

[Cite as *Cook v. Dept. of Rehab. & Corr.*, 2018-Ohio-1665.]

JOHNNIE D. COOK

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00491AD

Interim Clerk Daniel R. Borchert

MEMORANDUM DECISION

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#### FINDINGS OF FACT

{¶1} Plaintiff, Johnnie D. Cook, an inmate, filed a complaint against defendant, the Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff asserted that on April 23, 2017, he submitted an Institutional Health Care Slip to see a nurse concerning a medical problem. Plaintiff claimed that his confidential medical information was shared with correctional officers, who in turn shared it with his fellow inmates, in violation of ODRC’s policies and his rights under the state of Ohio and United States Constitution. He stated that he has been harassed by the release of his medical information.

{¶2} Plaintiff related that due to the dissemination of this information to fellow inmates he has suffered depression, humiliation, and cruel and unusual punishment for which he seeks damages in the amount of \$10,000.00. Plaintiff was not required to file the \$25 filing fee.

{¶3} Defendant submitted an investigation report, and argued that plaintiff failed to provide any details to support his claim. Specifically, defendant stated that plaintiff provided no names of officers or nurses involved, or any evidence that would support plaintiff’s claims for \$10,000 in damages for depression. Defendant attached the report from the Institutional Inspector who could not do a proper investigation into the matters alleged due to lack of information.

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{¶4} Plaintiff submitted a response and attached his Informal Complaint Resolution (“ICR”) which stated names of those involved. In the ICR, plaintiff states that on April 23, 2017, he submitted a health care slip to Nurse Rayburn and she gave it to CO Collum, who read the slip. CO Collum then returned to the block and told all the inmates that “my guts is hanging out due to my severe hernia problem.” The “action taken” portion of the form, filled out by defendant’s staff member, states that the staff member spoke to Nurse Rayburn who stated that CO Collum was in possession of his health care slip and the staff member would address plaintiff’s allegations with staff per DRC policy 68-MED-01.

#### 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 rejected the argument that “unauthorized disclosure under *Biddle* equates to ‘intentional’ disclosure.” *Scott v. Ohio Dept. of Rehab. & 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

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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*. *Scott* at ¶ 30.

{¶7} In this case, plaintiff’s ICR confirms that Nurse Rayburn stated that CO Collum possessed plaintiff’s health care slip, and that defendant’s staff would address plaintiff’s allegations with staff per ODRC policy 68-MED-01. Thus, contrary to the arguments in defendant’s investigation report, ODRC knew the names and conduct that gave rise to plaintiff’s claim for unauthorized, unprivileged disclosure of medical information. Defendant failed to respond to plaintiff’s allegation that CO Collum told inmates on plaintiff’s block that “my guts is hanging out due to my severe hernia problem.”

{¶8} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness’s testimony *State v. Antill*, 176 Ohio St. 61, 197 N.E.2d 548 (1964). The court finds plaintiff’s account of the dissemination of information persuasive. Therefore, under the circumstances presented in this case, the court finds that allowing a CO to disseminate medical information about an inmate to his cell block constitutes the unauthorized disclosure for the purposes of the tort of unauthorized disclosure of confidential medical information as defined in *Biddle*.

{¶9} However, to the extent that any of plaintiff’s claims can be construed as constitutional claims against defendant, this court does not have jurisdiction over those claims. It is well-settled that the court of claims does not have jurisdiction to hear constitutional claims brought against the state. *Bleicher v. Univ. of Cincinnati Coll. of Med.*, 78 Ohio App.3d 302, 604 N.E.2d 783 (10th Dist. 1992).

{¶10} While plaintiff seeks damages in the amount of \$10,000.00, plaintiff has presented no evidence as to the extent of his emotional distress. In *Jane Doe v. Ohio*

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*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.

{¶11} Based upon the totality of evidence, the court finds that plaintiff is entitled to damages attributable to the unauthorized disclosure in the amount of \$200.00.

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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 \$200.00. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Interim Clerk