

2021 WL 9182657

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

ESTATE OF RICHARD M. LASIW BY HIS EXECUTRIX, MICHELE LASIW AND MICHELE LASIW INDIVIDUALLY  
V.

DR. PEDRO M. PEREIRA M.D., LOPA MAHARAJA, M.D., DIANE LO PRESTI, R.N., VALDEHL PATEL, R.N., NETYE EUSTACHE, R.N., MIN JUNG KIM, R.N., KAYLA ZIMMERMAN, R.N., ET AL.

DOCKET NO. AM-000608-20T2

MOTION FILED: 07/09/2021

SUBMITTED TO COURT: July 13, 2021

FILED, Clerk of the Appellate Division, July 29, 2021

MOTION NO. M-005949-20

BY: HACKENSACK UNIVERSITY MEDICAL CENTER, HACKENSACK MERIDIAN HEALTH

BY: ESTATE OF RICHARD M. LASIW BY HIS EXECUTRIX, MICHELE LASIW AND MICHELE LASIW

BEFORE PART L JUDGES: CARMEN MESSANO KAREN L SUTER

ORDER ON MOTION

CARMEN MESSANO, P.J.A.D.

ORDER

\*1 THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 29th day of July, 2021, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT

MOTION FOR LEAVE TO APPEAL

GRANTED

SUPPLEMENTAL:

This matter comes before the court on defendants' motion for leave to appeal from: 1) the Law Division's May 18, 2021 order granting plaintiffs' motion to compel the onsite or remote inspection of electronic data regarding the medical files of decedent, Richard M. Lasiw, pursuant to Rule 4:18-1; and, 2) the June 28, 2021 order denying reconsideration; and,

Defendants further move for a stay of those orders pending appeal; and,

The court having agreed to consider those motions on an emergent basis; and,

After providing the parties with an opportunity to brief all issues and having now considered the parties' briefs and the record from the Law Division;

It is on this 29th day of July, 2021, ORDERED:

Defendants' motion for leave to appeal is GRANTED, the orders under review are REVERSED and VACATED, and the matter is remanded to the Law Division for the reasons that follow.

Plaintiffs served a notice to inspect the electronic data on or about January 12, 2021. The notice sought "inspection of any and all electronically stored information/electronic medical records for [d]decedent ... including all audit trail data ... but not limited to" various electronic record systems at defendant hospital. It set the date of inspection as February 18, 2021.

Nothing in the record indicates any further contact between counsel until February 15, when plaintiffs' counsel emailed defense counsel confirming the inspection as noticed. Defense counsel responded by email the same day, indicating broadly his objection to any inspection. Nothing in the record indicates further discussion between counsel prior to plaintiffs' motion to compel the inspection dated March 31, 2021.

The judge considered the oral argument of counsel on May 18, 2021. Although defense counsel continued to broadly object to any inspection, he noted that plaintiffs failed to abide by the

procedural aspects of the discovery rules, in particular, [Rule 4:18-1](#) and [Rule 4:10—2\(f\)](#)•

In her oral decision, the judge comprehensively addressed the merits of defendants' substantive objections and rejected them. She entered the order compelling inspection of the electronic data as proposed by plaintiffs. In denying reconsideration, the judge concluded defendants failed to demonstrate any legal error in her prior ruling, nor had she failed to consider any relevant evidence or caselaw in her initial decision. [D'Atria v. D'Atria](#), 242 N.J. Super. 392, 401 (Ch. Div. 1990).

“An appellate court applies 'an abuse of discretion standard to decisions made by [the] trial courts relating to matters of discovery.’” [C.A. by Applegard v. Bentolila](#), 219 N.J. 449, 459 (2014) (alteration in original) (quoting [Pomerantz Paper Corp. v. New Cmty. Corp.](#), 207 N.J. 344, 371 (2011)). “It 'generally defer[s] to a trial court's disposition of discovery matters unless the court has abused its discretion[,] or its determination is based on a mistaken understanding of the applicable law.’” [Ibid.](#) (first alteration in original) (quoting [Pomerantz Paper Corp.](#), 207 N.J. at 371).

\*2 [Rule 4:18-1\(a\)\(1\)](#) specifically permits a party to “inspect ... designated documents (including ... electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, by the respondent into reasonably usable form) ....” The official comment to the [Rule](#), however, states: “Parties are encouraged to meet and confer about the format in which they will produce electronic documents. Parties also should seek agreement on whether the receiving party may review unrequested metadata in electronic documents.” [Pressler & Verniero, Current N. J. Court Rules](#), Official Comment on 4: 18-1 (2021). “The official comment offers guidance with regard to computer metadata,” [Ibid.](#)

[Rule 4:10-2\(f\)](#) specifically requires that “[w]hen parties request metadata in discovery, they should consult and seek agreement regarding the scope of the request and the format of electronic documents to be produced.”

The procedural aspects of these [Rules](#) are critical and may not be bypassed by the proponent of the discovery demand,

and the court should consider them as prerequisites to consideration of the merits of the motion to compel. In this case, plaintiffs did not attempt to comply with the requirements of the [Rules](#) prior to filing the motion to compel, and the judge failed to consider defendants' procedural arguments. We acknowledge that such efforts may prove fruitless, given the broad objections lodged by defendants; nonetheless, they may not be ignored. The obligation of a proponent of a demand for production of documents or for inspection to confer with an adversary prior to seeking the court's intervention serve laudatory goals that are well-recognized throughout our Rules of Court. [See, e.g., R. 1:6-2 \(c\)](#) (requiring the attorney for the movant to certify as to oral attempts to resolve the discovery dispute prior to bringing the motion, or serving the respondent with written notice that continued default will result in an appropriate motion without further notice).

We therefore reverse and vacate the orders under review. Plaintiffs shall comply with the procedural aspects of the Rules, and thereafter may seek the same relief if necessary. In doing so, we hasten to add that we have not considered the merits of defendants' arguments, which were comprehensively and thoughtfully addressed by the Law Division judge in her oral opinion, and her written decision denying reconsideration.

The motions for leave to appeal is granted. The orders under review are summarily reversed and vacated. The matter is remanded to the Law Division. We do not retain jurisdiction. Defendants' motion for a stay pending appeal is denied as moot.

FOR THE COURT:

BER-L-0387-20

ORDER - REGULAR MOTION

JAG

BERGEN

**All Citations**

Not Reported in Atl. Rptr., 2021 WL 9182657