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COURT OF APPEALS
STATE OF WISCONSIN
DISTRICT II

VENKATA K. THOTA AND
CYNTHIA THOTA,

Plaintiffs-Petitioners,

vs.

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant-Respondent.

Appeal No. 22 AP 417

Circuit Court Case No. 18-CV-2283

BRIEF OF DEFENDANT-RESPONDENT LIBERTY MUTUAL INSURANCE COMPANY IN RESPONSE TO PLAINTIFFS-PETITIONERS' PETITION FOR LEAVE TO APPEAL THE MARCH 2, 2022 NON-FINAL ORDER OF THE WAUKESHA COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL O. BOHREN PRESIDING

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STATEMENT OF THE CASE

The sole issues to be determined at trial in this case regarding underinsured motorist ("UIM") benefits are (1) whether the plaintiff, Dr. Venkata Thota ("Dr. Thota"), will require a future left knee surgery and (2) what amount, if any, will compensate Dr. Thota for his past and future pain and suffering. Despite the limited issues to be resolved at trial, Dr. Thota saw fit to seek all of the tax records of defendant Liberty Mutual's ("Liberty") expert, Dr. Stephen Barron, for nearly four years prior to Dr. Barron's independent medical examination ("IME") of Dr. Thota. The stated basis for this request was to determine what percentage of Dr. Barron's practice consisted of IMEs vs. clinical work. As these documents were highly invasive and of no relevance to Dr. Barron's IME or the ultimate issues to be resolved at trial, Liberty moved for a protective order.

No Wisconsin Court has ever held that a medical expert, simply by virtue of his or her participation in a personal injury lawsuit, is required to disclose how much money he or she earned – regardless of source – for the four years preceding. On December 13, 2021, the Circuit Court, Judge Michael Bohren presiding, entered an Order that did just that – ordering Dr. Barron produce any and all documents showing income generated from the practice of medicine between 2018 and present. On February 22, 2022, the Circuit Court, Judge Michael Aprahamian presiding, reconsidered the issue and vacated Judge Bohren's Order.

The basis for Judge Aprahamian's decision was two-fold. First, in the time between Judge Bohren's initial Order and Liberty's filing of the motion for reconsideration, Dr. Barron informed Liberty he would withdraw as an expert if he was required to produce his tax documents. Judge Aprahamian held that Dr. Barron's informing Liberty of this fact constituted new evidence that supported reconsideration of the initial Order. Judge Aprahamian also found that Judge Bohren's initial Order was a manifest error of law as no Wisconsin authority supported that Order and the production of the tax documents was disproportional to the issues to be determined at trial.

Dr. Thota's request for an interlocutory review of Judge Aprahamian's decision should be denied for several reasons. As a preliminary matter, the tangential issue of Dr. Barron's tax records does not come close to meeting the standard for an interlocutory appeal. Under Wisconsin law, an interlocutory appeal is only appropriate under extremely limited circumstances, none of which are applicable here. An interlocutory review of Judge Aprahamian's Order would not materially advance the litigation, considering the limited (if any) relevance Dr. Barron's tax records have on the issues for trial. An interlocutory review would also not prevent substantial or irreparable harm to Dr. Thota as Dr. Thota can easily obtain the information he seeks – the percentage of Dr. Barron's practice dedicated to IMEs – via deposition questioning. Additionally, an interlocutory review

would have no broader impact on cases in Wisconsin as Judge Aprahamian did not – as Dr. Thota claims – insert himself into the discovery process but rather merely exercised his statutory authority under Wis. Stat. § 804.01(3)(a) to limit the scope of discovery.

The merits of Dr. Thota's appeal also fail as a matter of law. Dr. Thota first argues that Judge Aprahamian did not base his Order on either newly discovered evidence or a manifest error of law. However, Judge Aprahamian expressly held that Dr. Barron's withdrawal as an expert if he was required to produce the tax documentation was "new evidence" that was "grounds to reconsider" Judge Bohren's initial Order. Moreover, in previous briefing, Dr. Thota specifically argued that, at the time of Judge Bohren's initial Order, there was "not one shred" of evidence to indicate that Dr. Barron would withdraw as an expert, and so he cannot now argue that such evidence was present at that time. In addition, the record indicates that Judge Aprahamian also based his decision on a manifest error of law in Judge Bohren's initial Order, given Judge Aprahamian's recognition that (1) there was no basis in Wisconsin law for an Order requiring an expert to produce extensive tax documentation and (2) the requested documentation was not proportional to the needs of the case.

Dr. Thota's final argument is that, by way of his Order, Judge Aprahamian inserted himself into the discovery process. This argument

again fails as Judge Aprahamian's Order was a valid exercise of his authority to enter a protective order under Wis. Stat. § 804.01(3)(a).

For all of these reasons, Dr. Thota's request for interlocutory appeal should be denied.

STATEMENT OF THE ISSUES

I. Whether Dr. Thota has demonstrated a need for immediate relief sufficient to warrant an interlocutory review of a nonfinal judgment.

II. Whether the Circuit Court's Order granting Liberty's motion for reconsideration was based on new evidence and/or a manifest error in law or fact.

III. Whether the Circuit Court improperly inserted itself into the discovery process by entering an Order limiting the scope of discovery into an expert's irrelevant financial information.

STATEMENT OF THE FACTS

On July 11, 2017, Dr. Thota was involved in a car accident, re-tearing the anterior cruciate ligament ("ACL") in his left knee. (Resp't App., October 18, 2019 Deposition of Dr. Venkota Thota, 25:8-17). As a result of the 2017 accident, Dr. Thota required surgery to re-repair his torn ACL, which he had previously torn three years prior in a skiing accident. (*Id.*, 41:3-13). Dr. Thota's surgery – performed by Dr. Jonathan Berry on November 15, 2017 – was, by all accounts, successful. (*Id.*, 57: 14-16; Resp't App., Depo. of Dr. Jonathan Berry, 30:24 – 31:10).[1] Following a settlement with the other

[1] In fact, Dr. Thota testified that he was able to regularly run within seven months after the surgery was completed. (Resp't App., October 18, 2019 Deposition of Dr. Venkota Thota, 64:16 – 65:3).

driver in the 2017 accident, Dr. Thota filed suit against his insurer, Liberty, seeking UIM benefits. (Resp't App., Amended Complaint).

Once suit was filed, Dr. Thota retained Dr. Berry as his medical expert. Dr. Berry testified that Dr. Thota had suffered a permanent injury to his meniscus and that Dr. Thota may require future treatment, including a possible future surgery. (Resp't App., Depo. of Dr. Jonathan Berry, 42:6-15; 43:17-24).[2] Dr. Berry later submitted a supplemental report wherein he opined that Dr. Thota currently experiences arthritis. (Resp't App., Supplemental Report of Dr. Jonathan Berry). Liberty retained an expert of its own, Dr. Bradley Fideler, who testified that Dr. Thota did not suffer from arthritis and did not require any future treatment. (Resp't App., Depo. of Dr. Bradley Fideler, 12: 11-16).

However, due to health reasons, Dr. Fideler withdrew as an expert on June 14, 2021. (Resp't App., Affidavit of Dr. Bradley M. Fideler). Liberty then retained another orthopedic surgeon, Dr. Stephen Barron, who performed an independent medical examination ("IME") on Dr. Thota on September 8, 2021. As a result of the IME, Dr. Barron issued a report in which he largely agreed with Dr Thota's expert, Dr. Berry, except that Dr. Barron unequivocally opined that a future surgery would be "pure speculation." (Resp't App., Report of Dr. Stephen E. Barron, p. 5).

[2] Dr. Thota – a general practitioner specializing in family practice who has never performed knee surgery – will also testify that he requires future surgery. (Resp't App., September 10, 2019 Depo. of Dr. Venkota Thota, 15:19 – 16: 12).

In advance of Dr. Barron's deposition, Dr. Thota served a Request for Production of Documents, asking Liberty to produce, among other documents, all of Dr. Barron's financial and tax records – totally unrelated to his one-time examination of Dr. Thota – for an almost four-year period. (Resp't App., Plaintiff's First Request for Production of Documents). The stated purpose of these requests was so that Dr. Thota could have an understanding as to how much of Dr. Barron's practice consisted of clinical work versus IME work. (Resp't App., Transcript of February 23, 2022 Hearing, 9: 11-14). Given the invasiveness associated with producing nearly four years of entirely unrelated tax and income records, Liberty moved for a protective order for these documents. Dr. Thota moved to compel production.

At the initial hearing on these motions, counsel for Liberty raised concerns about the invasiveness of the requests and the chilling effect that an order compelling production might have on Dr. Barron's testimony specifically and retained experts generally. (Pet. App., Transcript of November 24, 2021 Hearing, 27:18 – 28:4). At that time, Dr. Barron had not informed Liberty he would withdraw as an expert if the production was required. (Resp't App., January 10, 2022 Affidavit of Mark D. Malloy; Resp't App., Dr. Thota's Response Brief in Opposition to Motion for Protective Order, p. 5). Despite the concerns raised by Liberty's counsel, the Circuit Court, Judge Bohren presiding, entered an Order requiring the production

of Dr. Barron's financial documents to be made. (Resp't App., Order Regarding the Hearing of November 24, 2021).

Following the Circuit Court's entering of the initial Order, Dr. Barron informed Liberty for the first time that he would withdraw as an expert if he was required to produce the sensitive financial documents Dr. Thota requested. (Resp't App., January 10, 2022 Affidavit of Mark D. Malloy). As such, Liberty filed a motion to reconsider with the Circuit Court, arguing (1) the Circuit Court's initial ruling on the motion for protective order and motion to compel was a manifest error of law requiring reconsideration because the ruling had no basis in existing precedent and the requests were not proportional to the needs of the case, and (2) Dr. Barron's statement that he would withdraw as an expert constituted newly discovered evidence requiring reconsideration. (Resp't App., Brief in Support of Motion to Reconsider).

The Circuit Court, Judge Aprahamian presiding, agreed with Liberty on both points. Based on the law cited by Liberty as well as the ease by which Dr. Thota could obtain the information he sought through other less intrusive means (e.g. asking Dr. Barron at his deposition how much of his practice consisted of clinical work and how much of his practice consisted of IMEs), Judge Aprahamian believed that the initial Order compelling production was a manifest error of law. (Resp't App., Transcript of February 23, 2022 Hearing, 9:11-21; 14:16 – 16:21). Judge Aprahamian further

believed that Dr. Barron's statement that he would withdraw as an expert if compelled to produce the financial documents was "new evidence" that was "going to impact the litigation in this case very significantly" and that constituted "grounds to reconsider." (*Id.*, 14: 12-15).

As such, on March 2, 2022, Judge Aprahamian entered an Order, granting Liberty's motion for reconsideration and limiting the scope of discovery on Dr. Barron's financials to written or oral deposition questions regarding the percentage of his practice dedicated to IMEs vs clinical work as well as questions regarding his compensation for testimony in this matter. (Pet. App., Order on Liberty Mutual Company's Motion for Reconsideration). Evidently disagreeing with this Order, Dr. Thota filed the present motion, seeking an interlocutory review by this Court.

ARGUMENT

I. DR. THOTA HAS NOT DEMONSTRATED A NEED FOR IMMEDIATE RELIEF SUFFICIENT TO WARRANT AN INTERLOCUTORY REVIEW OF A NONFINAL JUDGMENT.

Wis. Stat. § 808.03(2) provides that the Wisconsin Court of Appeals may exercise discretion and review a nonfinal judgment under three extremely limited circumstances: where such an appeal would either (1) materially advance the termination of the litigation or clarify further proceedings in the litigation; (2) protect the petitioner from substantial or irreparable injury; or (3) clarify an issue of general importance in the

administration of justice. However, under Wisconsin law, interlocutory review of a nonfinal judgment is a highly disfavored method of appellate review. *See e.g. State ex rel. A.E. v. Circuit Court for Green Lake Cnty.,* 94 Wis. 2d 98, 101, 288 N.W.2d 125 (1980).

For two distinct reasons the strongly favored approach is for appeals to occur upon entry of final judgment. First, requiring a final order of judgment to be entered before hearing an appeal helps to "avoid[] unnecessary interruptions and delays caused by multiple appeals." *K.W. v. Banas*, 191 Wis. 2d 354, 357, 529 N.W.2d 253 (Ct. App. 1995). Second, the final judgment rule reduces "the burden on the court of appeals by limiting the number of appeals to one appeal per case and allowing piecemeal appeals only under the special circumstances set forth in [§] 808.03(2), STATS." *Id.* (citation omitted). Thus, leave to appeal a nonfinal order is granted only in "limited circumstances" where "the necessity of immediate review outweighs [the] general policy against piecemeal disposal of litigation." *Cascade Mountain, Inc. v. Capitol Indem. Corp.,* 212 wis. 2d 265, 268 n. 2, 569 N.W.2d 45 (1997).

To that end, the Wisconsin courts have found that an interlocutory appeal was not required under the following compelling circumstances amongst many others: (1) when an Order of discovery sanctions raised "questions of constitutional privilege;" (2) when the State was ordered to produce the database through which it determined whether certain

individuals were "sexually violent persons" as defined by Wis. Stat. § 980.0036(5); (3) and where a Circuit Court Order declined to give a federal judgment preclusive effect. *See Lassa v. Rongstad*, 2006 WI 105, ¶¶ 6, 88-89, 294 Wis. 2d 187, 718 N.W.2d 673 (holding that interlocutory review was not required where discovery sanctions against a party raised "questions of constitutional privilege"); *State v. Jendusa*, 2021 WI 24, ¶¶ 2, 18-22, 396 Wis. 2d 34, 955 N.W.2d 777 (holding that the Wisconsin Court of Appeals did not erroneously exercise its discretion in denying a request for an interlocutory appeal where the state Department of Corrections was ordered to produce the database where it determined an individual was a "sexually violent person"); *State ex rel Hass v. Wisconsin Court of Appeals*, 2001 WI 128, ¶ 26, 248 Wis. 2d 634, 636 N.W.2d 707 (holding that an interlocutory review was not required for a Circuit Court Order that declined to give a federal judgment preclusive effect).

Here, there is simply no need for an immediate review of Judge Aprahamian's Order. First, a review would not materially advance the termination of the litigation or clarify further proceedings in the litigation. The sole issues for trial in this matter are (1) whether Dr. Thota requires future treatment and (2) what (if any) amount will compensate Dr. Thota for his past and future pain and suffering. Dr. Barron's tax records have absolutely no direct relevance to either of these inquiries. At most, the financial information in the returns is a tangential issue that could be

slightly probative of Dr. Barron's potential bias.[3] Moreover, the stated purpose for requesting Dr. Barron's tax information – determining the percentage of Dr. Barron's practice dedicated to IMEs – is something that can easily be asked at Dr. Barron's deposition without requiring him to produce sensitive documentation. The only reason that Dr. Thota has offered why this approach would be unreasonable is his baseless concern that Dr. Barron may perjure himself, without providing any reason why Dr. Barron's credibility should be questioned. (Resp't App., Transcript of February 23, 2022 Hearing, 9:22 – 12:4). Such a theoretical concern without any factual basis is not grounds for interlocutory review.

Additionally, an interlocutory review in this instance would not prevent substantial or irreparable harm to Dr. Thota. Again, the stated purpose of the request for Dr. Barron's tax documents was to determine the percentage of his practice dedicated to IMEs. Nothing in Judge Aprahamian's Order prevents Dr. Thota from obtaining this precise information at Dr. Barron's deposition. Furthermore, Dr. Thota did not request any tax documentation from Liberty's initial expert, Dr. Fideler, in advance of Dr. Fideler's deposition, which had already been conducted

[3] Liberty questions whether the returns are even minimally probative for this purpose given the relative agreement between Dr. Barron and Dr. Berry on the bulk of their opinions. Dr. Barron and Dr. Berry agree that Dr. Thota suffered a mildly permanent injury. The only disagreement between the two is Dr. Barron unequivocally opines that Dr. Thota's future surgery is speculative while Dr. Berry testified that a future surgery is a possibility. Additionally, Dr. Thota did not request any tax documentation from Liberty's initial expert, Dr. Fideler, whose opinions were much more at odds with Dr. Berry than Dr. Barron's are.

before his withdrawal. Thus, had health issues not required Dr. Fideler to withdraw as an expert, Dr. Thota would not have had access to any of the tax documents he now deems so crucial to his case. It strains credulity for Dr. Thota to argue that he would suffer "serious or irreparable injury" if he does not obtain tax documents he would not have obtained in the absence of Dr. Fideler's medical emergency.

Lastly, Dr. Thota argues that granting an interlocutory appeal in this instance would "clarify issues of utmost importance to the administration of justice" based on his notion that the Circuit Court inserted itself into the discovery process. As is further developed below, there is no basis for the idea that the Circuit Court inserted itself into the discovery process purely because it entered a protective order limiting the scope of discovery. Rather, Wis. Stat. § 804.01(3)(a)4 specifically provides that a judge may enter an Order that "the scope of the discovery be limited to certain matters." As such, the exercise of that authority in this case has no broader implications for case law in the state going forward.

II. THE CIRCUIT COURT'S ORDER GRANTING THE MOTION FOR RECONSIDERATION WAS BASED ON BOTH NEWLY DISCOVERED EVIDENCE AND A MANIFEST ERROR IN LAW IN THE CIRCUIT COURT'S INITIAL ORDER.

In addition to demonstrating an immediate need for review, in order to have a petition for interlocutory appeal granted, the appealing party must also show a "substantial likelihood of success on the merits" of their

argument on appeal. *State v. Webb,* 160 Wis. 2d 622, 632, 467 N.W.2d 108 (1991). Here, Dr. Thota argues that the Circuit Court's Order on the motion for reconsideration was improper as it was not based on newly discovered evidence or a manifest error of law. Dr. Thota's argument is fatally flawed for a number of reasons.

A. Judge Aprahamian's Order Was Based on Newly Discovered Evidence.

First, Judge Aprahamian's Order was plainly based on newly discovered evidence.[4] Dr. Thota claims that Liberty raised Dr. Barron's withdrawal as an expert at the initial motion hearing on the motion for protective order and motion to compel, and thus that Dr. Barron's withdrawal was not new evidence. However, at the time of the initial motion hearing, Liberty only raised the potential of Dr. Barron's withdrawal, which was a circumstance contemplated in much of the case law Liberty cited but was not yet reality. Specifically, Liberty stated the following at the initial motion hearing:

[4] Dr. Thota asserts that, at the hearing for the motion for reconsideration, Liberty argued that Dr. Barron's refusal to testify "was newly discovered evidence pursuant to *Alt v. Cline*." (Resp't App., Brief in Support of Motion for Interlocutory Review, p. 9). Dr. Thota further asserts that Judge Aprahamian "disregarded Liberty's argument on that issue." Both of these assertions are categorically false. *Alt* holds, in part, that a court cannot compel an individual to testify as an expert. 224 Wis. 2d 72, 85-86, 589 N.W.2d 21 (1999). In briefly mentioning this case at the hearing on the motion for reconsideration, Liberty was merely raising the point that, if the Circuit Court entered an Order compelling production of his financial documents, Dr. Barron was going to exercise his right under *Alt* not to testify and this was a fact not known to Liberty at the time of the initial motion hearing. Liberty was not arguing that *Alt* set the standard for newly discovered evidence. Furthermore, there is no basis for Dr. Thota's assertion that Judge Aprahamian disregarded Liberty's argument that newly discovered evidence required reconsideration. In fact, Judge Aprahamian's Order specifically states "[t]he Court finds that there are new facts warranting reconsideration of the prior order." (Pet. App., March 2, 2022 Order p. 1).

> The other issue I have is just from a practical standpoint, ***it may very well be*** once I inform Dr. Barron of this order, that he no longer will want to act as an expert in this case, which is his right to do that.

(Pet. App., Transcript of November 24, 2021 Hearing, 27: 18-22) (emphasis added)

At that time, Liberty had no knowledge whether Dr. Barron would agree to remain as a witness if required to produce his tax documents; Dr. Barron did not inform Liberty that he planned to withdraw as an expert until after the initial hearing. (Resp't App., January 10, 2022 Affidavit of Mark D. Malloy). Dr. Thota acknowledged this fact in prior briefing. In his brief in opposition to Liberty's original motion for protective order, Dr. Thota argued that, at the time of the initial hearing, there was "***not one shred of documentation via Affidavit or otherwise, that producing financial information as requested herein will have a chilling effect on Dr. Barron testifying in this matter or otherwise participating.***" (Resp't App., Response Brief in Opposition to Motion for Protective Order, p. 5) (emphasis added). Given Dr. Thota's prior position that there was not any evidence of Dr. Barron's withdrawal at the time of the initial hearing, he cannot now argue that the fact of Dr. Barron's withdrawal was established at that time. *See State v. Ryan*, 2012 WI 16, ¶ 32, 338 Wis. 2d 695, 809 N.W.2d 37 ("[t]he [judicial estoppel] doctrine precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position.") (citation omitted).

It was also the view of Judge Aprahamian that Dr. Barron's planned withdrawal was newly discovered evidence, holding that this was "new evidence" that was "going to impact the litigation in this case very significantly" and that constituted "grounds to reconsider." (Pet. App., Transcript of November 24, 2021 Hearing, 14: 12-15). Judge Aprahamian's Order following the motion hearing also stated that "[t]he Court finds that there are new facts warranting reconsideration of the prior order." (Pet. App., March 2, 2022 Order p. 1). There is thus no basis to conclude that Judge Aprahamian's order was not based on newly discovered evidence.

B. Judge Aprahamian's Order was Based on a Manifest Error of Law.

Despite Dr. Thota's assertion to the contrary, Judge Aprahamian's Order was also based on a manifest error of law. There is simply no basis in Wisconsin law for the proposition that, merely by agreeing to be retained as an expert, an individual is required to produce any and all documentation concerning the amount of money he/she earns regardless of source, which is precisely what would have been the effect of Judge Bohren's initial ruling. Rather, the Wisconsin case with the closest analogue to the present fact pattern is *Konle v. Page*, in which the Wisconsin Court of Appeals affirmed a trial court's holding that a ***plaintiff making a loss of earning capacity claim*** could not be compelled to produce his complete tax returns as such a request invaded the plaintiff's "zone of privacy," given the

sensitive information contained in the returns. 205 Wis. 2d 389, 393-97, 556 N.W.2d 380 (Ct. App. 1996).

Here, there are much less significant reasons to compel Dr. Barron to produce his tax documents than the plaintiff in *Konle* considering (1) Dr. Barron is not a party to this case and thus is not making any claim for damages (2) the stated reason for Dr. Thota's request for this documentation is to determine the percentage of his practice dedicated to IMEs, which is information that can just as easily be gleaned via questions at Dr. Barron's deposition. In light of *Konle* and other Wisconsin and foreign cases holding that expansive production of tax documents goes beyond the scope of discovery, Judge Aprahamian held that "the prior order [compelling production] was not proportional to the needs in the case and that the burdensome and invasive nature of the request—the production of all W2s and 1099s for the last four years—outweighs its likely benefit." (Pet. App., March 2, 2022 Order, p. 2). Thus, the Circuit Court plainly based its decision on the motion to reconsider on a manifest error of law in the earlier Order, and Dr. Thota's request for an interlocutory appeal must be denied.

III. THE CIRCUIT COURT DID NOT INSERT ITSELF INTO THE DISCOVERY PROCESS BUT RATHER EXERCISED ITS POWER UNDER WIS. STAT. § 804.01(3) TO LIMIT DISCOVERY.

Dr. Thota's final argument is that the Circuit Court inserted itself into the discovery process and engaged in "lawyering on behalf of Liberty" by limiting the scope of discovery of Dr. Barron's financials. (Petitioner's Brief

Requesting Interlocutory Appeal, pp. 16-17). This argument is not only extremely disrespectful to the Circuit Court and counsel for Liberty, but also evinces a complete disregard of the Circuit Court's statutory authority to limit discovery to fit the proportional needs of the case.

Wis. Stat. § 804.01(3)(a) provides the following:

> (a) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:
>
> 1. That the discovery not be had;
>
> 2. That the discovery may be had only by specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
>
> 3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
>
> 4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters....

Presented with a circumstance where a non-party expert was requested to produce sensitive tax documentation entirely irrelevant to the opinions he was providing, the Circuit Court exercised its discretion under Wis. Stat. § 804.01(3)(a) to limit this discovery to written or oral deposition questions regarding the percentage of Dr. Barron's practice dedicated to IMEs. In other words, the Circuit Court compared the relevance of the requested documentation with the undue burden and annoyance caused by

the requests, and then ordered that the scope of the discovery be limited to certain matters, all of which was in direct accordance with Wis. Stat. § 804.01(3)(a)4. Dr. Thota cites no case law to support his proposition that the entering of a protective order to limit the scope of discovery qualifies as advocacy for a party to the case.

CONCLUSION

The relief Dr. Thota seeks in this instance – compelling an expert witness to produce all of his irrelevant tax documentation merely because of his retention as an expert – would be unprecedented in Wisconsin. For this reason, as well as the new evidence of Dr. Barron's planned withdrawal as an expert, Judge Aprahamian properly limited the scope of discovery on Dr. Barron's financials to deposition questions that allow Dr. Thota to obtain the same information that the requested documents would provide. Given that the requested tax documents have no relevance to the issues set for trial and the information sought from the documents can readily be obtained via deposition, Dr. Thota has not demonstrated the need for immediate review of Judge Aprahamian's Order. Dr. Thota has also not demonstrated a substantial likelihood of success on the merits as Judge Aprahamian's Order was plainly based on both newly discovered evidence and a manifest error of law, and there is no basis to conclude the Judge Aprahamian inserted himself into the discovery process. For all of these reasons, Dr. Thota's request for interlocutory review should be denied.

Dated this 30th day of March 2022.

MEISSNER TIERNEY FISHER & NICHOLS S.C.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 4,611 words.

Dated this 30th day of March 2022.

MEISSNER TIERNEY FISHER & NICHOLS S.C.

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CERTIFICATION

I hereby certify filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. Section 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under Wis. Stat. Section 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of the full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 30th day of March 2022.

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