

*Note: In the case title, an asterisk (\*) indicates an appellant and a double asterisk (\*\*) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2019-126

OCTOBER TERM, 2019

Rick LaPrade* v. Lisa Menard, Commissioner	} } } } }	APPEALED FROM:  Superior Court, Washington Unit, Civil Division  DOCKET NO. 109-2-189
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff, a prisoner who sought copies of his prison medical records, appeals the civil division’s order dismissing his complaint after denying his motion to compel and for costs. We affirm.

In the summer of 2017, plaintiff requested his medical records from the Department of Corrections (DOC). In June 2017, the medical records were apparently sent to plaintiff’s sister at plaintiff’s request after plaintiff was told that the records could not be sent to the out-of-state facility where he was serving his sentence.

Plaintiff was dissatisfied with either the manner of delivery or the format on which the records were provided. On February 20, 2018, plaintiff filed a complaint in the superior court against DOC’s commissioner seeking disclosure of the records. Two days later, the trial court ordered plaintiff to attempt waiver of service before the court would authorize service by sheriff at public expense. On March 14, 2018, plaintiff filed a notice of lawsuit and a request for a waiver of service of summons. On April 16, 2018, plaintiff filed a motion for waiver of summons fees. One week later, the court authorized plaintiff to serve defendant by sheriff, indicating that it would consider plaintiff’s motion after service was completed.

On May 18, 2018, plaintiff filed a motion for a default judgment. On August 14, 2018, after defendant’s attorney stated at a July 13 status conference that plaintiff had failed to include a summons with his waiver request, the civil division ordered the court clerk to prepare a summons and send it to plaintiff with the waiver papers. Defendant’s attorney entered an appearance on October 12, 2018, one week after service was completed. Defendant filed an answer to the complaint on November 9, 2018.

On November 27, 2019, following a status conference held the previous day, the trial court indicated that a week earlier defendant had provided plaintiff with a compact disc presumably containing all the requested medical records. In response to plaintiff’s complaint about the poor quality of the recording, the court ordered the nurse manager at the prison facility to assist plaintiff in viewing the information on the compact disc. The court stated that the case would remain open

until January 31, 2019, at which time it would be dismissed if nothing further was filed with the court.

On January 14, 2019, plaintiff filed a motion to compel and for assignment of costs, stating that he was still unable to view the records because there was no law library at the prison facility where he was incarcerated and because the records were not legible. He also stated that he did not see in the records supplied to him a prior urologist visit he had had in the community. He asked that he be awarded \$20.40 in costs incurred in obtaining the records. On April 1, 2019, following a March 25 telephonic conference, the court dismissed the case and denied plaintiff's request for costs.

On appeal, plaintiff does not deny that he has received all of the requested records. Rather, he argues that: (1) the trial court erred by allowing his public records request to drag on for fourteen months; and (2) even if this case is not grounded in the Public Records Act (PRA), the court erred by not awarding him his costs in obtaining the records. Regarding the first argument, plaintiff points to a PRA provision that prioritizes the resolution of PRA cases. See 1 V.S.A. § 319(b) (stating that except for "cases the court considers of greater importance," PRA cases shall "take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way"). He also suggests that PRA cases should not be subject to the rules concerning a request for waiver of service because of the lengthy time periods associated with such requests. See V.R.C.P. 4(1)(3)(F) (allowing in-country defendant thirty days to respond to request for waiver); V.R.C.P. 4(1)(4) (allowing in-country defendant who accepts waiver sixty days to file answer from date waiver request was sent).

We find no abuse of discretion in how the trial court handled plaintiff's lawsuit. Notably, plaintiff was not entitled to his medical records under the PRA, which makes confidential records such as plaintiff's medical records unavailable for public access. See 1 V.S.A. § 317(c)(1)-(2) (exempting from public disclosure records otherwise made confidential by law and records that may only be disclosed to specifically designated persons); 18 V.S.A. § 1881(b) (prohibiting disclosure of protected health information). Rather, he was able to obtain the records because they were his own medical records. For that reason, we need not address whether the trial court abused its discretion in requiring plaintiff to seek waiver of service by summons rather than authorizing service by sheriff at state expense, and in denying plaintiff an award of attorney's fees pursuant to the PRA. 1 V.S.A. § 319(d)(2).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice