STATE OF MICHIGAN

COURT OF APPEALS

SUZANNE JONES and RUSSELL JONES,

Plaintiffs-Appellees,

v

KIRK PARENT and ST. MARY'S MEDICAL CENTER OF SAGINAW, INC.,

Defendants-Appellants.

UNPUBLISHED
February 15, 2002

No. 224960
Saginaw Circuit Court
LC No. 97-020117-NO

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

By order of the Supreme Court, we consider defendants' application for leave to appeal as on leave granted.[1] We affirm.

Plaintiff[2] was employed as a tumor registrar by defendant St. Mary's Medical Center of Saginaw, Inc., where she was supervised by defendant Kirk Parent. Plaintiff alleged that defendants failed to accommodate her disability, rheumatoid arthritis, and retaliated against her following her request for an accommodation. Plaintiff alleged that she submitted documentation verifying her need for an accommodation, but defendant Parent failed to act on her request. Plaintiff further alleged that she received favorable reviews until her request for an accommodation. Plaintiff worked with another employee in her department. Plaintiff alleged that she was blamed for shortcomings in the department caused by her co-worker, who had also requested an accommodation. Plaintiff, in the course of discovery, requested information regarding the number of employees who received an accommodation.[3] The trial court granted plaintiff's request to the extent that medical records were not disclosed. The trial court's order provided, in relevant part:

[1] *Jones v Parent*, 461 Mich 958 (2000).

[2] Plaintiff's husband, Russell Jones, alleged a derivative claim of loss of consortium. For ease of reference, we will use the singular "plaintiff."

[3] Plaintiff also requested documentation regarding the personnel file of her department co-worker. That discovery request is not at issue on appeal.

> NOW THEREFORE, IT IS HEREBY ORDERED that defendants shall provide a list of all other individuals for which defendants' have made accommodations for medical reasons and any documentation that supports the accommodation excluding medical reasons acquired in attending to the individual as a patient.

The application of the physician-patient privilege[4] presents a legal question that we review de novo. *Baker v Oakwood Hospital Corp*, 239 Mich App 461, 468; 608 NW2d 823 (2000). Once the applicability of the privilege is determined in light of the facts, we determine whether the trial court's order was proper or an abuse of discretion. *Id*. Based on the facts available, we cannot conclude that the trial court abused its discretion. Defendants argue that disclosure of the information in the present case will preclude patients from disclosing their full medical history for fear of the loss of the confidential status of that information.[5] Defendants further argue that *presumably* the request for an accommodation will be accompanied by a release of medical information. Lastly, defendants argue that the information sought by plaintiff is irrelevant.

However, there is no indication that any documents that defendants created in response to the trial court's order contained any information that a physician acquired. See *Herald Co, Inc v Ann Arbor Public Schools*, 224 Mich App 266, 276; 568 NW2d 411 (1997). Additionally, the information at issue, in this case, involves disclosure of information provided by *employees* seeking an accommodation. The statute governing accommodation does not provide any procedure for acquiring an accommodation that requires disclosure of medical records, MCL 37.1210, and defendants failed to provide any internal policies or procedures that mandates such

[4] MCL 600.2157 governs physician-patient privilege and provides in relevant part: "Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to do any act for the patient as a surgeon." Reviewing the plain language of the statute, *In re MCI Telecommunications Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999), the statutory privilege does not apply to defendants who are being sued in their capacity as employers. To the extent that defendants argue that, nonetheless, the discovery at issue will require them to violate the privilege, we will briefly address the claim.

[5] Defendants argue that this problem will arise where the need for an accommodation is not readily ascertainable by physical appearance. However, it is unknown if any employees fall into this category. "Advisory opinions are, inherently, abstract answers to abstract questions without factual development." *Advisory Opinion on Constitutionality of 1975 PA 227*, 400 Mich 270, 292; 254 NW2d 528 (1977) (Opinion of Levin, J.). We do not render advisory opinions. *People v Wilcox*, 183 Mich App 616, 620; 456 NW2d 421 (1990); see also Const 1963, art 3, § 8. In lieu of hypotheticals and presumptions regarding what the accommodation information would disclose, an in camera proceeding is the appropriate forum to determine whether discovery materials are protected by a statutory privilege. *LeGendre v Monroe Co*, 234 Mich App 708, 742; 600 NW2d 78 (1999). We note that defendants argue that an in camera review will not resolve any issues because it has provided the relevant information to plaintiff, but redacted the name of the applicable employee. However, it is unclear whether this documentation reflects accommodations and whether modified work schedules due to on the job injuries are considered accommodations. Thus, we disagree with defendants' characterization that the need for an in camera review is moot.

disclosure. Accordingly, the allegation that the release of this discovery information will create a chilling effect on full disclosure of medical information is mere speculation. Finally, we cannot conclude that the information is irrelevant. On the record available, defendants have failed to definitively set forth any basis for their challenge to the failure to accommodate claim in order for us to examine the relevancy argument. Lastly, we note that the decision of *Dorris v Detroit Osteopathic Hospital Corp*, 460 Mich 26; 594 NW2d 455 (1999), has no bearing on this decision, because it dealt with disclosure of patients' records, not employees.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer