

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-218

JONNIE LOCKE

APPELLANT

V.

CONTINENTAL CASUALTY
COMPANY et al.

APPELLEES

Opinion Delivered NOVEMBER 2, 2011

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. CV-2007-403-1]

HONORABLE JODI RAINES
DENNIS, JUDGE

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Jonnie Locke appeals the circuit court's granting of summary judgment to Continental Casualty Company in Locke's direct-action negligence suit in which Locke alleged that she suffered injuries resulting from a fall at Jefferson Regional Medical Center, which was insured by Continental. As one of her points on appeal, Locke asserts that the circuit court erroneously found that certain hospital records were privileged and not discoverable. We reverse on this point and remand.

According to Locke's complaint, on January 20, 2005, she went to the hospital to check on her daughter, who was in the emergency room. Locke exited her car and was walking down the sidewalk when she tripped and fell over four exposed bolts protruding from the sidewalk. These bolts once held in place a handicap-parking sign.

Locke propounded interrogatories and requests for production of documents, asking



about the existence of reports and records of the accident, and Continental objected. Locke filed a motion to compel, and Continental responded, asserting that two entries made into the hospital's Global Reporting System were privileged and not discoverable under a statutory privilege. Ark. Code Ann. § 16-46-105(a)(1)(A) (Repl. 1999). Following a hearing on Locke's motion to compel, the court entered an order denying the motion, citing the statute relied on by Continental. In a separate order, the court also granted summary judgment to Continental.

Locke contends that the circuit court erred in finding that the statutory privilege applied to the documents. Continental replies that the documents fell squarely within the privilege. The statute provides in part as follows:

The proceedings, minutes, records, or reports of organized committees of hospital medical staffs or medical review committees of local medical societies having the responsibility for reviewing and evaluating the quality of medical or hospital care, and any records, other than those records described in subsection (c) of this section, compiled or accumulated by the administrative staff of such hospitals in connection with such review or evaluation, together with all communications or reports originating in such committees, shall not be subject to discovery pursuant to the Arkansas Rules of Civil Procedure or the Freedom of Information Act of 1967, § 25-19-101 et seq., or admissible in any legal proceeding and shall be absolutely privileged communications.

Ark. Code Ann. § 16-46-105(a)(1)(A).

Continental did not offer any testimony at the hearing on Locke's motion to compel to support its privilege claim, so this court is left only with the contents of the entries to determine whether the entries fell within the privilege. We hold that the entries did not fall within the privilege. The first entry shows in part that Kim Lassiter, who is an LPN and the reporter of the entry, reported that Locke, "a visitor," tripped over bolts in the emergency-



room parking lot and that Locke was seen and treated in the hospital, with x-rays showing a fracture of the fifth metatarsal on the right foot. The second entry, which does not name a reporter, reports that Locke tripped over bolts on the sidewalk in the emergency-room parking lot; that the fall was witnessed by “Tammy,” who worked in the emergency room; and that Locke was coming to visit her daughter who was in the emergency room when she caught her foot on four large bolts on the sidewalk in front of a handicap-parking space in the emergency-room parking lot, causing Locke to fall. The entry also notes that orange barrels had been placed around the bolts by the time Locke exited the hospital.

We agree with Locke that the entries did not fall within the statutory privilege. The statute creates a privilege for reports for “evaluating the quality of medical or hospital care,” and Locke was neither a patient nor under the hospital’s care at the time of the incident, but rather, according to the report, a “visitor.” Moreover, the entries were not prepared by “organized committees of hospital medical staffs or medical review committees of local medical societies.” Nor were the entries “compiled or accumulated by the administrative staff” in connection with any committee’s review or evaluation of the quality of medical or hospital care. While the entries note that the entries were “Reviewed by QM,” Continental did not present any testimony or other evidence regarding what in fact is “QM.”

Furthermore, information within the entries regarding the hospital’s medical treatment of Locke fell within a statutory exception to the privilege. That exception provides that the privilege does not apply to “incident reports or other records with respect to the care or treatment of any patient or . . . affect the discoverability or admissibility of such records.” Ark.



Code Ann. § 16-46-105(c). Thus, we hold that the circuit court erred when it found the entries privileged and not discoverable. See *Cochran v. St. Paul Fire and Marine Ins. Co.*, 909 F. Supp. 641 (W.D. Ark. 1995) (holding that incident reports were not protected from discovery).

Locke also argues that the circuit court erred in granting summary judgment because there existed genuine issues of material fact on whether the hospital breached its duty of care that it owed to Locke. In her argument on this point, Locke asserts that the hospital was on notice that the signs were dangerous and that the circuit court should have considered the deposition testimony of a hospital employee concerning his knowledge of the sign's condition. But because the circuit court erred in finding that the entries were privileged, and because additional discovery may result in new evidence being presented to the circuit court, we need not now address this point on appeal. A plaintiff is entitled to have the benefit of adequate discovery before being required to respond to a summary-judgment motion. *First Nat'l Bank v. Newport Hosp. & Clinic, Inc.*, 281 Ark. 332, 663 S.W.2d 742 (1984). As we have concluded that the entries should have been disclosed to Locke and thus discovery has not been adequate, we reverse and remand without addressing this issue.

Reversed and remanded.

GRUBER, J., agrees.

BROWN, J., concurs.

Crockett Law Firm, by: *Michael A. Crockett*; and *Brian G. Brooks, Attorney at Law, PLLC*, by: *Brian G. Brooks*, for appellant.

R.T. Beard III and *Tony Juneau*, for appellee Continental Casualty Company.