IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
December 8, 2022 Session

JOHN PATTON ET AL. v. ANITA PEARSON

Appeal from the Circuit Court for Davidson County
No. 21C176 Judge Amanda McClendon

No. M2022-00708-COA-R3-CV

After a fire at a rental home, suit was brought against the tenant. During discovery, the tenant sought admissions related to the landlords' insurance coverage and as to whether the suit was actually a subrogation action by the insurer brought in the names of the insured. As a result of resistance to disclosure, the tenant moved to compel. The trial court granted the motion. Following admissions indicating that this suit is a subrogation action by the insurer brought in the names of the insured, the tenant moved for summary judgment asserting that under the *Sutton* Rule she is an implied co-insured under the landlords' insurance policy. Opposition to summary judgment was advanced based upon the purported inapplicability of the *Sutton* Rule and the purported applicability of the collateral source rule. The trial court granted summary judgment to the tenant. This appeal followed. We affirm the trial court's grant of the motion to compel and summary judgment in favor of the tenant.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JEFFREY USMAN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Taylor D. Payne, Murfreesboro, Tennessee, for the appellants, John and Melody Patton.

Clifford Wilson, Brentwood, Tennessee, for the appellee, Anita Pearson.

OPINION

I.

This case begins with a candle, a ribbon, a basket of craft supplies, and the untimely demise of a foster cat. In 2016, Anita Pearson signed a lease agreement to rent a home located on Falls Creek Drive in Nashville, Tennessee, (the "premises") from John and

Melody Patton. Under the terms of the lease, the Pattons were not responsible for damage to Ms. Pearson's personal property in the event of a fire. The lease also provided that Ms. Pearson would be responsible for any damage to the premises caused by her misuse or neglect, although she was not responsible for any normal wear and tear. The lease was silent as to which party would maintain fire insurance for the premises itself and regarding implied co-insured status on any insurance policy. Ms. Pearson purchased fire insurance to protect her personal property. The Pattons purchased fire insurance for the premises.

In December 2019, Ms. Pearson lit a candle in the living room. A cat that she was fostering began playing with a ribbon, bringing it into contact with the candle. The ribbon acted as a fuse, with fire spreading up the ribbon and into a basket of craft supplies. The flame caused aerosol cans in the basket to explode. The resulting fire caused significant damage to the premises. The cat did not survive.

The Pattons lost rental income and use of the premises. Ms. Pearson did not pay for repairs to the premises. In accordance with their fire insurance policy, the Pattons' insurer did pay for the damages caused by the fire. In January 2021, the Pattons brought a suit against Ms. Pearson, alleging negligence and seeking $150,000, discretionary costs, and attorney's fees.

During discovery, the Pattons objected to answering certain requests for admission related to the Pattons' insurance coverage of the premises, asserting that the collateral source rule applied. Ms. Pearson filed a motion to compel responses to these requests for admission regarding insurance. In response, the Pattons again argued that the collateral source rule applied, making the information about any potential insurance coverage inadmissible. The trial court, however, granted the motion to compel. The Pattons responded to the request for admission, admitting that they had fire insurance coverage for the premises, they had received payment under that insurance policy, and, most significantly, that the lawsuit was actually being brought as a subrogation action by the insurance carrier in the Pattons' names.

Shortly after receiving the responses, Ms. Pearson moved for summary judgment, arguing that the Pattons' insurer was precluded under Tennessee law from bringing a subrogation suit against her. Ms. Pearson argued that the prohibition arose because under the parties' lease agreement, she qualified as an implied coinsured party against whom the insurer could not bring a subrogation action. The Pattons filed a cross-motion for summary judgment. The trial court granted Ms. Pearson's motion for summary judgment and denied the Pattons' motion for summary judgment. The Pattons timely appealed.

II.

Before the trial court and now on appeal, the parties contest whether the *Sutton* Rule, which is discussed in more detail below, applies in the present case. The trial court

concluded that the *Sutton* Rule is applicable and as a result granted summary judgment to Ms. Pearson. The trial court based its conclusion on this court's opinions in *Dattell Family Ltd. Partnership v. Wintz*, 250 S.W.3d 883 (Tenn. Ct. App. 2007) and *Allstate Ins. Co. v. Watson*, No. M2003-01574-COA-R3-CV, 2005 WL 457846, at *5 (Tenn. Ct. App. Feb. 25, 2005).

On appeal, the Pattons contend that the trial court was in error for three principal reasons. One, they argue the *Sutton* Rule is inapplicable given the terms of the parties' lease agreement. Two, they argue the *Sutton* Rule fails because the limitations imposed by the collateral source rule render any reference to insurance inadmissible. Three, they argue that the admissions sought by Ms. Pearson regarding insurance were irrelevant and inadmissible and thus non-discoverable. With regard to the third reason, the Pattons' admissions stemming from the ruling on the motion to compel sparked Ms. Pearson's motion for summary judgment which was predicated upon the applicability of the *Sutton* Rule. As a result of these purported errors, the Pattons argue that the trial court erred in granting summary judgment in favor of Ms. Pearson and that the trial court erred in granting the motion to compel discovery responses.

In *Dattel*, this court confronted the question of when a tenant is an implied co-insured on a landlord's insurance policy. *Dattel*, 250 S.W.3d at 884, 887. This issue is of consequence because "it has long been held that no right of subrogation can arise in favor of an insurer against its own insured." Steven Plitt, et al., 16 *Couch on Ins.* § 224:1 (3d ed. 2022); *see also Dattel*, 250 S.W.3d at 887 (stating that "the right of subrogation cannot arise in favor of an insurer against its own insured" (citations omitted)). Accordingly, "if the tenant is deemed a co-insured under the landlord's insurance policy, the insurance carrier would be barred from bringing a subrogation action against the tenant to recover for damages to the landlord's insured premises." *Dattel*, 250 S.W.3d at 887.

Writing for the court in *Dattel*, then-Judge Kirby noted the existence of three approaches adopted in various jurisdictions when answering the question of when a tenant is an implied co-insured on a landlord's insurance policy. *Id*. at 887. One, "absent a clear contractual expression to the contrary, the insurance carrier will be permitted to sue a tenant in subrogation." *Id*. In other words, under this first approach, unless the agreement expressly provides to the contrary, the tenant will not be considered a co-insured. Two, some jurisdictions "seeking to avoid a per se rule, hold that the applicability of the doctrine of subrogation should be assessed on a case-by-case basis and governed by the intent and reasonable expectations of the parties under the facts of the given case." *Id*. Three, under an approach often termed the *Sutton* Rule,[1] "courts hold that, absent a clearly expressed agreement to the contrary, the tenant is presumed to be a co-insured on the landlord's

[1] Brian C. Crist, Aaron Aft, & Gregory C. Touney, *Survey of Recent Reported Cases in Real Property Law*, 49 Ind. L. Rev. 1167, 1233 (2016) (noting that "[t]he *Sutton* rule is named as such because of the decision by the Oklahoma Court of Civil Appeals in *Sutton v. Jondahl*. 532 P.2d 478 (1975)").

insurance policy, and therefore the landlord's insurance carrier has no right of subrogation against the negligent tenant." *Id*. at 888.

The *Dattel* court rejected the first approach because the court found it to be "not consonant with the realities of residential leasing or expectations that would be reasonable for the parties." *Id*. at 891. Furthermore, the first approach "promotes economic waste by, in effect, requiring both the landlord and each tenant to obtain duplicate insurance on the tenant's leased premises and the entire building." *Id*. Rejecting the middle ground second approach, the *Dattel* court explained its reasoning as follows:

> [I]ts uncertainty allows neither the landlord nor the tenant to understand their respective insurance requirements and plan appropriately for catastrophic loss. Such a "case-by-case" approach would also likely result in more litigation when losses occur because resolution of liability depends heavily on a court's interpretation of the lease provisions. In the wake of such litigation, many residential tenants may be forced to settle with the landlord's insurance carrier rather than incurring substantial attorney's fees to defend a lawsuit. This dynamic does not serve equity.

Id. As for the advantages of adopting the *Sutton* Rule, the *Dattel* court stated the following:

> We find persuasive the reasoning underlying the *Sutton* approach, namely, that "basic equity and fundamental justice" require that, absent an express agreement to the contrary, a tenant should be considered a co-insured under the landlord's property casualty insurance policy, and the insurance carrier should therefore be precluded from asserting subrogation rights against the tenant. In general, the *Sutton* approach has four virtues: (1) it corresponds with the reasonable expectations of the parties; (2) it is in accord with the commercial realities involved in insuring residential lease properties; (3) it comports with sound economic policy; and (4) it provides greater certainty of the law.

Id. at 892.

In *Watson*, a precursor to *Dattel*, this court also offered the following explanation in support of the *Sutton* Rule:

> . . . the *Sutton* rule prevents landlords from engaging in gamesmanship when drafting leases by providing the necessary incentive for them, if they so desire, to place express subrogation provisions in their leases. If such a provision is placed in their lease, tenants will be on notice that they need to purchase liability insurance. If such a provision is not included in their lease, insurers will pass the increased risk along to landlords in the form of higher

> premiums, and landlords, in turn, will pass along the higher premiums to tenants in the form of increased rent.

Watson, 2005 WL 457846 at *5.

Significant portions of the Pattons' briefing arguing against the applicability of the *Sutton* Rule appear to be directed at relitigating the *Dattel* decision without actually seeking to have *Dattel* overturned. The Pattons raise a variety of arguments that miss the mark. They note that Tennessee law recognizes an ability for insurers to bring subrogation actions in the name of the insured. The Pattons are correct on this point,[2] but this argument does not significantly advance the determination as to whether this particular subrogation action is in accordance with Tennessee law. The Pattons also raise freedom of contract concerns as to applying the *Sutton* Rule and note that Tennessee law allows for structuring lease agreements such that tenants will be liable for damage to real property. A problem with the Pattons' freedom of contract rationale is that the *Sutton* Rule sets a default for when the lease agreement is silent. Nothing in the *Dattel* decision itself prevents the parties from contracting so that the tenant would not be an implied co-insured and would be subject to a subrogation action brought by the insurer. To embrace the Pattons' argument would actually harm the parties' freedom of contracting insofar as it would change a clearly established background law default rule from what it was when the parties' lease agreement was reached -- a *post hoc* change in the law.

In arguing that *Dattel* and hence the *Sutton* Rule are inapplicable to the present case, the Pattons also note that the parties' lease agreement expressly provided that the Pattons were not liable for any damage to Ms. Pearson's personal property in the event of a fire and that Ms. Pearson was responsible for any damage to the premises caused by her misuse or neglect although she was not responsible for any normal wear and tear. Attempting to distinguish *Dattel* on this basis is unavailing. The lease agreement in *Dattel* provided as follows:

> Paragraph 4 of the Lease Agreement states in part, "It is further understood that the Resident shall be liable for all damages done to the premises . . . and for all damages done to the premises at any time the Resident shall vacate same, ordinary wear and tear excluded." Paragraph 15 of the Lease Agreement states in full:
>
> > It is understood and agreed that the Resident is responsible for the apartment. The Resident is responsible for the care of all walls, doors,

[2] Citing Tennessee Rule of Civil Procedure 17.01 and Tennessee common law, the Tennessee Supreme Court observed in *Travelers Ins. Co. v. Williams* that "[u]pon payment by the insurer of a loss, it becomes the real party in interest with respect to the subrogation claim, and has the right to bring suit in the name of the insured or in its own name." 541 S.W.2d 587, 590 (Tenn. 1976) (citations omitted).

> door knobs, door keys, locks, mailbox locks, appliances, carpets, drapes, windows, screens, light fixtures, cabinets, commodes, sinks, fe[n]ces and the entire appearance of the apartment during the term of this lease and until the lease has been terminated by the Landlord. The Resident is responsible for repairing all damages to the apartment other than those caused by normal wear and tear. The Resident is responsible for the insurance of their personal property in the case of fire or other perils that would be covered by a resident's renters insurance policy, as Dattel Realty Company's insurance policies do not cover personal property of the resident. Resident is also responsible for liability that resident may incur as the result of a negligent action by the Resident, both as to individual apartment leased or common areas, including elevators, stairwells, swimming pool, corridors, grounds, parking and paved areas.

Id. at 885. If there is a distinction to be found between the lease agreement in *Dattel* and the lease agreement in the present case, for purposes of the applicability of the *Sutton* Rule, it is a distinction without a difference.

In the present case, the trial court determined that the parties' lease agreement is silent as to the obligation of either party to obtain fire insurance for the premises. The trial court concluded that under Tennessee law the *Sutton* Rule applies and the insurance carrier cannot proceed with a subrogation claim against Ms. Pearson as an implied co-insured party. We agree with these conclusions. After reviewing the lease, there is no express agreement regarding which party will obtain fire insurance for the premises or indicating that Ms. Pearson is not to be considered a co-insured party under the landlords' insurance. At least under *Dattel* then, the outcome is clear. The *Sutton* Rule applies, making Ms. Pearson an implied co-insured party under the Pattons' fire insurance policy and barring the subrogation claim brought against her by the insurer.

III.

The Pattons argue that nevertheless, the trial court's awarding of summary judgment was in error because of the collateral source rule. Under the Pattons' theory, the insurance-related information Ms. Pearson received after the Pattons were compelled to respond to the requests for admission was inadmissible. Because summary judgment must only be based on admissible evidence, they argue that summary judgment was invalid because it was based on inadmissible evidence. In response, Ms. Pearson argues that the collateral source rule does not apply to the present case because she did not use the insurance coverage information in an attempt to reduce or offset damages. Rather, Ms. Pearson indicates that the information regarding insurance was being used to demonstrate that this was a subrogation action being brought by the insurer in the name of the insured against her. This was important information because it revealed that this was a subrogation suit by

the insurer against an implied co-insured in violation of Tennessee law barring such actions.

When reviewing an award of summary judgment, granting is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. In making this assessment, a court "must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." *Cook v. Fuqua*, 653 S.W.3d 702, 705 (Tenn. Ct. App. 2022) (quoting *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002)). An appellate court's review of "a trial court's summary judgment decision is de novo without a presumption of correctness." *Regions Bank v. Prager*, 625 S.W.3d 842, 849 (Tenn. 2021). In conducting this review, a Tennessee appellate court makes "a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015).

Turning to the applicability of the collateral source rule, the Tennessee Supreme Court has indicated that:

> The collateral source rule as applied in Tennessee . . . is succinctly articulated in the widely-cited Section 920A of the Restatement (Second) of Torts:
>
> > (1) A payment made by a tortfeasor or by a person acting for him to a person whom he has injured is credited against his tort liability, as are payments made by another who is, or believes he is, subject to the same tort liability.
> >
> > (2) Payments made to or benefits conferred on the injured party from other sources are not credited against the tortfeasor's liability, although they cover all or a part of the harm for which the tortfeasor is liable.

Dedmon v. Steelman, 535 S.W.3d 431, 442 (Tenn. 2017) (quoting Restatement (Second) of Torts § 920A (1977)). The collateral source rule functions as both a substantive and evidentiary rule. *Dedmon*, 535 S.W.3d at 443. "Substantively, it affects the amount of damages that may be awarded against a defendant by prohibiting reduction of a plaintiff's recovery by benefits from sources unrelated to the tortfeasor." *Id*. Flowing from this substantive rule, as an evidentiary rule, "[i]f a plaintiff's recovery may not be reduced by collateral benefits, then 'evidence that a plaintiff has received benefits or payments from a collateral source independent of the tortfeasor's procuration or contribution' must be excluded." *Id*. at 444 (quoting *Bozeman v. State*, 879 So. 2d 692, 699 (La. 2004)).

The Tennessee Supreme Court examined the evidentiary functioning of the rule in *Dedmon*:

> One court has explained that evidence of insurance should not be presented to the jury "[b]ecause the likelihood of misuse by the jury clearly outweighs the probative value of evidence of collateral benefits." *Kenney [v. Liston]*, 760 S.E.2d [434,] 441 (W. Va. 2014)]. "The theory is 'that the jury may well reduce the damages based on the amounts that the plaintiff has been shown to have received from collateral sources.'" *Id.* (quoting *Ratlief v. Yokum*, 167 W.Va. 779, 280 S.E.2d 584, 590 (1981)); *Loncar v. Gray*, 28 P.3d 928, 933 (Alaska 2001) ("The collateral source rule exclud[es] evidence of other compensation on the theory that such evidence would affect the jury's judgment unfavorably to the plaintiff on the issues of liability and damages." (internal quotations omitted)); *Proctor v. Castelletti*, 112 Nev. 88, 911 P.2d 853, 854 (1996) (adopting a per se rule barring admission of evidence of a collateral source of payment for any purpose because "[t]here is an ever-present danger that the jury will misuse the evidence to diminish the damage award"); *Jurgensen v. Smith*, 611 N.W.2d 439, 442 (S.D. 2000) (excluding collateral-source evidence "because of the danger that the jury may be inclined to . . . reduce a damage award, when it learns that plaintiff's loss is entirely or partially covered" (internal quotations omitted)).

Dedmon, 535 S.W.3d at 444–45.

Ms. Pearson's motion for summary judgment is addressed to a limitation as a matter of Tennessee law on the ability of an insurer to bring a subrogation action against a tenant who is considered to be an implied co-insured of a landlord. In other words, the substantive component of the rule is not applicable as the bar is to the insurer bringing a subrogation action against the co-insured rather than upon the insured seeking recovery. We note that "[u]pon payment by the insurer of a loss, it becomes the real party in interest with respect to the subrogation claim." *Travelers Ins. Co. v. Williams*, 541 S.W.2d 587, 590 (Tenn. 1976); *see Kentucky Nat. Ins. Co. v. Gardner*, 6 S.W.3d 493, 499 (Tenn. Ct. App. 1999) ("Upon payment of a loss, an insurance carrier becomes the real party in interest with respect to its subrogation claim."). The evidentiary function of the collateral source rule—concern that a jury may misuse it in determining the damages—is also inapplicable to the present case. Improper influencing of a jury in reducing damages is not at issue in the present case. Rather, in seeking summary judgment, Ms. Pearson placed before the trial court the Pattons' admissions regarding their insurance coverage and that the present case is a subrogation suit by the insurer. She did so to demonstrate that she is an implied co-insured party under the insurance policy and therefore this is an improper suit under Tennessee law.

A variety of evidentiary, procedural, and substantive rules create protection, allowing masking for insurance companies and related to insurance coverage in litigation because of concerns about how this information can distort proper adjudication of legal rights and responsibilities and the determination of damages. The law allows a mask to be worn to conceal the presence of the insurer. In this case, the arguments of the plaintiffs would convert this protective masking into its own legal distortion by making the mask a barrier to the proper legal resolution of the matters before the trial court. Properly worn, the mask is designed to conceal the insurer where its presence should not legally matter, but here, because this is a subrogation action brought by the insurer against an implied co-insured, it does legally matter who is behind the mask.

We conclude that the collateral source rule does not apply to the circumstances of the present case. A contrary understanding would swallow the *Sutton* Rule. The collateral source rule is not meant to prohibit any and all evidence that involves insurance. The Pattons' admissions regarding insurance should not have been excluded under the collateral source rule, and the trial court did not err in considering the Pattons' discovery responses in ruling on the motion for summary judgment.[3]

IV.

The Pattons argue that Ms. Pearson never should have obtained the insurance and subrogation information that became the catalyst for her summary judgment motion. Specifically, the Pattons argue they should not have been compelled to respond to the following three requests for admission:

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[3] The Pattons also argue that the trial court erred in granting summary judgment because there were disputed material facts. In support of this contention, the Pattons assert that Ms. Pearson failed to provide citations to the record for certain facts in her response to the Pattons' statement of additional material facts as required by Tennessee Rule of Civil Procedure 56.03. The Pattons argue that, therefore, due to the lack of citation, those facts are deemed disputed, and this precludes summary judgment.

Generally, when a party fails to respond to additional undisputed facts with a proper citation to the record, the trial court may refuse to consider the factual contentions. *See Holland v. City of Memphis*, 125 S.W.3d 425, 428 (Tenn. Ct. App. 2003); *Owens v. Bristol Motor Speedway, Inc.*, 77 S.W.3d 771, 774 (Tenn. Ct. App. 2001). However, the Pattons did not raise this issue before the trial court. At oral argument in this case, the Pattons' attorney was asked directly if this issue was raised before the trial court. He answered simply, "No." Tennessee appellate courts have long followed the basic principle that "litigants must raise their objections in the trial court or forego the opportunity to argue them on appeal." *Emory v. Memphis City Sch. Bd. of Educ.*, 514 S.W.3d 129, 146 (Tenn. 2017); (citing *In re Adoption of E.N.R.*, 42 S.W.3d 26, 32 (Tenn. 2001) ("It has long been the general rule that questions not raised in the trial court will not be entertained on appeal . . . ." (quoting *Lawrence v. Stanford*, 655 S.W.2d 927, 929 (Tenn. 1983)); *In re Taylor B.W.*, 397 S.W.3d 105, 114 (Tenn. 2013) ("It has long been the rule that this Court will not address questions not raised in the trial court."); *Simpson v. Frontier Cmty. Credit Union*, 810 S.W.2d 147, 153 (Tenn. 1991) (noting that "issues not raised in the trial court cannot be raised for the first time on appeal")). Because the Pattons failed to raise this issue before the trial court, we decline to consider this issue which has been raised for the first time on appeal.

> 1. Landlords purchased property insurance on the subject building that included coverage for damage to the building caused by a fire.
>
> . . . .
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> 3. Landlords have received payment from their insurance for the damages to the building caused by the fire in this lawsuit.
>
> 4. Landlords' insurance carrier is now bringing this lawsuit in our names against Tenant for the damage to the building caused by the fire.

The Pattons summarize their argument as follows:

> The admissions sought in Responses to Requests for Admission 1, 3, and 4 should not have been compelled because they are beyond the scope of Tennessee Rule of Civil Procedure Rule 26.02 because the substance of those requests is outside of the scope of Tennessee Rule of Civil Procedure Rule 26.02.

We review pretrial discovery decisions under an abuse of discretion standard. *West v. Schofield*, 460 S.W.3d 113, 120 (Tenn. 2015). An abuse of discretion occurs when the trial court applies incorrect legal standards, reaches an illogical conclusion, bases its decision on a clearly erroneous assessment of the evidence, or employs reasoning that causes an injustice to the complaining party. *Id.* (citing *State v. Banks*, 271 S.W.3d 90, 116 (Tenn. 2008)).

Tennessee Rule of Civil Procedure 26.02 allows for the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . . 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." Tenn. R. Civ. P. 26.02(1).

For an order compelling a discovery response to be valid under Rule 26.02, the matters sought must be "(1) not privileged and (2) relevant to the subject matter of the lawsuit." *West*, 460 S.W.3d at 121. The Pattons have not alleged any privilege. They instead contend that the insurance information sought in aforementioned requests for admissions is irrelevant based upon the inapplicability of the *Sutton* Rule and inadmissible based upon the collateral source rule.

Relevancy has been quite broadly construed to include "any matter that bears on, or that reasonably could lead to other matters that could bear on any of the case's issues." *State ex rel. Flowers v. Tennessee Trucking Ass'n Self Ins. Grp. Tr.*, 209 S.W.3d 602, 615

(Tenn. Ct. App. 2006) (citing *Price v. Mercury Supply Co.*, 682 S.W.2d 924, 935 (Tenn. Ct. App. 1984)). Evidence is relevant if there is "some probative value as to the subject matter involved in the pending action." *West*, 460 S.W.3d at 125 (emphasis omitted).

Here, the Pattons sought insurance information including whether the case was actually brought by the insurance carrier in the Pattons' names. Whether a lawsuit is a subrogation suit is relevant when the defending party is claiming to be an implied co-insured as Ms. Pearson is here. This information certainly serves "some probative value as to the subject matter involved in the pending action." *See West*, 460 S.W.3d at 125 (emphasis omitted). As for inadmissibility, for the reasons discussed above, we conclude that the collateral source rule did not prevent the trial court from considering that the present case is a subrogation action by the insurer.

Therefore, we conclude that the trial court did not abuse its discretion, and we affirm the trial court's grant of the motion to compel discovery responses.

V.

In considering the arguments advanced on appeal and for the reasons discussed above, we affirm the judgment of the Circuit Court for Davidson County. Costs of the appeal are taxed to the appellants, John and Melody Patton, for which execution may issue if necessary. The case is remanded for such further proceedings as may be necessary and consistent with this opinion.

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JEFFREY USMAN, JUDGE