

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHRISTOPHER JOHN HALL,

Petitioner,

v.

Case No. 5D18-1608

JEANINE LOUISE HALL AND BREVARD
PHYSICIAN ASSOCIATES, PLLC,

Respondents.

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Opinion filed February 1, 2019

Petition for Certiorari Review of Order
from the Circuit Court for Brevard County,
George B. Turner, Judge.

Charles A. Schillinger, and Joel A.
Goldfarb, of Schillinger & Coleman, PA,
Melbourne, for Petitioner.

No appearance for Respondents.

EDWARDS, J.

In this dissolution of marriage matter, Christopher John Hall (“Husband”) petitions this Court to issue a writ of certiorari quashing the circuit court’s discovery order which granted non-party Brevard Physician Associates’ (“BPA”) motion for a protective order regarding Husband’s request for non-party production. That order denied Husband access to certain financial records that may shed light on the value of Dr. Jeanie Hall’s (“Wife”) fractional ownership interest in BPA. BPA is a large medical practice involving

approximately seventy physicians, including Wife. We find that the circuit court was correct in granting BPA's motion for protective order as to many categories of documents that Husband sought, but departed from the essential requirements of law by not ordering production of certain other documents.

Wife filed a petition seeking dissolution of the parties' fifteen-year marriage. Husband filed an answer and counter-petition seeking, among other things, alimony and equitable distribution of the parties' marital assets. Husband sought production via non-party subpoena of sixteen categories of documents from BPA in an effort to determine the value of Wife's ownership interest in the medical practice.

BPA moved for entry of a protective order based on its argument that the value of Wife's interest in BPA is predetermined by BPA's Operating Agreement which is defined by the "Book Value" of BPA as described in that same operating agreement, which book value would be determined by BPA's accountant, and that value would be binding on all of BPA's owner/members. Husband responded that BPA's book value defines the value of Wife's interest in BPA only under limited circumstances: 1) failure of a member/owner to execute certain loan documents or make required contributions to BPA; 2) a sale based on termination of a member's employment for reasons other than death; 3) a sale based upon the member's death; and 4) an involuntary transfer of the member's interest in BPA. Husband argued both here and below that none of those circumstances will occur as a result of the parties' dissolution of marriage; thus, he is entitled to reasonable discovery from BPA to assist in determining the actual value of Wife's interest in BPA under a fair market valuation or any other reasonable methodology.

When an order denying a discovery request “effectively eviscerates a party’s claim, defense, or counterclaim, relief by writ of certiorari is appropriate.” *Giacalone v. Helen Ellis Mem’l Hosp. Found., Inc.*, 8 So. 3d 1232, 1234–35 (Fla. 2d DCA 2009). For purposes of resolving this discovery dispute, we find that none of the circumstances exist that would irrefutably define the value of Wife’s interest in BPA by an accountant’s determination of the book value of the practice. Wife will continue to be one of the owner/members of BPA even after the marriage is dissolved. If her ownership interest in BPA is a marital asset, its value must be determined and considered by the trial court in its equitable distribution analysis. Thus, information and documents regarding the value of BPA—which in turn may shed light on the value of Wife’s ownership interest—is discoverable as those documents may themselves be admissible or lead to the discovery of admissible evidence. See Fla. R. Civ. P. 1.280(b). One spouse is entitled to discovery concerning the value of the non-requesting spouse’s ownership interest in a company or business. See *Bushong v. Peel*, 85 So. 3d 511, 515 (Fla. 2d DCA 2012); *Palmer v. Servis*, 393 So. 2d 653, 655 (Fla. 5th DCA 1981). We agree that Husband is entitled to reasonable discovery from BPA so that he may seek to determine and offer evidence at trial of the value of Wife’s ongoing ownership interest in BPA.

We find that the trial court departed from the essential requirements of the law and that Husband would be subject to irreparable injury that cannot be cured by plenary appeal if he is denied that discovery. Accordingly, we grant the petition, quash the protective order in part, and instruct the trial court to order BPA to produce for Husband’s inspection, copying, and review, the subpoenaed documents described in paragraph eight (copies of all stock option plans, option agreements, other plans providing vested

benefits in BPA's stock, a detailed list of options granted), limited to those that apply to Wife's interest in BPA, and those subpoenaed documents described in paragraphs thirteen (closing statements and purchase agreements related to all purchases of BPA's stock since 2012), fourteen (any appraisals of BPA's stock made in the last five years), and sixteen (description of any bona fide offers to purchase BPA during the past five years). We deny the petition without prejudice as to the remaining documents sought by Husband's subpoena to seek discovery if additional good cause and need can later be shown by Husband after the above-described documents have been produced.

PETITION GRANTED IN PART, AND DENIED IN PART; REMANDED WITH INSTRUCTIONS.

COHEN and HARRIS, JJ., concur.