

MONDAY, MARCH 23, 2009
11:00 A.M.

NO. 3

#24917

RAENE LONGCHAMPS, as conservator
for MISTIE J. SANCHEZ, a minor,
and as special administrator for
the Estate of FIDEL SALVADOR
LONGCHAMPS, deceased,
Plaintiff and Appellant,

vs.

PAMELA EPHGRAVE, M.D.; and
SANFORD CLINIC,
Defendants and Appellee.

Mr. Steven M. Johnson
Mr. Ronald A. Parsons, Jr.
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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Kathleen K. Caldwell
Second Judicial Circuit
Minnehaha County

(CIV 07-3392)

STATEMENT OF THE ISSUES

- I. **IN A CIVIL ACTION, MAY PHYSICIANS OR OTHER MEDICAL PERSONNEL WHO ARE NON-PARTY, FACT WITNESSES IN THE CASE, CIRCUMVENT THE MEDICAL PRIVILEGE ESTABLISHED UNDER SOUTH DAKOTA LAW BY ENGAGING IN EX PARTE COMMUNICATIONS WITH DEFENSE COUNSEL REGARDING THEIR PATIENT'S MEDICAL TREATMENT UNDER THE GUISE OF PRIVILEGED ATTORNEY-CLIENT COMMUNICATIONS?**

The trial court held that defense counsel's *ex parte* communications with nurses employed by Sanford Medical Center regarding the allegations contained in the lawsuit against Dr. Ephgrave and Sanford Clinic were protected by the attorney-client privilege, and denied the plaintiff's motion to compel disclosure of the substance of those communications.

- *Schaffer v. Spicer*, 215 N.W.2d 134 (S.D. 1974)
- *Maynard v. Heeren*, 1997 SD 60, 563 N.W.2d 830
- *Alsip v. Johnson City Medical Ctr.*, 197 S.W.3d 722 (Tenn. 2006)
- *Baylaender v. Method*, 594 N.E.2d 1317 (Ill. Ct. App. 1992)
- *DeNeui v. Wellman*, 2008 WL 2330953 (D.S.D. June 5, 2008)
- SDCL § 19-2-3
- SDCL § 19-13-11