

11-0924

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

R. K.,

Plaintiff,

v.

ST. MARY'S MEDICAL CENTER, INC.
d/b/a ST. MARY'S MEDICAL CENTER,

Defendant.

CIVIL ACTION NO. 10-C-694
Judge David M. Paneake

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ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S
MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION FOR A
MORE DEFINITE STATEMENT

January 7, 2011, the Court held a hearing on the Motion to Dismiss or, In the Alternative, Motion For A More Definite Statement filed by Defendant St. Mary's Medical Center, Inc. d/b/a St. Mary's Medical Center ("St. Mary's"), which was represented by its counsel, Ryan Q. Ashworth, Esq. Plaintiff, R. K. ("the Plaintiff") opposed the motion, and was represented by his counsel, Jeffrey V. Mehalic, Esq. Having reviewed the parties' briefs and the arguments of counsel, the Court rules as described below.

FINDINGS OF FACT

St. Mary's admitted Plaintiff as a psychiatric patient in March, 2010. At or

about the same time, Plaintiff was involved in divorce proceedings with his then-wife. Plaintiff has alleged that, while hospitalized at St. Mary's, certain employees

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improperly accessed his medical records, and then disseminated and disclosed that information to his wife and her divorce attorney.

Plaintiff filed his complaint on September 21, 2010. The complaint set forth eight causes of action under the under the factual allegations: (1) negligence; (2) outrageous conduct; (3) intentional infliction of emotional distress; (4) negligent infliction of emotional distress; (5) negligent entrustment; (6) breach of confidentiality; (7) invasion of privacy; and (8) punitive damages.

St. Mary's timely filed its Motion To Dismiss The Complaint Or, In The Alternative, For A More Definite Statement Of Facts, in which it asserted that: (1) the Plaintiff's claims were preempted by the Health Insurance Portability and Affordability Act ("HIPAA") and should be dismissed; (2) that the Plaintiff's claims fell within the definition of "health care" under the West Virginia Code § 55-7B-2(f), and should be dismissed for failure to comply with the pre-suit filing requirements of § 55-7B-6; and (3) the Plaintiff's factual allegations failed to support his intended causes of action and should be dismissed.

Plaintiff has responded in opposition that first, HIPAA does not apply to this action. Second, his claims do not arise under the Medical Professional Liability Act and thus he is not required to comply with the pre-filing requirements. Third, the Plaintiff has alleged sufficient facts to support his causes of action, and St. Mary's has failed to comply with the requirements of Rule 12(e).

CONCLUSIONS OF LAW

Standard of review

St. Mary's brought its motion under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure and § 55-7B-1, *et seq.*, of the West Virginia Code. It sought dismissal of the Plaintiff's complaint for failure to state a claim upon which relief may be granted. In the alternative, and under Rule 12(e) of the West Virginia Rules of Civil Procedure, St. Mary's moved that the Plaintiff be required to provide a more definite statement, as St. Mary's asserted that his current pleading was too vague and ambiguous to enable it to respond.

Rule 12(b) of the West Virginia Rules of Civil Procedure allows a party to move for dismissal of claims: "How presented - every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto ..." Failure to state a claim upon which relief can be granted is such a defense.¹

The purpose of Rule 12(b)(6) is to test the formal sufficiency of the complaint.² Stated a different way, it is a determination of whether the plaintiff is entitled to offer evidence to support the claims in the complaint.³ The burden on a plaintiff in a Rule 12(b)(6) motion is relatively light, and the standard of proof is a liberal

¹ W. Va. R. Civ. P. 12(b)(6) (1998).

² *Collia v. McJunkin*, 178 W. Va. 158, 358 S.E.2d 242 (1987).

³ *Dimon v. Mansy* 198 W.Va. 40, 479 S.E.2d 339 (1996).

standard that few plaintiffs fail to meet.⁴ A trial court should not dismiss a complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitled him to relief.⁵

Rule 12(e) of the West Virginia Rules of Civil Procedure permits a party to move for a more definite statement "if a pleading to which a responsive pleading is permitted is so vague or ambiguous that the party cannot reasonably be required to frame a responsive pleading ..."⁶ A Rule 12(e) motion shall point out the defects complained of and the details desired.⁷ If such a motion is granted, "and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems fit."⁸

The Plaintiff's claims under HIPAA.

St. Mary's moved the Court under Rule 12(b)(6) to dismiss Plaintiff's complaint because it failed to state a claim upon which relief could be granted. In

⁴ *John W. Lodge Distributing Co., Inc. v. Texaco, Inc.*, 161 W. Va. 603, 245 S.E.2d 157 (1978).

⁵ *Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 236 S.E.2d 207 (W. Va.).

⁶ W. Va. R. Civ. P. 12(e) (1998).

⁷ *Id.*

⁸ *Id.*

support, St. Mary's asserted that Plaintiff's claims are preempted by federal law, specifically HIPAA, which encompasses, addresses, and expressly preempts private, state-law causes of action against a hospital, such as St. Mary's, for the unauthorized release of medical information. The Court agrees.

"A provision or requirement under this part, or a standard or implementation specification adopted or established under section 1320d-1 through 1320d-3 of this title, shall supersede any contrary provision of State law," as provided by 42 U.S.C. § 1320d-7, and must be dismissed. This is true even though HIPAA is not specifically mentioned in Plaintiff's complaint.

HIPAA does not provide for a private cause of action. The relevant portion of HIPAA for purposes of St. Mary's's motion is 1320d-2(d)(2), which provides:

(2) Safeguards

Each person described in section 1320d-1(a) of this title who maintains or transmits health information shall maintain reasonable and appropriate administrative, technical, and physical safeguards –

- (A) to ensure the integrity and confidentiality of the information;
- (B) to protect against any reasonably anticipated –
 - (i) threats or hazards to the security or integrity of the information; and
 - (ii) unauthorized uses or disclosures of the information; and
- (C) otherwise to ensure compliance with this part by the officers and

employees of such person.⁹

The Court notes that this is an issue of first impression. There is relatively little on which the Court may rely for precedential guidance. The Court does find that Plaintiff's claims are preempted by HIPAA and will dismiss these claims, which are contrary to federal law as they involve the disclosure of health information. All of the causes of action which are about, or that involve that disclosure of confidential information and the unauthorized release of the medical information, which HIPAA covers. HIPAA does not provide Plaintiff with a private cause of action. The Court concludes that these asserted causes of action would afford the Plaintiff remedies under state law that are not permitted by, and are rejected by HIPAA.

The Court finds the Connecticut case of *Fisher v. Yale Univ.*¹⁰ to be instructive. The case at bar involves an administrative procedure, which is also what was before the Connecticut court. It is instructive on this issue, at least by analogy.

The Court also relies on the principle of legislative interpretation known as *inclusio unius est exclusio alterius*, which means "the inclusion of one is the exclusion of another," so that if provision is not specifically included in the public law, it is excluded.

⁹ 42 U.S.C. § 1320d-2(d)(2) (2010).

¹⁰ 2006 WL 1075035 (Conn. Super. April 3, 2006).

The Plaintiff's claims under the Medical Professional Liability Act.

St. Mary's has also argued that this case falls under the West Virginia Medical Professional Liability Act ("MPLA"), and that Plaintiff failed to follow the MPLA's provisions for pre-suit filing, including filing a notice of claim and a screening certificate of merit. Plaintiff argues that his claims do not fall under the MPLA.

West Virginia Code § 55-7B-2 defines "health care" as "any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement."

The Court notes that the failure to plead claims under the MPLA does not bar its application: "The failure to plead a claim as governed by the Medical Professional Liability Act does not preclude application of the Act. Where the alleged tortious acts or omissions are committed by a health care provider within the context of rendering 'health care' as defined by W. Va. Code, 55-7B-2(e), the Act applies regardless of how the claims may have been pled."¹¹

However, just because a cause of action involves a health care provider or facility does not make the MPLA the exclusive remedy. "The West Virginia Medical Professional Liability Act applies only to claims resulting from death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility

¹¹ *Blankenship v. Ethicon, Inc.*, 221 W. Va. 700, 656 S.E.2d 451 (2007).

to a patient. It does not apply to other claims that may be contemporaneous to or related to the alleged act of medical professional liability.”¹²

“The Legislature has granted special protection to medical professionals while they are acting as such. This protection does not extend to intentional torts or acts outside the scope of ‘health care services.’”¹³ “Where, however, the action in question was outside the realm of the provision of [‘health care’], the statute does not apply.”¹⁴

The Court finds that Plaintiff’s claims are not covered by the MPLA and thus there was no need to follow its pre-suit requirements. The conduct in question is unrelated to providing medical care or health care, and therefore the Court will not dismiss the complaint for failure to comply with the MPLA.

The Plaintiff’s individual causes of action.

St. Mary’s argued that Plaintiff’s individual causes of action should be dismissed because the factual allegations are insufficient to support the causes of action.

First, as to the invasion of privacy claim, while the complaint may not outline

¹² *Boggs v. Camden-Clark Memorial Hospital Corp.*, Syl. Pt. 3, 216 W. Va. 656, 609 S.E.2d 917 (2004).

¹³ *Boggs*, 216 W. Va. at 662-63, 609 S.E.2d at 923-24.

¹⁴ *Blankenship*, 221 W. Va. at 707, 656 S.E.2d at 458.

the specifics of this claim, it is sufficient to put St. Mary's on notice of the claim.

Second, as to the intentional infliction of emotional distress or outrageous conduct claim, St. Mary's argues that Plaintiff did not plead any facts that would rise to the level of conduct that is "so atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency." The Court will not make a judgment as to the level of conduct, and finds that that is a better question for summary judgment or a jury, and is premature now.

Third, as to negligent entrustment claim, the Court finds that Plaintiff has pled sufficient facts for the claim. If St. Mary's takes issue with the discovery procedures and requests, it can raise that issue at a later and more appropriate time.

Fourth, as to the negligent infliction of emotional distress, breach of confidentiality claims, the Court finds that Plaintiff has pled enough to move forward. The Court cannot say at this point that there are no set of facts that would entitle Plaintiff to relief and that he cannot show the elements of negligence, and without more, the Court will not hold that St. Mary's owed no duty to Plaintiff.

In the alternative, St. Mary's has moved that Plaintiff provide a more definite statement if its motion to dismiss is denied, which the Court will address in order to have a record of all of the issues for future discussion. All that is required under Rule 8 of the West Virginia Rules of Civil Procedure is a short and plain statement of the claim, and the Court finds that the complaint is sufficient to put St. Mary's on notice as to the claims and that the specifics can be elicited during discovery.

Accordingly, the Court **GRANTS** St. Mary's motion to dismiss under HIPAA preemption; **DENIES** St. Mary's motion to dismiss under the Medical Professional Liability Act; **DENIES** St. Mary's motion to dismiss as to the specific issues with the individual causes of action; and **DENIES** St. Mary's motion for a more definite statement of facts.

The objections and exceptions of the parties to these rulings are noted.

This is a final and appealable Order.

The Clerk is directed to send certified copies of this Order to the following counsel of record:

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ENTERED this 9th day of May, 2011.

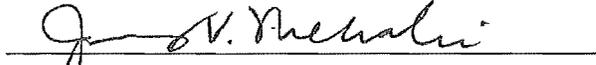


JUDGE DAVID M. PANCAKE

Prepared by:

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STATE OF WEST VIRGINIA
COUNTY OF CABELL
I, ADELL CHANDLER, CLERK OF THE CIRCUIT
COURT FOR THE COUNTY AND STATE AFORESAID
DO HEREBY CERTIFY THAT THE FOREGOING IS
A TRUE COPY FROM THE RECORDS OF SAID COURT
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THIS 10 2011
Adell Chandler CLERK
CIRCUIT COURT OF CABELL COUNTY WEST VIRGINIA

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