STATE OF MICHIGAN

COURT OF APPEALS

CHENNE LEAVERSON,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendants,

and

STEVEN KALKANIS, M.D., and HARRY SUKUMARAN, M.D.,

Appellants.

UNPUBLISHED
July 23, 2025
10:05 AM

No. 370698
Macomb Circuit Court
LC No. 2023-001058-NF

CHENNE LEAVERSON,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY and PROGRESSIVE MARATHON INSURANCE COMPANY,

Defendants,

and

NORMAN MILLER, M.D.,

Appellant.

No. 370699
Macomb Circuit Court
LC No. 2023-001058-NF

Before: K. F. KELLY, P.J., and O'BRIEN and ACKERMAN, JJ.

PER CURIAM.

In these consolidated appeals involving an action for personal injury protection (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., nonparty appellants Dr. Steven Kalkanis, Dr. Harry Sukumaran, and Dr. Norman Miller, appeal by leave granted the trial court's order denying their motions to quash subpoenas issued by plaintiff. Kalkanis and Sukumaran appeal in Docket No. 370698 and Miller appeals in Docket No. 370699.[1] We affirm in part, modify in part, and remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from plaintiff's claims for PIP benefits based on injuries she allegedly sustained in two separate motor-vehicle collisions. During the first collision on June 10, 2020, plaintiff was insured by defendant State Farm Mutual Automobile Insurance Company (State Farm), and during the second collision on April 7, 2022, she was insured by defendant Progressive Marathon Insurance Company (Progressive). In March 2023, plaintiff filed a complaint against defendants to recover PIP benefits. Defendants named appellants as expert witnesses and retained them to perform insurance medical examinations (IMEs)[2] of plaintiff, pursuant to MCL 500.3151. Plaintiff served subpoenas on appellants, requesting that they produce the following:

> 3. Produce 1099s that you have received in the past 4 years for performing medical exams for insurance companies and being a retained expert.
>
> 4. Produce your personal tax returns for the past 4 years.
>
> 5. Produce the four (4) years of tax returns and 1099s of any entity that receives payments for the medical exams that you perform for insurance companies and being a retained expert.

Appellants separately moved to quash the subpoenas with regard to the above information. They generally argued that, as nonparties, plaintiff was not entitled to discovery of their personal, private

[1] *Leaverson v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered June 13, 2024 (Docket No. 370698); *Leaverson v State Farm Mut Auto Ins Co*, unpublished order of the Court of Appeals, entered June 13, 2024 (Docket No. 370699).

[2] As explained in *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 364 n 3; 986 NW2d 451 (2022), an IME traditionally referred to the phrase "independent medical examination," but because the independence of such examinations has been questioned, it is more appropriate to refer to them as insurance medical examinations.

financial information. Moreover, even if plaintiff was entitled to some financial information, her request was excessive and the relevant information could be discovered by other means.

The trial court declined to hear oral argument and issued a written opinion and order denying appellants' motions to quash. It reasoned that appellants' tax information was relevant to discovering potential bias and their ability to testify as experts under MCL 500.3151(2)(b). The trial court concluded that the requested tax information, though confidential, was discoverable. It also allowed discovery of appellants' tax information beyond the one-year limitation provided in MCL 500.3151(2)(b), reasoning that the additional information could be relevant to establish appellants' bias or challenge their credibility. The trial court permitted appellants to redact information unrelated to their total compensation and gross income, and ordered plaintiff to hold the tax information in confidence and use it only in connection with the case. It then ordered appellants to produce the requested documents within 14 days of the order.

Kalkanis and Sukumaran jointly moved for reconsideration, while Miller moved separately. The trial court denied both motions. These appeals ensued, challenging the trial court's order denying appellants' motions to quash.

II. STANDARDS OF REVIEW

We review a trial court's decision on a motion to quash a subpoena for an abuse of discretion. *Fette v Peters Constr Co*, 310 Mich App 535, 547; 871 NW2d 877 (2015). A trial court's decision to grant or deny discovery is also reviewed for an abuse of discretion. *Micheli v Mich Auto Ins Placement Facility*, 340 Mich App 360, 367; 986 NW2d 451 (2022). "A trial court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes." *Fette*, 310 Mich App at 547. "We review de novo the interpretation and application of statutes, rules, and legal doctrines." *Micheli*, 340 Mich App at 367.

III. ANALYSIS

Appellants argue that the trial court erroneously denied their motions to quash the subpoenas issued by plaintiff. We agree in part. While the trial court properly allowed discovery of appellants' financial records, it erred by granting plaintiff access to appellants' personal and business tax returns because the relevant information was otherwise discoverable by reviewing appellants' Forms W-2 and Forms 1099. In addition, the trial court erred by ordering appellants to produce four years of records when, at most, plaintiff should receive records for two years preceding the date of each IME performed.

A. GENERAL PRINCIPLES OF DISCOVERY

At issue in this case is the scope of discovery of the financial interests of expert witnesses retained in no-fault matters to perform IMEs on behalf of an insurer. Generally, the rules of discovery are liberally construed to allow for open discovery. *Domako v Rowe*, 438 Mich 347, 359; 475 NW2d 30 (1991). MCR 2.302(B)(1), which governs the general scope of discovery, provides:

> (1) *In General*. Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, taking into account all pertinent factors, including whether the burden or expense of the proposed discovery outweighs its likely benefit, the complexity of the case, the importance of the issues at stake in the action, the amount in controversy, and the parties' resources and access to relevant information. Information within the scope of discovery need not be admissible in evidence to be discoverable.

In general, witness credibility is considered a material issue, and evidence tending to show bias or prejudice of a witness is considered to always be relevant. *Lewis v LeGrow*, 258 Mich App 175, 211; 670 NW2d 675 (2003). MCR 2.302(B)(4) specifically addresses discovery related to expert witnesses:

> (4) *Trial Preparation; Experts*. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subrule (B)(1) and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:
>
> > (a)(*i*) A party may through interrogatories require another party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter about which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
> >
> > (*ii*) A party may take the deposition of a person whom the other party expects to call as an expert witness at trial. The party taking the deposition may notice that the deposition is to be taken for the purpose of discovery only and that it shall not be admissible at trial except for the purpose of impeachment, without the necessity of obtaining a protective order as set forth in MCR 2.302(C)(7).
> >
> > (*iii*) On motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions (pursuant to subrule [B][4][c]) concerning fees and expenses as the court deems appropriate. [MCR 2.302(B)(4)(a)(*i*) to MCR 2.302(B)(4)(a)(*iii*).]

Also relevant to this case is MCR 2.305, which allows for the issuance of subpoenas to nonparties. In addition to deposing a witness, a party is permitted to include a request for the production of documents to a nonparty. See MCR 2.305(A)(1) and (2). MCR 2.305(A)(4)(a) allows a court to quash or modify a subpoena that is unreasonable or oppressive upon a timely motion made by the subpoenaed nonparty.

B. DISCOVERY OF FINANCIAL RECORDS

Appellants argue that plaintiff should not be permitted to discover their financial records to learn their gross incomes because that information is only minimally relevant to the issue of witness bias. We disagree.

In *Micheli*, this Court reviewed a trial court's denial of a motion to quash a subpoena issued to an insurer's expert witness, Dr. Mary Kneiser; and her business, Ability Assessments, PC. *Micheli*, 340 Mich App at 364. The subpoena requested information on the number of IMEs and patient examinations performed from 2017 to 2020, as well as records of income related to conducting IMEs from 2017 through 2020. *Id*. at 364-365. This Court concluded that the information sought was properly within the scope of discovery:

> We disagree with nonparty appellants regarding relevance. Although the records were unrelated to the substantive legal issues in this case, they were related to Dr. Kneiser's credibility, and information that bears on witness credibility or bias is never irrelevant. To show that an expert witness is potentially biased, one may show that an expert has a pattern of testifying for a particular category of defendants, and one may show that an expert has a pecuniary interest in the outcome. Whether nonparty appellants have a history of serving as experts for insurance companies, and their compensation for doing so, bears on Dr. Kneiser's credibility, and it is therefore relevant. [*Micheli*, 340 Mich App at 373-374 (citations omitted).]

This Court also rejected the argument that an expert's financial records were not discoverable under MCR 2.302(B)(4). *Micheli*, 340 Mich App at 367. While MCR 2.302(B)(4) addresses discovery of "facts known" or "opinions held" by a nonparty expert, it did not preclude discovery of an expert's financial records. *Micheli*, 340 Mich App at 369-370. Instead, where discovery of information relates to an expert's normal business activities, as opposed to facts or opinions developed in anticipation of litigation, the expert is treated as any other potential witness under MCR 2.302(B)(1). *Micheli*, 340 Mich App at 369-371.

Applying the *Micheli* Court's analysis, there is no merit to appellants' argument that discovery of their financial records is foreclosed under the court rules. In general, the amounts that appellants earn from performing IMEs and acting as expert witnesses for insurance companies is relevant information for a jury to consider when evaluating witness credibility. These areas are appropriate topics to explore in discovery to determine if a witness may possess a bias in favor of insurers. The trial court did not abuse its discretion by allowing plaintiff to discover appellants' gross incomes in order to explore their credibility and potential bias.

Information about appellants' gross incomes is also relevant to discovering whether they were qualified to perform IMEs under MCL 500.3151(2)(b). Appellants performed IMEs pursuant to MCL 500.3151(1), which allows an insurer to require a claimant for PIP benefits to submit to a mental or physical examination by a physician. MCL 500.3151(2) imposes certain requirements on a physician conducting an IME, and provides, in relevant part:

> (b) During the year immediately preceding the examination, the examining physician must have devoted a majority of his or her professional time to either or both of the following:

> (*i*) The active clinical practice of medicine and, if subdivision (a) applies, the active clinical practice relevant to the specialty.
>
> (*ii*) The instruction of students in an accredited medical school or in an accredited residency or clinical research program for physicians and, if subdivision (a) applies, the instruction of students is in the specialty. [MCL 500.3151(2)(b)(*i*) and (*ii*).]

Because the Legislature has adopted qualifications of witnesses performing IMEs, it necessarily has attempted to screen out any physicians who devote the majority of their work to performing IMEs or acting primarily in an expert-witness capacity, and the above guidelines seem to be aimed at preventing those who may be biased against plaintiffs from testifying. As explained above, the credibility or bias of an expert witness performing an IME is relevant and, therefore, if a witness performs a majority of his or her work on behalf of an insurer, that is an important factor for a jury to consider in evaluating that witness's testimony. More importantly, MCL 500.3151(2)(b) requires a witness who conducts an IME in a no-fault case to perform a majority of his or her work in active medical practice or medical instruction.

In this case, plaintiff sought information about appellants' gross incomes and income derived from performing IMEs. Because a witness's credibility or bias may be affected by the amount of his or her income derived from performing IMEs, this information is relevant to evaluating appellants' credibility or bias. The discovery requests related to appellants' gross incomes are also relevant to determining if they were qualified to perform IMEs under MCL 500.3151(2)(b). The trial court did not abuse its discretion by denying appellants' motions to quash on the ground that plaintiff sought information about their gross incomes.

C. DISCOVERY OF TAX RETURNS

Appellants argue that the trial court erroneously allowed discovery of their personal tax returns, which was highly invasive of their privacy rights as nonparties. Following the trial court's denial of appellants' motions to quash, plaintiff appears to have withdrawn her request for any tax returns and curtailed it to copies of appellants' W-2s and 1099s. Regardless, we agree with appellants and conclude that the trial court abused its discretion in allowing discovery of their tax returns.

The *Micheli* Court recognized that "[i]ndividuals have a privacy interest in their personal tax returns," and that "corporate financial records give rise to somewhat lessened (albeit not nonexistent) privacy concerns." *Micheli*, 340 Mich App at 374 n 5 (citations omitted). However, the *Micheli* Court did not squarely resolve whether a nonparty's personal tax returns are subject to discovery because the subpoena at issue did not request personal tax returns. *Id*. at 364-365.

In *Fassihi v St Mary Hosp of Livonia*, 121 Mich App 11, 14-15; 328 NW2d 132 (1982),[3] this Court considered whether a plaintiff's joint tax returns with his spouse were subject to discovery because the plaintiff's wife was not a party to the action. This Court ordered the trial court to conduct an *in camera* review of the records to redact any of the spouse's information from the returns after the defendants showed good cause and reasonably designated the records sought. *Id*. at 16. Although the *Fassihi* Court did not directly decide whether nonparties are required to provide tax returns, the remedy adopted suggests that a party cannot request the tax returns of a nonparty unless good cause is shown and steps are taken to protect the nonparty's privacy.

The privacy concerns recognized in *Fassihi* are present in this case. Allowing discovery of appellants' personal tax returns risks exposing the private information of their spouses, who are not witnesses in this matter. There is also a risk of exposing information unrelated to appellants' professional services. Accordingly, the trial court abused its discretion by granting plaintiff discovery of appellants' tax returns when there are alternative means to obtain the relevant information without jeopardizing the privacy of appellants and their families.

Indeed, plaintiff apparently concedes that she does not need access to appellants' tax returns, and can determine the relevant information from their Forms W-2, which will show income from regular employment; and Forms 1099, which will show income earned from performing IMEs or providing expert-witness services. Because plaintiff concedes that appellants' W-2s and 1099s are sufficient, we vacate the portion of the trial court's August 30, 2023 order that required appellants to produce their personal and business tax returns, and modify it to allow discovery of their W-2s and 1099s.

D. TWO-YEAR LIMITATION

Finally, we agree with appellants that the trial court should have limited the scope of plaintiff's discovery. While plaintiff has shown entitlement to appellants' W-2s and 1099s to discover possible bias and address whether appellants are qualified to testify under MCL 500.3151(2)(b), the trial court abused its discretion by requiring appellants to provide four years of tax records when the statute is only concerned with the year preceding the date of each IME performed.

In *Micheli*, 340 Mich App at 374 n 4, this Court explained that MCL 500.3151(2)(b) limits the relevancy of requested records to only one year before the date an IME is performed:

> Plaintiff also argues that the requested records are relevant to establishing whether Dr. Kneiser was *qualified* to conduct a mental or physical examination under MCL 500.3151. In relevant part, MCL 500.3151(2)(b) imposes certain requirements on examining physicians for "*the year* immediately preceding the examination . . . ." (Emphasis added.) Even if plaintiff's request were relevant to

[3] "Although published decisions of this Court issued prior to November 1, 1990, are not strictly binding upon us, all published decisions of this Court are precedential under the rule of stare decisis and generally should be followed." *Stoudemire v Thomas*, 344 Mich App 34, 41 n 2; 999 NW2d 43 (2022).

> whether Dr. Kneiser met the requirements under this statute, only one year of records would be relevant. In other words, records from 2017, 2018, and most of 2019 would be irrelevant.

Because a tax year may differ from a calendar year, plaintiff should have access to two years of records for the purposes of discovering potential bias and determining if appellants are qualified under MCL 500.3151(2)(b). Accordingly, we also vacate the portion of the trial court's August 30, 2023 order that required appellants to produce four years of records, and modify the order to limit discovery to a two-year period.

In sum, the trial court properly allowed plaintiff to discover appellants' gross incomes from their professional work. However, we vacate the August 30, 2023 order to the extent it allowed discovery of appellants' personal and business tax returns, and modify it to allow discovery of their W-2s and 1099s. We also modify the trial court's order to require that appellants produce only two years of tax records, rather than four. Appellants may still redact any confidential or irrelevant information from their records and plaintiff is still obligated to keep all discovery confidential.

We affirm in part, modify in part, and remand for further proceedings consistent with this opinion. Neither party having prevailed in full, no taxable costs are awarded. MCR 7.219(A). We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Colleen A. O'Brien
/s/ Matthew S. Ackerman