

Cite as 2023 Ark. App. 206
ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-20-625

BRANDON BARRS

APPELLANT

V.

LAURA TODD, BAPTIST HEALTH
MEDICAL CENTER, AND NORTH
LITTLE ROCK MEDICAL CENTER

APPELLEES

Opinion Delivered April 12, 2023

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT
[NO. 43CV-17-992]

HONORABLE SANDY HUCKABEE,
JUDGE

AFFIRMED

BART F. VIRDEN, Judge

Brandon Barrs appeals the Lonoke County Circuit Court’s decision granting Laura Todd, Baptist Health Medical Center, and North Little Rock Medical Center’s (appellees’) motion for summary judgment in his civil suit for damages related to the disclosure of his medical information. We affirm.

I. Relevant Facts

On January 16, 2017, Barrs was a thirteen-year member of the United States Air Force and a combat veteran when he was admitted to the Baptist ICU.¹ There, he told a social

¹Barrs worked in crash recovery, and his duties included the upkeep, repair, and reclamation of military aircraft.

worker that he was suicidal and had used methamphetamine and had drunk a large amount of alcohol that day.² Dr. Sherri Carter-Wyatt's notes from that day included the following:

He has been thinking about killing himself today, states that he has felt the desire to drive off a cliff. States he felt so bad that he decided to do methamphetamines, did some about 7 to 8 hours prior to arrival. He has also admitted to drinking more alcohol than usual lately. His last drink was about 4 hours ago. He is drinking about a fifth of vodka daily.

While Barrs was in the hospital, he explained that since he had come back from Afghanistan in September 2016, he had been sleeping poorly and having suicidal ideations, and he used alcohol to self-medicate. The day he was admitted into the ER, he had decided to shoot himself with his shotgun but could not find the key to the gun case and came to the hospital instead. The next day, he spoke with Nurse Laura Todd, a care coordinator for Baptist Health. Barr told her he had used methamphetamine and he had drunk about a fifth of vodka. Barrs requested that he be referred to University Behavioral Health (UBH), a treatment facility in Denton, Texas, to participate in inpatient dual treatment for his substance abuse and mental-health issues. In the hospital social worker's report, it was noted that approval from his commanding officer was necessary to refer him out of state. After a few days at Baptist rehabilitation, he transferred to UBH for twenty-eight-day inpatient treatment. Barrs was discharged from UBH on February 21.

On March 1, Cdr. Lt. Col. Mark Chapa submitted a charge sheet accusing Barrs of using methamphetamine in January 2017, a violation of the Uniform Code of Military

²Barrs reported that this was the only time he had ever used methamphetamine.

Justice, article 112a. Barrs moved to suppress all evidence obtained from “the Accused’s alleged self-identification disclosure.”

In the order granting Barrs’s motion, the military court recounted the testimony as follows. A hospital social worker told Nurse Todd that Barrs requested a transfer to UBH in Texas. Barrs explained to Todd that the program at UBH offers both mental-health counseling for PTSD and drug-and-alcohol treatment, and he knew others who had been treated there. Todd believed that she would have to discuss the transfer to UBH with his superior officer because “coordination with military authorities would be a prerequisite to transferring the Accused out of state.” Barrs gave Todd Senior M.Sgt. Danyiell Lockwood’s business card and permission to contact her about the transfer. Todd did not specifically ask Barrs if she could disclose his methamphetamine use. She stated that the purpose of her call to Senior M.Sgt. Lockwood was to facilitate treatment for mental-health issues as well as substance-abuse issues. When they spoke on the phone, Senior M.Sgt. Lockwood stated that she believed Barrs had been admitted for kidney failure, and she did not understand why he was being discharged. Todd explained that Barrs’s use of methamphetamine could cause tests to show some indication of kidney failure. Senior M.Sgt. Lockwood stated that “[she was] sure that in the course of the conversation” she and Todd discussed transfer to a treatment facility, but “the big takeaway from this was this guy had tested positive for drugs, and I needed to make some phone calls.”

The military court found that Barrs voluntarily disclosed his one-time methamphetamine use to a civilian medical provider, who, in turn, disclosed Barrs’s drug

use to his first sergeant with Barrs's permission for the purpose of obtaining treatment. The military court noted that normally this communication would have been protected; however, because Barr disclosed this information for the purpose of seeking treatment, and because Todd divulged this information to his superior officer with Barrs's permission on his behalf for the purpose of transferring him to a treatment facility, he was immune from prosecution for drug use. The court explained that self-disclosure of drug use for the purpose of obtaining treatment protects those who wish to get help, and these facts fell squarely under this provision.

On June 29, the report setting forth that the charge had been withdrawn and dismissed was entered.

As stated above, on February 21, Barrs was discharged from UBH and returned to the Little Rock Air Force Base. He enrolled in the Alcohol and Drug Abuse Prevention and Treatment program (ADAPT), but he did not successfully participate in the program. On May 15, a memorandum letter was issued stating that Barrs, despite multiple warnings, had failed the ADAPT program because of his pattern of unacceptable behavior and unwillingness to comply with his treatment plan, including treatment resistance during his inpatient care, continued alcohol use during outpatient, and failure to vet his absences from treatment through his chain of command. A letter of reprimand was issued and placed in his file.

In July, in a memorandum notifying Barrs of a hearing, Commander Chapa informed Barrs that he was recommending a general discharge from the Air Force (1) for his failure in

the ADAPT program and (2) for a charge of misconduct stemming from his use of methamphetamine in January. In part, Commander Chapa asserted that Barrs continued to use alcohol after he had been discharged from the program, showed resistance to treatment during inpatient treatment, and failed to “vet” treatment absences through his chain of command.

Barrs responded, offering a conditional waiver of his right to a hearing if he was honorably (rather than generally) discharged. He was honorably discharged, and his discharge from the military was attributed to failure in the ADAPT program.

On December 6, 2017, Barrs filed a complaint for negligence against Laura Todd, Baptist Health Medical Center, and North Little Rock Medical Center. Barrs alleged that Nurse Todd negligently divulged his protected health information to SMSgt Lockwood and then repeated the disclosure by testifying at the hearing. Todd’s testimony, he argued, was a breach of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and she failed to use ordinary care to protect his privacy. Barrs asserted that Todd’s disclosure of protected medical information to third parties caused him to lose his job; lose his healthcare benefits, including free medical care for life; lose his retirement benefits and military benefits; and incur attorney’s fees related to the court-martial proceeding.

Appellees responded, arguing that Barrs failed to allege facts sufficient to state a cause of action for negligence or any other cause of action. Appellees asserted that Todd was subpoenaed to testify at Barrs’s court-martial proceeding; thus, she was obligated to testify, and she did so truthfully. Appellees stated that any information divulged to a third party was

done with Barrs's express permission and in compliance with all state and federal laws. Appellees contended that Barrs waived any HIPAA issue because he did not assert any privilege or confidentiality argument below, and he failed to object or raise any privacy issue during the May 2017 court-martial proceeding. Moreover, they argued, the Military Command Exception provides that certain information is excepted from the HIPAA, and the information Barrs gave Todd fell under this exception, i.e., when the patient poses a harm to himself, others, or the mission, when the patient has been admitted for inpatient care, and when the patient has acute medical conditions interfering with his military duties. Appellees argued that Todd had a duty to report what Barrs told her to his commanders, and Barrs gave Todd permission to communicate with his superior officers regarding his medical condition and admission to an out-of-state, dual-treatment facility. Moreover, appellees argued that Barrs's own action—his failure to comply with the ADAPT program—was the intervening cause of his damages.

Appellees moved for summary judgment, asserting that (1) no private cause of action exists under the HIPAA; (2) Todd's lawful disclosure did not violate the HIPAA; (3) Todd's actions were not negligent or the cause of Barrs's harm; and (4) Barrs was precluded from arguing that he did not give Todd permission to disclose his drug use because the military court already reached a final judgment on the exact issue.

The circuit court granted appellees' summary-judgment motion. Barrs timely filed his notice of appeal.

II. *Discussion*

In the instant case, we use our well-established standard of review:

Summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated and the moving party is entitled to judgment as a matter of law. Once a moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. After reviewing undisputed facts, summary judgment should be denied if, under the evidence, reasonable minds might reach different conclusions from those undisputed facts. On appeal, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of its motion leave a material question of fact unanswered. This court views the evidence in a light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party.

Jackson v. Sparks Reg'l Med. Ctr., 375 Ark. 533, 539, 294 S.W.3d 1, 4-5 (2009) (quoting *Sykes v. Williams*, 373 Ark. 236, 239-40, 283 S.W.3d 209, 212-14 (2008)).

On appeal, Barrs alleges that Nurse Todd could have refrained from disclosing his one-time illegal drug use when she spoke to SMSgt Lockwood about his request for mental-health and alcohol-abuse treatment; thus, Todd violated the HIPAA by needlessly disclosing the protected information. Also, Barrs urges this court to follow the example of other jurisdictions and allow Todd's alleged negligence to be used as evidence that she violated the standard of care. Barrs's argument is not well taken. No HIPAA violation occurred, and we affirm.

The purpose of the HIPAA is to increase privacy surrounding a patient's medical records. 45 C.F.R. §§ 160, 164. However, covered entities are permitted to use and disclose protected health information, without an individual's authorization, for treatment or incident to an otherwise permitted use and disclosure. 45 C.F.R. § 164.512. The Military

Command Exception to the HIPAA provides that patient information may be disclosed without individual authorization or an opportunity to object, as follows:

A covered entity may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:

- (A) Appropriate military command authorities; and
- (B) The purposes for which the protected health information may be used or disclosed.

45 C.F.R. § 164.512 (k)(1)(i)(A) and (B).

Covered entities may disclose protected health information in a judicial or administrative proceeding if the request for the information is through an order from a court or administrative tribunal. 45 C.F.R. § 164.512(e). Such information may also be disclosed in response to a subpoena or other lawful process if certain assurances regarding notice to the individual or a protective order are provided. *Id.* A central aspect of the privacy rule is the principle of “minimum necessary” use and disclosure. 45 C.F.R. § 164.502(b). A covered entity must make reasonable efforts to use, disclose, and request only the minimum amount of protected health information needed to accomplish the intended purpose of the use, disclosure, or request; however, the minimum necessary requirement is not imposed when it is a request by a healthcare provider for treatment. 45 C.F.R. § 164.502(b)(2)

Todd was not required to obtain Barrs’s permission to disclose his methamphetamine use, according to the Military Command Exception. As stated above, the Military Command Exception to the HIPAA provides that patient information may be disclosed without

individual authorization or an opportunity to object. Todd was allowed—with or without consent from Barrs—to disclose to Barrs’s superior officer healthcare information relating to “mental health and/or substance misuse conditions or related circumstances” when the condition involves harm to self or harm to the mission or the provider believes that the condition interferes with military duties. The day that Barrs was admitted to the ER, he was suicidal, suffered from mental-health issues related to his experiences in Afghanistan, and was self-medicating with alcohol and methamphetamine. Barrs does not dispute that he reported to Todd and other healthcare providers feeling suicidal, and his alcohol and drug use were directly related to his depression. Also, because Nurse Todd was engaged in helping Barrs obtain treatment for his substance-abuse issue, the “minimum necessary” requirement was not applicable to her disclosure.

Because we hold that no HIPAA violation occurred, we need not address the remaining issues raised on appeal.

Affirmed.

GRUBER and BROWN, JJ., agree.

David Hodges, for appellant.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., by: *Byron Freeland* and *Amanda G.*

Orcutt, for appellees.