between the oral pronouncement and the written order, it is the oral pronouncement that controls.”); *Xavier J. Fernandez, P.A. v. Sun Bank of Tampa Bay*, 670 So. 2d 1106, 1107 (Fla. 2d DCA 1996) (“Reversal is required where the final judgment is inconsistent with the trial court's oral pronouncements.”).

Because the trial court failed to conduct an in camera review and make the appropriate findings, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is GRANTED.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this 31 day of March, 2017.

Original Order entered on March 31, 2017, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

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