

[Cite as *Miller v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5709.]

JOSEPH MILLER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00393-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Joseph Miller, a former inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted while he was housed at defendant’s Marion Correctional Institution (“MCI”), on March 13, 2015, his medication was given to another inmate. Due to this negligent action on part of defendant’s prison personnel, fellow inmates now know he is Human Immune-deficiency Virus (“HIV”) positive.

{¶2} Plaintiff related due to the dissemination of this information to prison staff and fellow inmates he has suffered anxiety, fear, humiliation and depression for which he seeks damages in the amount of \$9,925.00. Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant submitted an investigation report acknowledging that plaintiff’s medication was accidentally given to another inmate. However, defendant asserted as the result of the disclosure plaintiff did not suffer physical injury or damage. Defendant further contended that plaintiff has failed to state a claim for negligent infliction of emotional distress because his distress was not severe or debilitating. Furthermore, plaintiff failed to offer evidence that other inmates knew of his condition and since plaintiff was released from prison on July 26, 2016, he “is no longer around any people who allegedly know his medical condition.”

{¶4} Plaintiff submitted a response stating defendant's negligence caused another inmate to have knowledge of his HIV condition. Plaintiff contended after his condition was exposed he "was harassed refused certain living arrangements and staff tampered with me urine test to get me rode out of the institution."

CONCLUSIONS OF LAW

{¶5} "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-Ohio-115, 715 N.E.2d 518, 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, 893 N.E.2d 153, ¶ 9. "Indeed, even a prison inmate's personal medical records are qualified protected from disclosure and are not 'public' records per se." *Wilson v. Ohio Dept. of Rehab. Corr.*, 73 Ohio App.3d 496, 499, 597 N.E.2d 1148 (10th Dist.1991).

{¶6} The Tenth District Court of Appeals has rejected the argument that "'unauthorized' disclosure under *Biddle* equates to 'intentional' disclosure." *Scott v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 12AP-755, 2013-Ohio-4383, ¶ 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*." *Scott*. However, the court of appeals noted that, under certain circumstances, inadvertent disclosure might fulfill the elements of *Biddle*. *Scott* at ¶ 30.

{¶7} In the case at bar, defendant acknowledged that plaintiff's HIV medication was given to another inmate by defendant's medical staff. In this case, defendant failed

to protect plaintiff's confidential medical information from disclosure by giving another inmate plaintiff's prescription. Plaintiff's prescription contained his name and inmate number.

{¶8} Furthermore, 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 information would lead to the disclosure of the information contained therein. *Scott* at ¶ 30. Therefore, under the circumstances presented in this case, the court finds that allowing another inmate to receive plaintiff's prescription for HIV medications constitutes unauthorized disclosure for the purposes of the tort of unauthorized disclosure of confidential medical information as defined in *Biddle*.

{¶9} While plaintiff seeks damages in the amount of \$9,925.00, plaintiff has presented no evidence as to the extent of his emotional distress. In *Jane Doe v. Ohio Department of Rehabilitation and Correction*, 2012-08575 (8-6-14) adopted jud (11-19-14), the court determined damages in the amount of \$7,500.00 were reasonable for the violation of the duty under 07-ORD-11, access in confidentiality in medical and mental health and recovery services. In *Doe*, plaintiff suffered harassment by fellow inmates, was severely depressed, experienced weight loss, discontinued exercise, work and recreational activities resulting in suicidal ideation.

{¶10} Based upon the totality of evidence, the court finds that plaintiff is entitled to damages attributable to the unauthorized disclosure in the amount of \$6,000.00. Accordingly, plaintiff is granted judgment in the amount of \$6,025.00, which includes the filing fee paid by plaintiff.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$6,025.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk