

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT  
IN AND FOR HARDEE COUNTY, FLORIDA

THE TRIBUNE COMPANY,  
MOLLY SWEENEY, and  
THE SARASOTA  
HERALD-TRIBUNE CO.,

Petitioners/plaintiffs,

vs.

CASE NO. CA-91-370

HARDEE MEMORIAL HOSPITAL,  
HARRELL CONNELLY, Hospital  
Administrator and DEWEY TERRELL,  
Chairman, Hospital's  
Board of Directors,

Respondents/Defendants.

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ORDER

This cause is before the Court on a Petition for Writ of Mandamus against Hardee Memorial Hospital (the "hospital") and its records custodians for the release of public records pursuant to the Public Records Act, Chapter 119, Florida Statutes (1989). The Tribune Company (the "Tribune"), publisher of The Tampa Tribune, and Molly Sweeney, its reporter, filed the petition. The Sarasota Herald-Tribune Co. later joined. The facts underlying this petition are as follows:

On Tuesday, July 23, 1991, Tribune reporter Sweeney attended a meeting of the hospital's board of directors. At that time, a board member disclosed that a settlement agreement had been reached in Twigg v. Hospital District of Hardee County, Florida, Case No. 89-1262-CIV-T-17A, a nationally publicized suit pending in the United States District Court for the Middle District of Florida, and the case was dismissed. In that action, Ernest and

Regina Twigg alleged that the hospital swapped their infant daughter with the natural daughter of Barbara and Robert Mays. The Mays family also sued the hospital district. That lawsuit is still pending. After the board meeting, the Tribune reporter requested a copy of the settlement agreement from various hospital officials, including the hospital's attorney.

While acknowledging that the settlement agreement was a public record, the hospital maintained that the settlement agreement would not be released without a court order because it contained a confidentiality provision. The hospital also maintained that the public record was exempt from disclosure as attorney work product under Section 119.07(3)(n), Florida Statutes (Supp. 1990). That section states:

A public record which was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from the provisions of subsection (1) until the conclusion of the litigation or adversarial administrative proceedings.

The gist of the hospital's work product argument is that the settlement agreement constitutes work product under this exemption because it demonstrates the attorneys' assessments of

the merits of their case and litigation strategy not only in the Twiggs' case but in the related and pending Mays' case.

This Court rejects both the hospital's confidentiality and work product arguments. An agency simply cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements. Furthermore, a settlement agreement signed by the parties cannot constitute work product within the meaning of Section 119.07(3)(n), even if the payment of money constitutes a damages "bench mark" that might be relevant in a related lawsuit. See Orlando v. Desjardins, 493 So.2d 1027, 1028 (Fla. 1986).

Furthermore, if the signed settlement agreement constituted work product, the termination of the litigation, as evidenced here by the stipulation of dismissal, eviscerates the limited work product exemption under Section 119.07(3)(n). The hospital argues that the exemption survives until the conclusion of all related litigation, including the Mays' case. The exemption is not that broad. Even when litigation is related, the dismissal of one case destroys the limited agency work product privilege for that case. Seminole County v. Wood, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987).

Therefore, it is hereby ORDERED AND ADJUDGED that:

1. The Petition for Writ of Mandamus filed by The Tribune Company, Molly Sweeney and The Sarasota Herald-Tribune Company is hereby granted and the hospital must immediately deliver the settlement agreement to the petitioners.

2. The Court retain jurisdiction to determine the award of attorneys fees pursuant to Sections 119.07(3)(N) and 119.12, Florida Statutes (Supp. 1990).

DONE AND ORDERED in Chambers at Bartow, Polk County, Florida this 19 day of August, 1991.

~~DENNIS P. MALONEY~~  
Dennis P. Maloney, Circuit Judge

Copies furnished to:

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