Supreme Court of Texas

No. 20-0945

In re Central Oregon Truck Co., Inc., and David Hupp,
Relators

On Petition for Writ of Mandamus

PER CURIAM

Christina Broussard sued Relators David Hupp and Central Oregon Truck Company for personal injuries and economic losses following a 2017 rear-end collision. In this mandamus proceeding, Relators seek relief from trial court orders granting Broussard's motions to quash discovery subpoenas seeking (1) post-accident medical-billing information from Broussard's medical providers and (2) third-party production of Broussard's pre-accident medical, education, employment, and insurance records. Relators contend the requested discovery is relevant to the existence and extent of damages causally attributable to the accident. Although we agree the discovery requests seek relevant information, we deny the petition for writ of mandamus without prejudice to allow the parties to confer and the trial court to reconsider its orders in light of our recent opinion in *In re K&L Auto Crushers, LLC*, 627 S.W.3d 239 (Tex. 2021).

Subject to a "proportionality standard that requires a case-by-case balancing of jurisprudential considerations," *id.* at 250 (internal quotations omitted), a party is permitted to "obtain discovery regarding any matter that is not privileged and is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." TEX. R. CIV. P. 192.3(a). Evidence is relevant if it tends to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. TEX. R. EVID. 401.

In *K&L Auto*, which issued while this mandamus petition was pending, we held that information about the billing practices of medical providers is relevant and, with properly tailored requests, discoverable in a personal-injury suit. 627 S.W.3d at 244-45. As we explained there, medical-billing information may bear on the reasonableness of the amount charged, and reasonableness is an established limitation on the recoverability of medical expenses as damages. *Id.* at 250 (observing that the reasonableness limitation "ensures that the tortfeasor is held responsible only for losses naturally resulting from its wrongful act"). Here, the Relators' discovery requests encompass medical-billing information nearly identical to the discovery requests in *K&L Auto*,[1] and

[1] Relators served discovery requests inquiring about (1) the amount of total billed charges; (2) the amount of any adjustments or write-offs; (3) the amount paid to the provider and by whom it was paid; (4) the amount of any outstanding balances; (5) copies of any contracts for services with Broussard's health-insurance carrier; and (6) any letters of protection, contracts, liens, or other guarantees for payment.

that information, which the Relators have subpoenaed from Broussard's third-party medical providers, is relevant to determining the extent to which Broussard may recover her post-accident medical expenses as damages.

Similarly, because defendants are liable "only for losses *caused by* their tortious conduct," *id.* (emphasis in original), other information bearing on the causal connection between the 2017 accident and Broussard's economic and noneconomic losses may be relevant and discoverable. In this suit, Broussard alleges that, due to the 2017 accident, she suffered a traumatic brain injury (TBI) and a corresponding diminution of her employment opportunities and earning capacity. But when the accident occurred, Broussard was unemployed, and she had previously sought medical treatment related to two prior automobile accidents (in 2008 and 2012) and for other ailments with potentially confounding symptoms in relation to the injuries alleged in this case. At her deposition, Broussard asserted that short- and long-term memory issues attributable to her TBI prevented her total recall in response to questions about these matters. Relators accordingly served discovery subpoenas on various nonparties to obtain Broussard's pre-accident medical, education, and employment records as well as insurance records pertaining to her prior accidents. These requests include information relevant to Broussard's claimed damages that may be discoverable with properly tailored discovery requests.

"Reasonable and proper compensation must be neither meager nor excessive, but must be sufficient to place the plaintiff in the position in which he [or she] would have been absent the defendant's tortious act.

In this way, compensation through actual-damages awards functions as 'an instrument of corrective justice, an effort to put the plaintiff in his or her rightful position.'" *J&D Towing, LLC v. Am. Alt. Ins. Corp.*, 478 S.W.3d 649, 655 (Tex. 2016) (citation omitted) (quoting 1 DAN B. DOBBS, LAW OF REMEDIES § 3.1 (2d ed. 1993)). While pre-existing medical conditions do not preclude recovery of negligently caused injuries and other losses, information about Broussard's physical and mental conditions at the time of the accident are relevant to the Relators' damages defenses. Broussard's employment and educational records also bear on the extent to which her accident-related injuries have limited her ability to obtain employment or diminished her earning power. *See, e.g.*, *Bowman v. Patel*, No. 01-10-00811-CV, 2012 WL 524428, at *3 (Tex. App.—Houston [1st Dist.] Feb. 16, 2012, no pet.); *cf. In re Wal–Mart Stores, Inc.*, 545 S.W.3d 626, 633-36 (Tex. App.—El Paso 2016, orig. proceeding [mand. denied]). Insurance records from Broussard's prior accidents could have bearing on her previously sustained injuries, among other things.

Given the damages and injuries Broussard claims, the trial court's near-total denial of the requested discovery was an abuse of discretion.[2] However, even when a party seeks information that is relevant and not privileged, the proportionality overlay imposes an obligation on courts to "'make an effort to impose reasonable discovery limits,' particularly when 'the burden or expense of the proposed

[2] As reflected in the trial court's orders, before the hearing on Broussard's motions, she voluntarily agreed to produce an operative report from a pre-accident tailbone surgery in addition to some of her cell-phone and gym-fitness records.

discovery outweighs its likely benefit.'" *K&L Auto*, 627 S.W.3d at 248 (citations omitted) (quoting *In re State Farm Lloyds*, 520 S.W.3d 595, 604 (Tex. 2017), and TEX. R. CIV. P. 192.4(b), respectively). To that end, Broussard has asserted proportionality and undue-burden challenges to the nonparty discovery Relators seek. Separately, Broussard objects that some of the requests are overbroad and include irrelevant or confidential information. *See In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (observing that discovery requests must be reasonably tailored to include only relevant matters). *K&L Auto* provides extensive guidance on how a trial court should resolve such disputes. 627 S.W.3d at 251-56. Because the scope of discovery is largely within the trial court's discretion, *In re Colonial Pipeline Co.*, 968 S.W.2d 938, 941 (Tex. 1998), the trial court and the parties should have an opportunity to revisit the discovery requests with this guidance in mind.

Accordingly, we deny the petition for writ of mandamus without prejudice to Relators' seeking relief, if necessary, after the trial court has had an opportunity to reconsider its rulings. *See In re Van Waters & Rogers, Inc.*, 988 S.W.2d 740, 741 (Tex. 1998).

OPINION DELIVERED: May 6, 2022