[Cite as *Chiasson v. Doppco Dev., L.L.C.*, 2009-Ohio-5013.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93112

TIFFANY CHIASSON

PLAINTIFF-APPELLEE

vs.

DOPPCO DEVELOPMENT, LLC, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-631149

BEFORE: Cooney, A.J., Celebrezze, J., and Sweeney, J.

RELEASED: September 24, 2009

JOURNALIZED:
ATTORNEYS FOR APPELLANTS

David A. Posner
James A. Slater, Jr.
Baker & Hostetler LLP
3200 National City Center
1900 East Ninth Street
Cleveland, Ohio 44114-3485

ATTORNEYS FOR APPELLEE

Brian D. Spitz
The Spitz Law Firm, LLC
4568 Mayfield Road, Suite 102
Cleveland, Ohio 44121

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} This case came to be heard upon the accelerated calender pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Defendants-appellants, Doppco Development, LLC, Jeffrey Doppelt, and Alan Berger (collectively referred to as "appellants") appeal the trial court's denial of their motion to quash or modify a subpoena. Finding merit to the appeal, we reverse and remand.

{¶ 3} In July 2007, plaintiff-appellee, Tiffany Chiasson ("Chiasson"), filed suit against Joseph Panetta ("Panetta"), Integrity Staffing Services ("ISS"), and the appellants alleging employment discrimination.[1]

{¶ 4} Chiasson sought employment through ISS, an employment staffing company. ISS placed her with Doppco Development, LLC ("Doppco") as a project coordinator in April 2007, and she was directly supervised by Panetta.[2] Chiasson alleged that Panetta made several unwanted advances and inappropriate comments to her. She further alleged that as a result of her reporting Panetta's sexual harassment, the appellants retaliated against her by excluding her from company functions and denying her benefits provided to other employees.

[1]Panetta is not part of this appeal, and ISS was dismissed with prejudice in November 2007.

{¶ 5} As part of her written discovery request to the appellants, Chiasson sought all documents and electronically stored information that related to her. In November 2007, Chiasson moved to compel appellants to respond to her discovery requests. The trial court granted Chiasson's motion to compel in part and denied it in part on February 1, 2008.

{¶ 6} Chiasson alleges that appellants produced a limited number of documents after she demonstrated that appellants withheld at least 65 pages of documents. In April 2008, she moved for sanctions and to enforce the court's February 1, 2008 order. She claims that after appellants were confronted with the missing documents and her motion for sanctions, they informed the court that some of the documents may have been destroyed at the recommendation of Kevin Blinkhorn ("Blinkhorn"), Doppco's outside IT administrator.[3]

---

[2]Panetta reported to Jeffrey Doppelt and Alan Berger.

[3]In January 2008, the court held a pretrial conference in which the parties agreed to exchange privilege logs identifying each document claimed to be privileged, the date on which the document was prepared, the name of the person who prepared the document, the person to whom the document was directed, and the purpose for which the document was prepared. Appellants' privilege log, provided to Chiasson on February 1, 2008, indicated that Doppco's then in-house counsel, Kevin Brokaw ("Brokaw"), had communications with Blinkhorn.

Chiasson, however, failed to provide appellants with a privilege log by the February 1 deadline, which resulted in appellants filing a motion to compel. The trial court granted appellants' motion in November 2008.

{¶ 7} Chiasson served Blinkhorn with a subpoena in December 2008, asking him to produce, among other things, information regarding the destruction of electronic information, protocols for backup tape storage, and his communications with the appellants.

{¶ 8} In response to this subpoena, appellants moved to quash or modify the subpoena, arguing that the documents Chiasson sought are protected by the attorney work-product doctrine and were prepared in anticipation of litigation. Appellants provided the privilege log to the court in support of their motion. Chiasson opposed the motion to quash, and the trial court denied appellants' motion in March 2009.

{¶ 9} It is from this order that the appellants appeal, raising one assignment of error in which they argue that the trial court erred in denying their motion to quash or modify the Blinkhorn subpoena.[4] The appellants claim that the documents at issue were created by their attorney, Brokaw, and for him by Blinkhorn and in connection with Brokaw's investigation of the lawsuit.

[4] We note that generally discovery orders are not appealable. *Walters v. Enrichment Center of Wishing Well, Inc.* (1997), 78 Ohio St.3d 118, 121, 676 N.E.2d 890. However, if the judgment orders a party to disclose allegedly privileged material, it is appealable pursuant to R.C. 2505.02(B)(4).

{¶ 10} This court reviews a trial court's ruling on a motion to quash a subpoena for an abuse of discretion. *State ex rel. The V Cos. v. Marshall*, 81 Ohio St.3d 467, 1998-Ohio-329, 692 N.E.2d 198. "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144.

{¶ 11} In the instant case, Chiasson served a subpoena on Blinkhorn in late December 2008 requesting the following materials from Doppco:

> "1. All documents and/or electronic files, including but not limited to, all communications, cell-phone records, phone records, bids, contracts for services, promotional documentation, request to perform work, written protocols and directives, outlines of scope of projects, outlines of requirements, contracts for payment, reports, promotional materials, outlines of qualifications, invoices, emails, letters, and payments by, to from, and/or between, or relating to, Doppco Development, LLC (and/or any of its employees, principals or agents) from January 1, 2006 to the present.
>
> * * *
>
> "9. All documents and/or electronic files, including but not limited to, all bills, invoices, financial records, payroll records, and checks by, to, from, or relating to Doppco Development, LLC (and/or any of its employees) from January 1, 2006 to the present.
>
> "10. All electronic files, including but not limited to, computer back-up files, computer back-up tapes, computer back-up discs/CD-ROMS/ or other tangible computer media types, by, to, from, or relating to, Doppco Development, LLC (and/or any of its employees) from January 1, 2006 to the present."

{¶ 12} In January 2009, the appellants moved to quash or modify the subpoena served on Blinkhorn, arguing that the material requested is protected by the attorney work-product doctrine and that the documents were prepared in anticipation of litigation. Chiasson argued in her opposition brief that the communications with Blinkhorn are not privileged and that Doppco does not have standing to challenge the Blinkhorn subpoena. The trial court denied the appellants' motion to quash in March 2009, without issuing an opinion or stating any reasons.

{¶ 13} However, because the trial court summarily denied the appellants' motion, without conducting an evidentiary hearing or undertaking an in camera inspection, we find that the record is insufficiently developed to determine whether the documents requested in the subpoena violate the work-product doctrine.

{¶ 14} As the court in *Grace v. Mastruserio*, Hamilton App. No. C-060732, 2007-Ohio-3942, stated: "[s]ome documents will undoubtedly be privileged or will be protected by the work-product doctrine, and conversely some will not. To distinguish between protected and unprotected materials, the trial court should have, at a minimum, conducted an evidentiary hearing or undertaken an in camera review of the case file."

{¶ 15} Moreover, this court has found that upon assertion of work-product privilege, the trial court *shall* conduct an in camera review to determine whether such privilege applies. See *Jerome v. A-Best Prod. Co.*, Cuyahoga App. Nos. 79139-79142, 2002-Ohio-1824, ¶31, citing *Stelma v. Juguilon* (1992), 73 Ohio App.3d 377, 389, 597 N.E.2d 523. Furthermore, this court has found that the trial court commits reversible error when it fails to hold an evidentiary hearing or in camera review to analyze the requested material alleged to be work-product privileged. See *Squire Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, Cuyahoga App. No. 92366, 2009-Ohio-2490, ¶91.

{¶ 16} Thus, we conclude that the trial court abused its discretion by denying the appellants' motion to quash or modify the Blinkhorn subpoena without holding an evidentiary hearing or conducting an in camera review. We therefore reverse the order denying the appellants' motion and remand the matter with instructions for the trial court to conduct an evidentiary hearing or to undertake an in camera review of the subpoenaed materials, and to decide if any of the materials are protected under the work-product doctrine.

{¶ 17} Accordingly, the sole assignment of error is sustained.

{¶ 18} Judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

It is ordered that appellants recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

_____

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR