

Court of Claims of Ohio

The Ohio Judicial Center
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JANE DOE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2012-08575

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

JUDGMENT ENTRY

{¶1} On August 6, 2014, the magistrate issued a decision recommending judgment in favor of plaintiff in the amount of \$7,525 on plaintiff's claim of the unauthorized, unprivileged disclosure of medical information pursuant to *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395 (1999).

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." On August 20, 2014, defendant filed both a transcript of the proceedings before the magistrate and objections to the magistrate's decision. Plaintiff did not file a response.

{¶3} Plaintiff, an inmate in the custody and control of defendant at the Ohio Reformatory for Women (ORW), brought this action for the unauthorized disclosure of her medical information. Prior to her incarceration, plaintiff tested positive for the human immunodeficiency virus (HIV). While at ORW, plaintiff received medical treatment for HIV. Sometime in late 2011, plaintiff became aware that inmate Tashika Anderson observed plaintiff's name and HIV diagnosis listed on paperwork while

working as a porter in the infirmary. Plaintiff submitted an informal complaint to defendant on December 13, 2011, wherein she complained that her medical information had been wrongfully disclosed.

{¶4} According to Anderson, while cleaning an office in the ORW infirmary in early December 2011, she observed a sheet of paper that listed the names and institution numbers of inmates who were being treated for HIV. That list included plaintiff. Anderson testified that while she was cleaning a medical office in the infirmary, she was briefly left unsupervised by defendant's staff such that she was able to read the sheet of paper, which apparently was in open view in the office. Shortly thereafter, following an altercation involving Anderson, plaintiff, and plaintiff's friend, inmate Kimberly Jordan, Anderson disclosed the information regarding plaintiff's HIV status to other inmates. According to Jordan, 30-40 inmates were present during the altercation and plaintiff was humiliated by Anderson's comments regarding plaintiff's HIV status. Jordan reported that plaintiff subsequently became depressed and stopped participating in recreational activities.

{¶5} Marta Raneri, an inspector at ORW, investigated plaintiff's grievance alleging that Anderson had accessed her medical file. After performing an investigation, Raneri concluded that ORW's "medical department did violate policy 07-ORD-11, access in confidentiality in medical and mental health and recovery services by having a file where a third-shift inmate or porter could access it." Transcript, pgs 61-62; see Plaintiff's Exhibit 5.

{¶6} The magistrate determined that "Anderson had access to the open medical record which showed plaintiff's positive HIV status." Magistrate's decision, pg 6. The magistrate reasoned that "in light of 'the known propensity of some inmates to ingeniously and maliciously exploit any opportunity for leverage over staff or fellow inmates,' the court finds that it was foreseeable that allowing an inmate to have access to confidential medical records would lead to the disclosure of the information contained

therein.” *Id.*, quoting *Scott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-755, 2013-Ohio-4383, ¶ 30. Accordingly, the magistrate concluded that “allowing Anderson access to plaintiff’s medical information constitutes unauthorized disclosure for the purposes of the tort of unauthorized disclosure of confidential medical information as defined by *Biddle, supra.*” *Id.* The magistrate then recommended an award of \$7,525 for plaintiff’s damages.

{¶7} Defendant has interposed several objections to the magistrate’s decision. Defendant has identified its objections both by number and letter. In reviewing a party’s objections, the “court must conduct an independent analysis of the underlying issues, undertaking the equivalent of a de novo determination and independently assessing the facts and conclusions contained in the magistrate’s decision.” *Shihab & Assoc. Co. v. Ohio Dept. of Transp.*, 168 Ohio App.3d 405, 2006-Ohio-4456, ¶ 13 (10th Dist.); *City of Dayton v. Whiting*, 110 Ohio App.3d 115, 118 (2nd Dist.1996).

{¶8} In its objections labeled 2 and 4, defendant argues that plaintiff failed to establish the standard of care regarding the maintenance of confidential medical documents in a prison setting and that any finding that defendant was negligent was erroneous.

{¶9} The magistrate faulted defendant for allowing Anderson to access an open medical record which showed plaintiff’s positive HIV status. The magistrate noted that defendant has a duty to safeguard the confidential medical records of inmates. Such a duty was acknowledged by David Pennington, ORW’s medical operations manager. Additionally, Corrections Officer (CO), Kimberly Augsburger, testified that an inmate working in a medical office should remain under the CO’s direct supervision and that medical files are not to be left open when inmates are cleaning medical offices. Moreover, Raneri determined that defendant violated its own internal policy regarding confidentiality of medical records. Anderson, however, was briefly unsupervised in an office containing confidential medical records. During that interval, Anderson viewed a

medical record identifying plaintiff's positive HIV status. Defendant's objections are OVERRULED.

{¶10} In its objection's B, 1, and 3, defendant argues that the facts and circumstances of this case do not support a claim for the unauthorized disclosure of confidential medical information. Specifically, defendant argues that there was no affirmative act amounting to a disclosure and that no liability can attach where a party fails to prevent an inmate from "stealing" the confidential medical information.

{¶11} "In Ohio, an independent tort exists for the unauthorized, unprivileged disclosure to a third party of nonpublic medical information that a physician or hospital has learned within a physician-patient relationship." *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395 (1999), paragraph one of the syllabus. The Supreme Court of Ohio recognized the tort in *Biddle* based upon the policy that "[i]n general, a person's medical records are confidential. Numerous state and federal laws recognize and protect an individual's interest in ensuring that his or her medical information remains so." *Hageman v. Southwest Gen. Health Ctr.*, 119 Ohio St.3d 185, 2008-Ohio-3343, ¶ 9. "Indeed, even a prison inmate's personal medical records are qualifiedly protected from disclosure and are not 'public' records per se." *Wilson v. Ohio Dept. of Rehab. & Corr.*, 73 Ohio App.3d 496, 499 (1991).

{¶12} The Tenth District Court of Appeals has rejected the argument that "'unauthorized' disclosure under *Biddle* equates to 'intentional' disclosure." *Scott* at ¶ 29. In *Scott*, the court determined that "supervised inmate access to trash containing unshredded medical documents does not constitute 'disclosure' for purposes of the tort of unauthorized disclosure of medical information as defined by *Biddle*." *Id.* However, the court of appeals noted that, under certain circumstances, inadvertent disclosure might fulfill the elements of *Biddle*. *Id.* at ¶ 30. The evidence in the case at bar does not present the factual scenario of *Biddle* but rather presents an apparent inadvertent disclosure to a briefly unsupervised inmate with attendant consequences. The

magistrate found that the inadvertent disclosure of plaintiff's medical information to Anderson met the elements of *Biddle*. As detailed above, a disclosure need not be intentional to satisfy the elements of *Biddle*. In this case, defendant failed to protect plaintiff's confidential medical information from disclosure to inmate porters cleaning the medical offices. Defendant's objections are OVERRULED.

{¶13} Finally, in its remaining objections, defendant argues that it was error for the magistrate to not apportion any liability to Anderson and that Anderson and plaintiff fabricated the entire scenario in order to obtain a transfer from the institution. However, the magistrate determined that "allowing Anderson access to plaintiff's medical information constitutes unauthorized disclosure for the purposes of the tort of unauthorized disclosure of confidential medical information as defined by *Biddle, supra*." Magistrate's decision, pg. 6.

{¶14} It is foreseeable that allowing an inmate unsupervised access to the medical records of another inmate would lead to the disclosure of confidential medical information. Accordingly, the disclosure to Anderson was a violation of *Biddle*. Additionally, upon review of the transcript, the court does not believe that plaintiff fabricated the circumstances of this case in order to obtain a transfer from the institution. Indeed, defendant does not point the court to evidence that would support such a conclusion. Defendant's objections are OVERRULED.

{¶15} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein.

{¶16} Judgment is rendered for plaintiff in the amount of \$7,525 which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk

shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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