

[Cite as *Boddie v. Van Steyn*, 2011-Ohio-5660.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Howard Boddie, Jr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-263
Dr. Scott J. Van Steyn,	:	(C.P.C. No. 10CVH-10-15062)
Defendant-Appellee.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 3, 2011

Howard Boddie, Jr., pro se.

Roetzel & Andress, L.P.A., Thomas A. Dillon, and Klodiana B. Tedesco, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiff-appellant, Howard Boddie, Jr. ("Boddie"), appeals the judgment of the Franklin County Court of Common Pleas, which dismissed his complaint against Scott J. Van Steyn, M.D. ("Dr. Van Steyn"). Because we conclude that the trial court erred by dismissing Boddie's complaint for failure to file an affidavit of merit on a medical claim, we reverse.

I. BACKGROUND

{¶2} On October 13, 2010, Boddie filed a complaint against Dr. Van Steyn. In it, Boddie alleged that Dr. Van Steyn violated the physician-patient relationship that existed between them and disclosed confidential information about his medical condition. The complaint contained three counts.

{¶3} In count one, Boddie alleged that Dr. Van Steyn disclosed confidential information to attorney Todd Barstow and indicated to Barstow that Boddie's condition may be different than Dr. Van Steyn had relayed to Boddie and to the court.¹ Dr. Van Steyn obtained this information about Boddie "during the course of the physician-patient relationship," and this disclosure "violated the patient's rightful expectation of privacy and was the proximate cause of damages and injury to" Boddie.

{¶4} In count two, Boddie alleged that Dr. Van Steyn also disclosed information to prosecutor Leigh Bayer and gave information to Bayer that contradicted his earlier statements about Boddie's condition. Boddie alleged that Dr. Van Steyn's disclosure of this information violated Boddie's "rightful expectation of privacy and was the proximate cause of damages and injury to" him. He also said that he "continues to investigate possible grounds for a legitimate malpractice action."

{¶5} In count three, Boddie alleged that Dr. Van Steyn disclosed confidential information to prosecutor Shontell Walker and accused Boddie of coercing him into reporting more restrictive limitations than those needed. Boddie alleged that these

¹ The complaint does not reveal the details of the case Boddie was involved in, nor does it reveal Dr. Van Steyn's role in the matter.

accusations "were false and that the violation of the physician-patient confidentiality, outside of court, without consent or privilege, was the proximate cause of damages and injury to" him.

{¶6} In his prayer for relief, Boddie asked for consequential, proximate, and discretionary damages totaling \$1,000,000, plus costs and any other appropriate relief.

{¶7} Dr. Van Steyn filed an answer and denied Boddie's allegations. He specifically denied "that he disclosed confidential, non-public information to a third party, that he violated the patient's rightful expectation of privacy, or in any other way breached physician-patient confidentiality as alleged in Plaintiff's Complaint." Dr. Van Steyn also moved to dismiss Boddie's complaint for failure to include an affidavit of merit, which Civ.R. 10(D) requires to support a medical claim. Boddie opposed Dr. Van Steyn's motion and also moved to amend his complaint.

{¶8} On February 17, 2011, the trial court issued a decision and entry that granted Dr. Van Steyn's motion to dismiss and denied Boddie's motion to amend his complaint.

II. ASSIGNMENT OF ERROR

{¶9} Boddie filed a timely appeal, and he raises the following assignment of error:

THE TRIAL COURT ERRED WHEN IT GRANTED [DR. VAN STEYN'S] MOTION TO DISMISS BASED ON THE DETERMINATION THAT A COMPLAINT FOR BREACH OF PHYSICIAN-PATIENT CONFIDENTIALITY IS A "MEDICAL CLAIM" AND THEREFORE REQUIRED AN AFFIDAVIT OF MERIT.

III. DISCUSSION: A "MEDICAL CLAIM" UNDER R.C. 2305.113

{¶10} In his assignment of error, Boddie contends that the trial court erred by determining that his complaint alleged a medical claim and dismissing his complaint because he did not file an affidavit of merit pursuant to Civ.R. 10(D). We agree.

{¶11} The Supreme Court of Ohio has held that a defendant's proper response to a plaintiff's failure to include an affidavit of merit with a complaint containing a medical claim is a motion to dismiss under Civ.R. 12(B)(6). *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, ¶13. In considering a Civ.R. 12(B)(6) motion to dismiss, a trial court may not rely on allegations or evidence outside the complaint. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 1997-Ohio-169. Rather, the trial court may only review the complaint and may dismiss the case only if it appears beyond a doubt that the plaintiff can prove no set of facts entitling the plaintiff to recover. *O'Brien v. Univ. Community Tenants Union, Inc.* (1975), 42 Ohio St.2d 242, syllabus. We review de novo a trial court's dismissal under Civ.R. 12(B)(6). *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶12} Here, the trial court dismissed Boddie's complaint because he did not file the affidavit of merit Civ.R. 10(D) requires. Civ.R. 10(D)(2)(a) provides that, with some exceptions, "a complaint that contains a medical claim," as defined in R.C. 2305.113, "shall include one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability." Boddie concedes that he did not include an affidavit of merit with his complaint, but contends that his complaint does not contain a "medical claim."

{¶13} R.C. 2305.113(E)(3) defines " 'medical claim' " to include any claim that is asserted in a civil action against a physician and "that arises out of the medical diagnosis, care, or treatment of any person." In his civil action, Boddie alleges a claim against a physician, Dr. Van Steyn, but the claim does not arise out of any medical diagnosis, care or treatment by Dr. Van Steyn. Rather, his claim arises from Dr. Van Steyn's alleged disclosure of confidential information about him.

{¶14} In *Allinder v. Mt. Carmel Health* (Feb. 17, 1994), 10th Dist. No. 93AP-156, the plaintiff asserted a claim against a physician for disclosing her chemical-dependency treatment to her employer. The physician moved to dismiss her claim for failure to file an affidavit of merit (then required by former R.C. 2307.42) in support of her "medical claim" (then defined by former R.C. 2305.11). The trial court dismissed the complaint, and this court reversed. In determining that the plaintiff had not alleged a medical claim, this court noted that, in Ohio, a physician may be liable for the unauthorized disclosure of confidential information and that a physician's duty not to disclose confidential information arises separately from his or her duty to provide adequate medical care. Therefore, the plaintiff's complaint, which alleged "a violation of patient confidentiality and privacy rights," did not state a medical claim within the statutory definition. *Allinder*. See also *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395, 1999-Ohio-115, syllabus ("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.").

{¶15} In an attempt to distinguish *Allinder*, Dr. Van Steyn contends that Boddie's complaint at least questions his diagnosis and treatment because Boddie alleges that

some of Dr. Van Steyn's disclosures contradict statements he made previously to Boddie and to the court. To be sure, Boddie's complaint rests on the physician-patient relationship that existed between them, and Boddie states that Dr. Van Steyn gave contradictory statements. But a pre-existing relationship and exchange of information will always be necessary for a plaintiff to support a claim that the physician breached his or her duty of confidentiality, and a fair reading of Boddie's complaint is that his claims do not arise out of the medical diagnosis, care or treatment he received from Dr. Van Steyn. In fact, Dr. Van Steyn did not answer Boddie's complaint in those terms. Rather, he denied that he disclosed confidential information or otherwise breached physician-patient confidentiality. And we need not consider any claims Boddie may have raised in his amended complaint because the trial court denied his request to amend.

{¶16} For all these reasons, we conclude that Boddie did not allege a medical claim. Therefore, an affidavit of merit was unnecessary. Because the trial court held otherwise, we sustain Boddie's assignment of error.

IV. CONCLUSION

{¶17} In conclusion, we sustain Boddie's assignment of error. Accordingly, we reverse the judgment of the Franklin County Court of Common Pleas.

*Judgment reversed;
cause remanded.*

BRYANT, P.J., and SADLER, J., concur.
