



Supreme Court State of Tennessee

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TENNESSEE SUPREME COURT HOLDS ATTORNEY-CLIENT PRIVILEGE EXTENDS TO THE FUNCTIONAL EQUIVALENT OF AN EMPLOYEE

Nashville, Tenn. - The Tennessee Supreme Court has held that the attorney-client privilege protects communications between a business's attorneys and a third party when the third party acts as the functional equivalent of an employee and when the communications relate to the attorney's representation of the business and were intended to be confidential.

The Supreme Court issued this ruling in a business dispute appealed from the Davidson County Circuit Court. In this case, Dialysis Clinic, Inc. sued to evict tenants from commercial properties in Nashville that the Dialysis Clinic had purchased. The tenants subpoenaed documents from XMi Commercial Real Estate, a property management company hired by Dialysis Clinic to manage the properties. Dialysis Clinic and XMi objected to producing emails between Dialysis Clinic's attorneys and XMi, arguing that they were protected by attorney-client privilege. The trial court ruled that XMi did not have to produce the emails because they were covered by attorney-client privilege. The Court of Appeals denied the tenants' request for review of the trial court's decision. The Supreme Court agreed to hear the case.

In a unanimous opinion, authored by Justice Sharon G. Lee, the Supreme Court noted that it is increasingly common for businesses to use outside consultants and other independent contractors. These third parties often operate in the same manner as employees of the business and have information needed by the business's attorneys that no employee of the business has. For that reason, many courts across the country have

extended the attorney-client privilege to cover communications between those third parties and the business's attorneys, when certain conditions are met.

Here, based on existing Tennessee law and cases from other jurisdictions, the Supreme Court ruled that the attorney-client privilege applies to communications between a business's attorneys and a third party when the third party acts as the functional equivalent of an employee and when the communications relate to the attorney's representation of the business and were intended to be confidential. Applying this legal framework, the Supreme Court held that XMi was the functional equivalent of a Dialysis Clinic employee and that the emails between XMi and Dialysis Clinic's attorneys were protected by attorney-client privilege. The Supreme Court affirmed the trial court's decision and sent the case back to the trial court for further proceedings.

To read the unanimous opinion of the Supreme Court in [*Dialysis Clinic, Inc. v. Kevin Medley*](#), authored by Justice Sharon G. Lee, please visit the Opinions section of tncourts.gov. Oral arguments for this case were video recorded and are available on tncourts.gov under Supreme Court and [Oral Argument Videos](#).

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