

SUPREME COURT OF OHIO

Roe v. Planned Parenthood Southwest Ohio Region

122 Ohio St. 3d 399, 2009-Ohio-2973 · No. No. 2007-1832 · Decided July 1, 2009

SUMMARY

The Supreme Court of Ohio held that the balancing test from *Biddle v. Warren General Hospital* provides a defense to liability for unauthorized disclosure of confidential medical information but does not create a right to discover confidential medical records of nonparties. It also held that R.C. 2151.421(M) creates a substantive right and could not be applied retroactively, and that punitive damages were unavailable under former R.C. 2151.421 absent statutory authority. The court affirmed the judgment of the Court of Appeals for Hamilton County.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; Moyer, C.J.; O'Connor, J.; O'Donnell, J.; Pfeifer, J.; Lanzinger, J.; Cupp, J.; Donovan, J.; Mary E. Donovan, J., sitting for O'Connor, J.
JURISDICTION	Ohio
DECIDED	July 1, 2009
DOCKET	No. 2007-1832
DISPOSITION	affirmed
PROCEDURAL POSTURE	Discretionary appeal from the judgment of the Court of Appeals for Hamilton County reversing a trial court order compelling production of confidential child-abuse reports and redacted medical records of nonparty patients.
STANDARD OF REVIEW	De novo review of the privilege and discovery issue because the case involved discovery of confidential and privileged information.
PRECEDENTIAL VALUE	published_binding
PARTIES	John Roe, June Roe, Jane Roe, a minor, by her parents v. Planned Parenthood Southwest Ohio Region, Other defendants

TOPICS

discovery dispute

privilege

medical records privacy

statutory interpretation

punitive damages

PRACTICE AREAS

Civil procedure

Evidence

Health law

Statutory interpretation

Constitutional law

Torts

Remedies

QUESTIONS PRESENTED

1. Whether the balancing test in *Biddle v. Warren General Hospital* creates a right to discover confidential medical records of nonparties in a private lawsuit.
2. Whether redaction of identifying information removes the privileged or confidential status of nonparty medical records and child-abuse reports.
3. Whether the 2008 amendments to R.C. 2151.421, including division (M), could be applied retroactively to authorize damages and discovery in this pending action.
4. Whether punitive damages were available under former R.C. 2151.421 in the absence of express statutory authorization.

HOLDINGS

1. The balancing test in *Biddle v. Warren General Hospital* applies only as a defense to the tort of unauthorized disclosure of confidential medical information; it does not create a litigant's right to discover confidential medical records of nonparties in a private lawsuit.
2. Redaction of personal identifying information does not remove the privileged status of confidential medical records or child-abuse reports.
3. R.C. 2151.421(M) affects a substantive right, and its retroactive application would violate due process.
4. In the absence of statutory authority, punitive damages are not available for violating former R.C. 2151.421.
5. The Roes could not discover reports of other incidents of abuse under former R.C. 2151.421 because that version of the statute contained no applicable exception for discovery in this private civil action.

KEY QUOTATIONS

“We hold that the balancing test in Biddle v. Warren Gen. Hosp. (1999), 86 Ohio St.3d 395, 715 N.E.2d 518, applies only as a defense to the tort of unauthorized disclosure of confidential medical information and does not create a right to discover confidential medical records of nonparties in a private lawsuit.” (¶ 3)

“Thus, we hold that R.C. 2151.421(M) affects a substantive right, and its retroactive application would violate due process.” (¶ 37)

“Therefore, we hold that in the absence of statutory authority, punitive damages are not available under former R.C. 2151.421.” (¶ 43)

“Redaction of personal information, however, does not divest the privileged status of confidential records.” (¶ 49)

“Because Biddle applies as a defense to the tort of unauthorized disclosures of confidential medical information, we hold that Biddle does not authorize the Roes to discover the confidential medical records of

FACTUAL BACKGROUND

The Roes alleged that Planned Parenthood performed an abortion on their fourteen-year-old daughter without adequate parental notification or consent, without obtaining the minor's informed consent, and without reporting suspected sexual abuse by the minor's adult soccer coach. The Roes sought compensatory and punitive damages and requested discovery of child-abuse reports and medical records of nonparty minors treated by Planned Parenthood over a ten-year period. Planned Parenthood produced the daughter's records but withheld the nonparty records based on confidentiality and physician-patient privilege.

PROCEDURAL HISTORY

The trial court granted the Roes' motion to compel and ordered production of confidential records with identifying information redacted. The court of appeals reversed, holding that the records were not necessary or sufficiently probative to overcome the nonparties' privacy interests and that former R.C. 2151.421 did not authorize punitive damages. The Supreme Court of Ohio accepted jurisdiction and affirmed the appellate judgment.

DISPOSITION

affirmed

CASES CITED

- Biddle v. Warren Gen. Hosp., 86 Ohio St. 3d 395, 715 N.E.2d 518 (1999)
- Richards v. Kerlakian, 162 Ohio App. 3d 823, 2005-Ohio-4414, 835 N.E.2d 768
- Fair v. St. Elizabeth Med. Ctr., 136 Ohio App. 3d 522, 737 N.E.2d 106 (2000)
- Alcorn v. Franciscan Hosp. Mt. Airy Campus, 2006-Ohio-5896
- Cepeda v. Lutheran Hosp., 2008-Ohio-2348
- Hageman v. Southwest Gen. Health Ctr., 119 Ohio St. 3d 185, 2008-Ohio-3343, 893 N.E.2d 153
- Jackson v. Greger, 110 Ohio St. 3d 488, 2006-Ohio-4968, 854 N.E.2d 487
- Ackison v. Anchor Packing Co., 120 Ohio St. 3d 228, 2008-Ohio-5243, 897 N.E.2d 1118
- Bielat v. Bielat, 87 Ohio St. 3d 350, 721 N.E.2d 28 (2000)
- French v. Dwiggins, 9 Ohio St. 3d 32, 458 N.E.2d 827 (1984)
- Osai v. A & D Furniture Co., 68 Ohio St. 2d 99, 428 N.E.2d 857 (1981)
- Campbell v. Burton, 92 Ohio St. 3d 336, 750 N.E.2d 539 (2001)
- Rice v. CertainTeed Corp., 84 Ohio St. 3d 417, 704 N.E.2d 1217 (1999)
- O'Toole v. Denihan, 118 Ohio St. 3d 374, 2008-Ohio-2574, 889 N.E.2d 505
- Kleybolte v. Buffon, 89 Ohio St. 61, 105 N.E. 192 (1913)
- Cincinnati Women's Serv., Inc. v. Taft, 466 F. Supp. 2d 934 (S.D. Ohio 2005)
- Cincinnati Women's Serv., Inc. v. Taft, 468 F.3d 361 (6th Cir. 2006)

- Med. Mut. of Ohio v. Schlotterer, 122 Ohio St. 3d 181, 2009-Ohio-2496, 909 N.E.2d 1237

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