

[Cite as *Valente v. Porter, Wright, Morris & Arthur, L.L.P.*, 2010-Ohio-6201.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95499

JOHN VALENTE

PLAINTIFF-APPELLANT

vs.

**PORTER, WRIGHT, MORRIS
& ARTHUR, L.L.P.**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-689757

BEFORE: Celebrezze, J., Blackmon, P.J., and Jones, J.

RELEASED AND JOURNALIZED: December 16, 2010

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiff-appellant, John Valente, appeals the trial court's decision granting summary judgment in favor of defendant-appellee, Porter Wright Morris & Arthur, L.L.P. ("Porter Wright"). For the reasons that follow, we affirm.

{¶ 2} Appellant, a former law student at the University of Dayton School of Law ("UDSL"), filed multiple lawsuits against the school in 2007. Porter Wright has represented UDSL in these various cases. While we do not have the complete records of those actions before us in this appeal, a complaint filed in the United States District Court for the Southern District of Ohio, identified by case number 3:08 CV 225, raised claims related to

UDSL's Honor Code accusations and disciplinary proceedings.¹ Appellant then filed for temporary injunctive relief asking the federal court to lift his suspension from UDSL. Appellant requested this relief claiming that UDSL violated various portions of its Honor Code and did not follow the proper procedures in suspending him.

{¶ 3} On April 9, 2009, appellant filed the instant action against Porter Wright for inducement of a breach of confidentiality or fiduciary duty and legal malpractice. On June 31, 2009, appellant filed an amended complaint to include a statement explaining why venue was proper in Cuyahoga County and to delete the legal malpractice claim.² Porter Wright filed its motion for summary judgment on March 30, 2010 arguing that appellant could not prove a claim for inducement of a breach of confidentiality or breach of fiduciary duty because such claims have only been recognized in cases involving a patient/physician relationship, and appellant presented no facts to support his claim that Porter Wright induced UDSL to breach any duty it owed appellant.

¹Appellant was accused of violating UDSL's Honor Code and was suspended from the university as a result.

²Despite the omission of the legal malpractice claim from appellant's amended complaint, he filed a motion in May 2010 seeking to join parties he claimed were necessary to support such a claim. Because he failed to plead a legal malpractice claim, it will not be considered in this appeal.

{¶ 4} On July 8, 2010, the trial court granted Porter Wright's motion for summary judgment finding that a claim for inducement of a breach of confidentiality or breach of fiduciary duty has not been extended to cases such as the one at issue and that Ohio does not recognize a fiduciary relationship between a university and an adult student.

{¶ 5} Appellant filed this timely appeal claiming the trial court failed to address his argument that Porter Wright induced third parties, not just UDSL, to breach their contractual obligation of confidentiality, the trial court misinterpreted and misapplied *Biddle v. Warren Gen. Hosp.*, 86 Ohio St.3d 395, 1999-Ohio-115, 715 N.E.2d 518, and the trial court erred in finding that appellant and UDSL did not have a fiduciary relationship.

Law and Analysis

{¶ 6} This court reviews the lower court's granting of summary judgment de novo. *Brown v. Scioto Cty. Commrs.* (1993), 87 Ohio App.3d 704, 622 N.E.2d 1153. Before summary judgment may be granted, the court must determine that there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and that viewing the evidence in a light most favorable to the nonmoving party, reasonable minds can reach one conclusion in favor of the moving party. Civ.R. 56(C); *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

Inducement of a Breach of Confidentiality

{¶ 7} Before deciding the merits of appellant's claims, we must first determine whether appellant could present a colorable claim of inducement of a breach of confidentiality in this context. In support of his claim, appellant relies on *Biddle*. In *Biddle*, a law firm and a hospital reached an agreement whereby the hospital would send all patient registration forms to the law firm and the firm would contact those patients it thought were eligible for Supplemental Security Income. *Biddle* at 396. A class action suit was filed on behalf of the hospital's patients against the hospital and the law firm alleging that such an arrangement was a breach of the hospital's duty of confidentiality. *Id.* at 397. When addressing the law firm's liability, the Court in *Biddle* construed the narrow issue to be "whether a third party can be held liable for inducing the unauthorized, unprivileged disclosure of nonpublic medical information." *Id.* at 407. The Court held that such a claim does exist where the physician or hospital learned the information within a physician-client relationship. *Id.* at 408.

{¶ 8} This case and *Biddle* are clearly distinguishable. In *Biddle*, the law firm actively sought the information for its own benefit, i.e., to gain clients by informing them of their ability to have their medical bills paid by the Supplemental Security Income program. Contrarily, in this case, any information obtained by Porter Wright was obtained in order to defend

against a lawsuit filed by appellant. The two cases are distinguishable, and we see little room for *Biddle's* application in this context.

{¶ 9} This court is unaware of any Ohio cases that extended *Biddle's* holding beyond the breach of confidentiality that occurs when a third party obtains an individual's medical records without his consent. In fact, *Biddle* has been cited numerous times in Ohio cases, none of which extend its holding beyond the realm of medical records. See, e.g., *Cornwall v. N. Ohio Surgical Ctr.*, 185 Ohio App.3d 337, 2009-Ohio-6975, 923 N.E.2d 1233; *Garland v. Seven Seventeen Credit Union, Inc.*, 184 Ohio App.3d 339, 2009-Ohio-5214, 920 N.E.2d 1034, ¶20; *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601, 913 N.E.2d 939, ¶28-29 (Moyer, C.J., concurring); *Roe v. Planned Parenthood Southwest Ohio Region*, 122 Ohio St.3d 399, 2009-Ohio-2973, 912 N.E.2d 61, ¶54; *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, ¶17; *Hageman v. Southwest Gen. Health Ctr.*, 119 Ohio St.3d 185, 2008-Ohio-3343, 893 N.E.2d 153, ¶10-13; *Herman v. Kratche*, Cuyahoga App. No. 86697, 2006-Ohio-5938; ¶13, *Kutnick v. Fischer*, Cuyahoga App. No. 81851, 2004-Ohio-5378, ¶31.

{¶ 10} Assuming without deciding that the Ohio Supreme Court intended *Biddle's* holding to extend beyond its application to the release of an individual's medical records, appellant is unable to support a claim for

inducement of a breach of confidentiality or fiduciary duty.³ This court declines to unnecessarily decide such an issue of first impression. However, we question whether the Ohio Supreme Court would support such an extension, especially in light of how narrowly the Court decided the issue in *Biddle*.

{¶ 11} We must first note that appellant has failed to demonstrate that UDSL, or any of the students involved in the disciplinary proceedings, violated the duty of confidentiality.⁴ In a document titled “Plaintiff’s Response to Defendant’s Motion to Dismiss or in the Alternative for Summary Judgment and Plaintiff’s Motion for Summary Judgment,” appellant purported to attach an email in which a UDSL student complained that he was ordered to violate the Honor Code’s confidentiality requirements. Notably, appellant either attached the wrong email or redacted that portion of the email that supported his argument. Although Porter Wright pointed out this error, appellant never provided the correct copy of the email that purportedly proves that UDSL instructed students to violate the Honor

³To establish liability for inducing a breach of confidentiality, appellant must prove 1) that Porter Wright knew of the confidential relationship between appellant and UDSL, 2) Porter Wright intended to induce UDSL to disclose information about appellant or that Porter Wright reasonably should have anticipated that its actions would induce UDSL to disclose such confidential information, and 3) Porter Wright did not reasonably believe UDSL could disclose such information without violating the duty of confidentiality it owed to appellant. *Biddle* at 408.

⁴This includes students involved in the disciplinary proceedings who served an adjudicatory function as well as those who were mere witnesses.

Code.⁵ In fact, in its reply in support of its motion to dismiss or in the alternative for summary judgment, Porter Wright noted, “Plaintiff alleges that he has attached an e-mail which establishes that Porter Wright breached the Honor Code’s confidentiality provisions. First, the e-mail attached to Plaintiff’s Motion does not include the language that Plaintiff quotes in his Motion. Second, even if it did, the brief statement which Plaintiff quotes does not substantiate a claim that Porter Wright induced the University to breach the confidentiality proscribed under the Honor Code. It does not establish any fact; it serves only to fuel Plaintiff’s never ending suspicions of conspiracy and foul play, thus prompting him to file this litigation when he could not achieve his desired result in the Federal litigation.”

{¶ 12} The record is devoid of any evidence whatsoever that UDSL or any of its students provided Porter Wright with confidential information related to the disciplinary proceedings against appellant. Appellant relies on the fact that Porter Wright has not denied the receipt of confidential information to argue that a breach of the duty of confidentiality occurred. Porter Wright has consistently refused to admit or deny whether it obtained confidential information through its representation of UDSL because such information would be protected by the attorney-client privilege. This refusal

⁵ Appellant referred to this email again in “Plaintiff’s Reply to Defendant’s Response to Motion for Summary Judgment.”

to admit or deny does not constitute evidence that Porter Wright was in receipt of confidential information related to the disciplinary proceedings against appellant.

{¶ 13} Construing the undisputed material facts in favor of appellant, he has failed to provide any evidence that UDSL or any of its students breached the duty of confidentiality. Summary judgment was properly granted in favor of Porter Wright. Appellant's first and second assignments of error are overruled.

Fiduciary Duty

{¶ 14} In his third and final assignment of error, appellant argues that the trial court erred in finding there was no fiduciary duty between UDSL and appellant. For the same reasons set forth in our analysis of appellant's first and second assignments of error, we need not address the merits of appellant's argument. Appellant offered no evidence that UDSL breached any duty it owed him. As such, we need not determine whether UDSL and appellant shared a fiduciary relationship. Appellant's third assignment of error is overruled.

Conclusion

{¶ 15} Once Porter Wright filed its summary judgment motion claiming that *Biddle* was inapplicable to the case at bar and that appellant failed to prove that UDSL breached any duty it owed appellant, the burden shifted to

appellant to offer evidence to support his causes of actions. Appellant failed to meet that burden. Despite the fact that litigation was ongoing for 15 months, appellant failed to offer one scintilla of evidence that UDSL, or any of its students, breached any duty owed to him or that Porter Wright was in receipt of confidential information related to the disciplinary proceedings against him. As such, summary judgment was properly granted in favor of Porter Wright.

{¶ 16} Porter Wright asked this court, through oral motion, pursuant to App.R. 23, to sanction appellant for having to defend this appeal. This appeal, while lacking merit, is not frivolous or without just cause; therefore, this court denies Porter Wright's motion.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

PATRICIA ANN BLACKMON, P.J., and

LARRY A. JONES, J., CONCUR