

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ANDRE WINGO,

Plaintiff,

v.

ORDER

WEST BEND MUTUAL INSURANCE,
WISCONSIN COMMUNITY SERVICES, INC.,
MARGO NEIMON, TEDI GENTRY, WALTER LEMON
and ROMERO WILSON,

06-C-696-S

Defendants.

Plaintiff was allowed to proceed on his claim that defendants Wisconsin Community Services, Margo Neimon, Tedi Gentry, Walter Lemon and Romero Wilson violated his Constitutional rights by failing to protect the confidentiality of his treatment records. Plaintiff was also allowed to proceed against West Bend Mutual Insurance, the insurer of Wisconsin Community Services.

On March 9, 2007 defendant West Bend Mutual insurance moved for partial summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, an affidavit and a brief in support thereof. This motion has been fully briefed and is ready for decision.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendant's motion for partial summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Andre Wingo is currently an inmate at the New Lisbon Correctional Institution, New Lisbon, Wisconsin. Defendant West Bend Mutual Insurance Company is the insurer providing liability

coverage for defendant Wisconsin Community Services, Inc., a federally funded substance abuse program provider.

Plaintiff requests punitive damages in the amount of \$250,000.00 against the defendant Wisconsin Community Services, Inc. The insurance policy issued by West Bend to defendant Wisconsin Community Services, Inc. contained an endorsement which expressly excludes West Bend from indemnifying the insured against punitive or exemplary damages.

MEMORANDUM

Defendant West Bend Mutual Insurance Company moves for partial summary judgment declaring as a matter of law that it is not liable for punitive damages in this matter. It is undisputed that the policy does not cover punitive damages. Accordingly, defendant West Bend Mutual Insurance Company's motion for partial summary judgment on its liability for punitive damages will be granted.

ORDER

IT IS ORDERED that the partial summary judgment of defendant West Bend Mutual Insurance Company concerning punitive damages is GRANTED.

Entered this 4th day of April, 2007.

BY THE COURT:

S/
JOHN C. SHABAZ
District Judge