IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

RAYMOND E. STEINKERCHNER	)	
	)	
Plaintiff/Appellee	)	Appeal No.
	)	01-A-01-9910-CH-00039
VS.	)	
	)	Davidson Chancery
PROVIDENT LIFE & ACCIDENT	)	No. 98-530-III
INSURANCE CO.	)	
	)	
Defendant/Appellant	)	

APPEAL FROM THE CHANCERY COURT
FOR DAVIDSON COUNTY

THE HONORABLE ELLEN HOBBES LYLE PRESIDING

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REVERSED AND REMANDED

PATRICIA J. COTTRELL, JUDGE

CONCUR:

CANTRELL, P. J.
CAIN, J.

OPINION

This is an extraordinary appeal pursuant to Tenn. R. App. P. 10 arising from a discovery dispute. For the following reasons, we reverse.

Appellee Dr. Raymond Steinkerchner, a self-employed clinical psychologist, submitted a claim for disability insurance to his insurer, Appellant Provident Life & Accident Insurance Co. ("Provident"), based on angina and coronary artery disease. When Provident denied the claim, Dr. Steinkerchner commenced this action, alleging breach of the disability insurance policy, bad faith denial of the claim, and violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*

The underlying discovery dispute arose after Dr. Steinkerchner propounded the following interrogatory:

> Identify by name, address, telephone number and policy number each and every Tennessee resident to whom Provident Life and Accident Insurance Company had issued a job disability policy, upon which a claim for disability benefits has been made and subsequently denied in whole or in part by the Defendant Provident Life and Accident Insurance Company during the period of time after January 1, 1996.

Provident objected on the grounds that the interrogatory was overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence.

Dr. Steinkerchner successfully moved to compel, arguing that the information sought was needed to show a pattern of improper denial of claims, fraudulent marketing, and bad faith refusal to pay. The purpose of the interrogatory was to obtain information which would allow Dr. Steinkerchner's counsel to contact other policyholders whose claims had been denied. Dr. Steinkerchner has, in his pleadings, claimed that Provident has entered in a course of conduct to deny claims by others with similar policies, but has

identified no such others and has not sought class certification.

The trial court granted the motion to compel. The order directed Provident to comply with the discovery request:

> to the extent that the defendant is required to create a computerized query for claims submitted to Provident by Tennessee residents on or after January 1, 1996, using the last claim status field. The resulting list shall include name, address, and policy numbers, and where available on the computer, telephone numbers.

Shortly thereafter, the trial court decided to hold the above-mentioned order in abeyance until Provident filed a memorandum addressing "whether it is [a] breach of someone's privacy to reveal to third parties that they have filed a claim for disability benefits."

On December 22, 1998, the trial court determined that Dr. Steinkerchner sought no confidential information. It ordered Provident to (1) comply with its previous order regarding the names, addresses, policy numbers and telephone numbers of its insured who filed claims on or after January 1, 1996; (2) file the resulting list with the court under seal; and (3) send the following notice to the individuals included on the list:

> Dear [Policy Holder]:
>
> Presently pending in the Chancery Court for Davidson County, Tennessee is a lawsuit filed by a Provident Life and Accident Insurance Company policyholder, Raymond E. Steinkerchner, against Provident concerning a dispute about payments pursuant to the terms and provisions of a job disability policy.
>
> Relative to the issues in that lawsuit, the names and identities of individual Tennessee residents who have been issued a job disability policy by Provident and have made a claim for disability benefits which has been denied in whole or in part during the period of time after January 1, 1996, have been filed under seal with the Court. By filing the information under seal, only the judge and attorneys may view the information. Additionally, however, you may be contacted by the attorneys for the policyholder or Provident in an attempt to obtain evidence for the lawsuit . . .

> **Please be advised that you are not required to respond to this letter in any manner, and you certainly are not required to talk to or respond to calls or communications received from any of the attorneys in this lawsuit.** (emphasis in original).

Provident filed a second unsuccessful motion for interlocutory appeal and then filed its successful Tenn. R. App. P. 10 application for extraordinary appeal in this court.

Provident maintains that the trial court erred by ordering it to produce confidential information relating to non-parties which was not relevant or calculated to lead to the discovery of admissible evidence.

Rule 26 of the Rules of Civil Procedure sets the basic parameters of permissible discovery. It states:

> IN GENERAL. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The scope of discovery, while broad, is not unlimited. *See Miller v. Doctor's General Hosp.*, 76 F.R.D. 136, 139 (W.D. Okla. 1977).

> Mere incantations that an opponent has acted in bad faith will not convert a simple contract lawsuit into a license to burden or harass one's adversary. Conclusory claims of bad faith may not be the bases for conducting marginally relevant discovery which is by its nature burdensome. Such discovery requests amount to nothing more than an out and out fishing expedition.

Marker v. Union Fidelity Life Ins. Co., 125 F.R.D. 121, 125 (M.D.N.C. 1989).

The issues in this case are limited to Provident's handling of Dr. Steinkerchner's claim for employment disability insurance benefits and to the adequacy of Provident's reasons for denying the claim. Provident's conduct

regarding the unique insurance claims of others is not relevant to whether it properly handled the claim at issue. Dr. Steinkerchner may determine the reasons for Provident's conduct by deposing its employees and others who were involved in the decision to terminate his benefits. *See Moses v. State Farm Mut. Auto. Ins. Co.*, 104 F.R.D. 55, 57 (N.D.Ga. 1984). Having discovered those reasons, Dr. Steinkerchner will then be in a position to produce evidence to challenge that decision. *See id.*

Although the complaint makes vague allegations that the denial of benefits was part of a course of conduct, at his deposition Dr. Steinkerchner admitted that he had no information about other policyholders' dissatisfaction with Provident. Dr. Steinkerchner's speculative accusations about a course of conduct do not suffice to demonstrate the relevance of Provident's handling of other claims. He has been unable to identify the particular course of conduct he alleges exists, merely itemizing actions taken in handling of his claim. Thus, we find that the requested information is unlikely to lead to relevant evidence.

Under these circumstances, we must reverse the trial court's decision to permit the requested discovery. In light of this finding, we need not reach the remaining issues asserted by Provident. This case is remanded to the trial court for proceedings consistent with this opinion and such further proceedings as may be necessary. Costs of this appeal are to be taxed to Dr. Steinkerchner.

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PATRICIA J. COTTRELL, JUDGE

CONCUR:

_____
BEN H. CANTRELL, PRESIDING JUDGE (M.S.)

_____
WILLIAM B. CAIN, JUDGE