

In the Circuit Court of Putnam County, West Virginia

J.M.A.,
Plaintiff,

vs.)

MARSHALL UNIVERSITY JOAN C.
EDWARDS SCHOOL OF MEDICINE,
MARSHALL UNIVERSITY BOARD OF
GOVERNORS,
RADIOLOGY, INC,
CABELL HUNTINGTON HOSPITAL,
INC.,
MARK JASON AKERS, M.D. ET AL,
Defendants

Case No. CC-40-2019-C-75

**Order Denying Defendants Marshall University Joan C. Edwards School of Medicine and
Marshall University Board of Governors' Motions to Dismiss**

COMES NOW, the Plaintiff, J.M.A., by counsel, The Giatras Law Firm, PLLC, and Defendants, Marshall University Joan C. Edwards School of Medicine and Marshall University Board of Governors by counsel, Campbell Woods, PLLC, upon the Defendants' Motions to Dismiss the Amended Complaint.

The Court, after careful review of the file, the Defendants' Motion to Dismiss the Amended Complaint and memoranda in support, the Plaintiff's response thereto, a review of the record, full hearing taking place on November 7, 2019, and June 29, 2020, and for good cause shown, it is Hereby **ORDERED, DECREED, and ADJUDGED** that this Court **DENIES** the *Motion to Dismiss* and makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The Plaintiff's Complaint alleges that the Plaintiff was a patient at Cabell Huntington Hospital in or around 2011 where he received a procedure that required

radiological images to be taken.

2. The Plaintiff's Complaint alleges that, in or around 2018, the Plaintiff became aware that those images, which had not been de-identified, had been viewed by his peers at the Defendant university's medical school.

3. The Plaintiff's Complaint alleges that the Plaintiff learned about this embarrassing disclosure of his sensitive medical information at his residence in Putnam County, West Virginia.

4. The Plaintiff's Complaint alleges that the Plaintiff is a student at the Defendant University and medical school.

5. The Plaintiff's Complaint alleges that the Plaintiff's sensitive medical information was disseminated amongst his peers without being de-identified which caused him severe humiliation.

6. The Plaintiff's Complaint alleges that the cause of action, the harm caused to the Plaintiff, occurred in Putnam County, West Virginia.

Conclusions of Law

1. The West Virginia Consumer Credit and Protection Act (WVCCPA) venue provision, W. Va. Code § 46A-5-107 states, in its entirety:

Any civil action or other proceeding brought by a consumer to recover actual damages or a penalty, or both, from creditor or a debt collector, founded upon illegal, fraudulent or unconscionable conduct, or prohibited debt collection practice, or both, shall be brought either in the circuit court of the county in which the plaintiff has his or her legal residence at the time of the civil action, the circuit court of the county in which the plaintiff last resided in the state of West Virginia, or in the circuit court of the county in which the creditor or debt collector has its principal place of business or, if the creditor or debt collector is an individual, in the circuit court of the county of his or her legal residence. With respect to causes of action arising under this chapter, the venue provisions of this section shall be exclusive of and shall supersede the venue provisions of any other West Virginia statute or rule.

2. The purpose of the WVCCPA is to protect consumers from unfair, illegal, and deceptive acts or practices by providing an avenue of relief for consumers who

would otherwise have difficulty proving their case under a more traditional cause of action. . . . Where an act is clearly remedial in nature, we must construe the statute liberally so as to furnish and accomplish all the purposes intended. *State ex rel. McGraw v. Scott Runyan*, 194 W.Va. at 777, 461 S.E.2d at 523.

3. The venue statute of W. Va. Code § 14-2-2A states that “any civil action in which the governing board of any state institution of higher education, any state institution of higher education...is made a party defendant, shall be brought in the circuit court of any county wherein the cause of action arose, unless otherwise agreed by the parties.”

4. While the two statutes may seemingly conflict, the Plaintiff is the master of his complaint, and has alleged the cause of action to have occurred in Putnam County, West Virginia. Because the cause of action is alleged to have occurred in Putnam County, West Virginia, and because of the superceding language found in W. Va. Code § 46A-5-107, venue is properly found in that county.

5. Even were W. Va. Code § 14-2-2A to apply, because the cause of action is alleged to have occurred in Putnam County, West Virginia, venue is properly maintained by this Court.

In light of all the above findings, and for good cause shown consistent with the principals of justice, the Court hereby DENIES the Defendants’ Motion to Dismiss the Amended Complaint.

The objection of any party aggrieved to this ruling is hereby noted and preserved.

The Clerk is hereby DIRECTED to send certified copies to all counsel of record at no cost.

Prepared by:

/s/ Troy N. Giatras

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/s/JudgeName
Circuit Court Judge
29th Judicial Circuit

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