Court of Appeals, State of Michigan

ORDER

WILLIAM WAYNE WORDEN V SPARROW HEALTH SYSTEM

Docket No. 377186

LC No. 25-001881-NH

Mariam S. Bazzi
Presiding Judge

Anica Letica

Randy J. Wallace
Judges

The motion to file supplemental briefing is GRANTED and the brief filed with the motion is accepted.

Pursuant to MCR 7.211(C)(4) and MCR 7.205(E)(2), and in lieu of granting the application for leave to appeal, the motion for peremptory reversal is GRANTED and the August 20, 2025 order of the trial court is VACATED in part to the extent that it requires advanced notice of counsel's intent to meet with healthcare providers and to the extent that it gives opposing counsel the opportunity to attend those meetings. Plaintiff failed to show anything more than generalized concerns for those requirements, and such generalized concerns do not warrant the conditions imposed by the trial court. See MCR 2.302(C); *Szpak v Inyang*, 290 Mich App 711, 715-716; 803 NW2d 904 (2010).

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.

Presiding Judge

Wallace, J., concurs with the order granting peremptory reversal.

I concur with the majority's peremptory reversal in this matter because this Court is bound by *Szpak v Inyang*, 290 Mich App 711, 713-714; 803 NW2d 904 (2010), and the present matter is not distinguishable from *Szpak*.

However, I write separately to note my belief that the Michigan Supreme Court's holding in *Holman v Rasak*, 486 Mich 429, 442, 447; 785 NW2d 98 (2010), was wrongly decided because it fails to recognize that MCL 600.2157 is preempted by the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d *et seq*. This Court's decision in *Szpak* in turn relied upon *Holman*. *Szpak*, 290 Mich App at 713-715.

In relevant part, MCL 600.2157 states:

> If [a] patient brings an action against any defendant to recover for any personal injuries, or for any malpractice, and the patient produces a physician as a witness in the patient's own behalf who has treated the patient for the injury or for any disease or condition for which

> the malpractice is alleged, the patient shall be considered to have waived the privilege provided in this section as to another physician who has treated the patient for the injuries, disease, or condition.

Thomas v 1156729 Ontario, Inc, 979 F Supp 2d 780, 782 (ED Mich, 2013), observed that HIPAA does not provide for or recognize such automatic waiver of the physician-patient privilege and preempts MCL 600.2157. I accordingly believe that, given the opportunity, the Michigan Supreme Court should revisit the holding in *Holman* for the reasons stated by the court in *Thomas*.[1]

[1] I note that the court in *Thomas* ultimately issued an order allowing the defendants to conduct ex parte communications with the plaintiff's physicians, under certain conditions, but it also recognized that "qualified protective orders for ex parte interviews do not issue automatically, and HIPAA does not require a court to issue them. If a plaintiff shows a specific reason for restricting access to her or his treating physicians, such as sensitive medical history irrelevant to the lawsuit, a court may restrict ex parte interviews and disclosure of medical records." *Thomas*, 979 F Supp 2d at 784 (quotation marks and citation omitted). *Holman* likewise found that "HIPPA does not require a trial court to grant a motion for protective order." *Holman*, 486 Mich at 447. However, I believe the Court erred by also holding that HIPPA does not preempt Michigan law, because, as noted, MCL 600.2157 is clearly preempted by HIPAA. *Thomas*, 979 F Supp 2d at 783.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

March 27, 2026
Date

Chief Clerk