



Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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www.cco.state.oh.us

DARLENE LANE FERRARO, etc.

Plaintiff

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER

Defendant

Case No. 2011-10371

Judge Patrick M. McGrath

ENTRY

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On February 3, 2015, defendant filed a motion to order the Ohio Department of Rehabilitation and Correction (ODRC) to produce records related to plaintiff's decedent, Junior Lee Lane. On March 3, 2015, with leave of court, plaintiff filed a response. On March 11, 2015, defendant filed a motion for leave to file a reply and a reply memorandum. Defendant's motion for leave is GRANTED.

Defendant seeks all ODRC files pertaining to the decedent including files containing his "education, physical health, mental health, Rules Infraction Board and other disciplinary matters, parole matters, pre-sentence investigation and any other file generated or maintained by ODRC with regard to Mr. Lane (former inmate number 332-087)." Defendant argues that such records are necessary to determine the decedent's potential earning capacity, educational attainment in and out of prison, work history, disposition towards employment, any relevant training, potential recidivism, and any potential impairment that might affect his ability to obtain and maintain employment.

In her response, plaintiff agrees to waive any privilege with respect to the decedent's medical records that pertain to his physical health. However, plaintiff argues that any educational, disciplinary, vocational, and other records should not be subject to discovery. Plaintiff argues that such records can only be used to prove that the decedent was a "bad person." With respect to any mental health records, plaintiff argues that such records are

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privileged and not subject to discovery. Plaintiff adds that defendant has not demonstrated that the privilege should be overridden in this case.

Civ.R. 26(B)(1) governs the scope of discovery and provides, in relevant part: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party[.] * * * It is not ground for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

Plaintiff has asserted that the decedent's medical records are privileged and are therefore not discoverable. However, plaintiff has agreed to waive any privilege with respect to such records excluding any psychiatric or mental health records. Therefore, ODRC shall produce within *14 days* of the date of this entry to counsel for defendant all the decedent's medical records excluding any psychiatric or mental health records. With regard to the decedent's psychiatric or mental health records, ODRC shall file such records with the court, under seal, for an in camera inspection. Such records shall be filed with the court within *14 days* of the date of this entry. After which, the court shall determine whether such records are discoverable.

Turning to defendant's request that ODRC produce all non-medical records maintained or generated by ODRC, plaintiff has not asserted that any such records are privileged. Indeed, plaintiff argues that such records could only be used to demonstrate that the decedent was a "bad person." However, plaintiff conflates the scope of discovery under Civ.R. 26 with the admissibility of evidence at trial governed by the Rules of Evidence. The court finds that defendant's discovery request is reasonably calculated to lead to the discovery of admissible evidence. Such records may contain information regarding the decedent's education level, work history, or any relevant training. The records shall be produced within *14 days* of the date of this entry to counsel for defendant.

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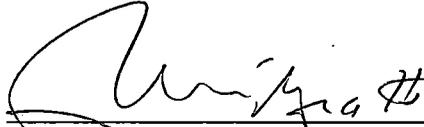
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For the foregoing reasons, defendant's motion to order ODRC to produce the decedent's records is GRANTED, in part, as set forth above.



PATRICK M. MCGRATH
Judge

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