

**ORIGINAL**

IN THE COURT OF CLAIMS OF OHIO

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COURT OF CLAIMS, CLERK

DARLENE LANE FERRARO

Plaintiff

v.

THE OHIO STATE UNIVERSITY  
MEDICAL CENTER

Defendant

CASE NO. 2011-10371

JUDGE PATRICK M. McGRATH

MAGISTRATE  
ROBERT VAN SCHOCK

**FILED**  
MAR 11 2015  
COURT OF CLAIMS OF OHIO

**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO ORDER THE OHIO  
DEPARTMENT OF REHABILITATION AND CORRECTION TO PRODUCE  
RECORDS**

Defendant, The Ohio State University Medical Center ("OSUMC"), has asked for an order to obtain records from the Ohio Department of Rehabilitation and Correction ("ODRC") regarding Junior Lee Lane, the decedent in this case. Contrary to the plaintiff's position, those records are both relevant—or at least discoverable—and OSUMC's motives in seeking those records are not inappropriate.

The plaintiff has agreed to waive any objection to the production of medical records, agreeing that they are relevant to at least one issue in this matter. OSUMC has agreed to maintain the confidentiality of those records in such a manner that allows their use in these proceedings. Therefore, at least that much of OSUMC's request should be granted.

The plaintiff has opposed the request in regards to all other records. In part, the plaintiff argues that the records are subject to various protections—a point that OSUMC has conceded in its original motion. The question is whether those protections should prevent OSUMC from obtaining the records in question.

**ON COMPUTER**

The plaintiff simply avoids half of what is important in her arguments concerning the relevance of the records in question—presentence investigation reports, education records, RIB records and mental health records. The plaintiff also argues that those records are irrelevant to the determination of the decedent's potential life-span. The plaintiff may be right about that. But the plaintiff fails to acknowledge, or even address, the fact that those records are relevant to the decedent's potential earning capacity over that life-span. All of those records may potentially lead to the discovery of admissible evidence concerning the decedent's potential earning capacity—his educational attainment in and out of prison, his work history, his disposition towards employment, any relevant training, his potential for recidivism, and potentially any impairment that would affect his ability to obtain or maintain employment. All of those records may impact a finding regarding the loss of income and/or inheritance that the plaintiff has placed at issue in this wrongful death action.

The plaintiff has expressed concern that the records should not be released to OSUMC because they are irrelevant “bad person” evidence, but this misses the mark for three reasons. First, that argument does not address the fact that discovery is not determined by admissibility under the Rules of Evidence, but instead whether the request may lead to the discovery of relevant evidence. “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Civ.R. 26(B)(1). As set forth above, OSUMC believes that the records in question should be available because they address factors relevant to the question of the decedent's earning capacity. Whether any particular record is admissible is a question for another day.

Second, it is not OSUMC's intent to present “bad person” evidence, but instead to obtain records relevant to the decedent's earning capacity. The plaintiff is concerned, apparently,

that OSUMC will try to prove that the decedent is unworthy of compensation for being a bad person. This concern is unwarranted because any such concern can be addressed at trial, or even in a motion in limine. It is also unwarranted because preventing discovery of those records will not alleviate the concern raised by the plaintiff. If OSUMC were to try to defend this action by proving that the decedent was a "bad person" because had a criminal record, that he had drugs in his system at the time of his death, and that he associated with others who have criminal records, the prison records would not be necessary because that information is already present in the record of this case. But that is not the purpose of this request, and this Court is fully capable of acting as the gatekeeper at trial to determine whether the information in question is relevant to the question truly at issue: the amount of compensation due to the plaintiff for the decedent's lost earning capacity.

Third, both the plaintiff's concerns and OSUMC's entitlement to the records can be addressed by an in camera review of the requested records. If this Court finds that they could not lead to the discovery of admissible evidence concerning the decedent's potential earning capacity, they need not be produced. If they do lead to such evidence, they should be produced. And if they are both relevant but potentially prejudicial or duplicative, this Court can address the problem in the normal course of trial proceedings after OSUMC is allowed to discover what is contained in the records.

Accordingly, the Motion should be granted and ODRC records regarding the decedent should be ordered to be produced.

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General



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CERTIFICATE OF SERVICE

On March 11, 2015, a copy of this document was served via regular mail on the following:

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