

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

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ANDRE WINGO,

Plaintiff,

v.

MEMORANDUM and ORDER

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

06-C-696-S

Defendants.

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Plaintiff Andre Wingo was allowed to proceed on his claim that defendants Wisconsin Community Services, Margo Neimon, Tedi Gentry, Walter Lemon and Romero Wilson violated his rights under federal law 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 19, 2007 defendants Wisconsin Community Services, Inc., Margo Neimon, Tedi Gentry, Walter Lemon and Romero Wilson moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. On April 4, 2007 defendant West Bend Mutual Insurance joined this motion. Plaintiff cross moved for summary judgment on March 20, 2007. These motions have been fully briefed and are 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 the motions for 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 Wisconsin Community Services, Inc. (WCS) is a Wisconsin corporation located in Milwaukee, Wisconsin and receives federal funding. WCS operates a program, Justice Thurgood Marshall House, funded by the Wisconsin Department of Corrections (DOC). Defendant West Bend Mutual Insurance is the insurer providing liability coverage for WCS.

Defendant Margo Neimon is the Director of Thurgood Marshall House and Tedi Gentry is a supervisor. Defendants Walter Lemon and Romero Wilson are professional counselors at Thurgood Marshall House.

The program components available at Thurgood Marshall House include alcohol and drug abuse treatment, men's issues groups, cognitive interventions groups, employment preparation, anger management, independent living skills, health education, journaling and assignments, recreation, community service hours, transportation, urine and Breathalyzer surveillance, visits and free time. On February 13, 2006 plaintiff was granted parole by the Wisconsin DOC and placed at the Thurgood Marshall House.

On February 13, 2006 plaintiff signed a consent of disclosure of confidential information by the Wisconsin Department for Community Corrections to Thurgood Marshall House. On December 13, 2005 plaintiff had signed an authorization for disclosure of non-

health confidential information and an authorization for disclosure of protected health information which allowed the exchange of such information between the Wisconsin DOC and Thurgood Marshall House.

Plaintiff was perceived by WCS to be a client who needed to be held highly accountable for the safety of the community. He was allowed to leave Thurgood Marshal House to go unescorted to court, the county law library and to search for a job but was required to take with him verification forms to be signed by courthouse officials and prospective employers to verify where he went in the community. The verification form that he was required to take to the court was entitled "Thurgood Marshall House Verification Form". It listed the plaintiff's name and the date and time he arrived and departed the courthouse. The verification form for prospective employers did not have the name of Thurgood Marshal on the form and only required the employer to sign the time that the plaintiff arrived and departed.

On March 30, 2006 plaintiff's placement was terminated at the Thurgood Marshall House because he falsified the verification forms and spent unaccounted time in the community. He was taken into custody on March 31, 2006.

Walter Lemon prepared a Discharge Summary summarizing the reason for plaintiff's termination from the program and provided it to the Department of Corrections (DOC) officials on April 13, 2006. On June 7, 2006 the DOC conducted an administrative hearing to

determine whether to revoke plaintiff's parole. At the hearing defendants Walter Lemon and Romero Wilson testified concerning the plaintiff's falsifying verification forms.

#### MEMORANDUM

Plaintiff claims that the verification forms that he was required to have completed by courthouse officials and employers revealed confidential information. He also claims that defendants Lemon and Wilson revealed confidential information at his June revocation hearing.

A confidentiality requirement applies to programs or activities funded by the federal government. 42 U.S.C. §290dd-2(a). The statute provides that records maintained in connection with substance abuse education, prevention, training, treatment, rehabilitation or research be kept confidential. This information may be disclosed pursuant to the prior written consent of the plaintiff.

Any disclosure of confidential information by Thurgood Marshall House to the Wisconsin DOC at the revocation hearing was allowed by plaintiff's prior written consents signed on April 13, 2006 and December 13, 2005. The provision of information by defendants Lemon and Wilson at plaintiff's revocation hearing did not violate the confidentiality statute.

Plaintiff also contends that the verification forms he was required to have signed by prospective employers and courthouse employees reveal confidential information. The form that an employer was required to sign did not indicate that plaintiff was a resident of Thurgood Marshal House and did not reveal any confidential information.

The verification form for courthouse visits was entitled "Thurgood Marshall House Verification Form". 42 C.F.R. §2.13(c)(1) permits acknowledgment of the presence of an identified patient of a facility if the facility is not publicly defined as only an alcohol or drug abuse center and if the acknowledge does not reveal the patient is an alcohol or drug abuser. The verification form that plaintiff took to the courthouse perhaps identified him as a resident of Thurgood Marshal House but the facility was not publicly identified as only an alcohol or drug abuse facility and plaintiff was not identified as an alcohol or drug abuser. The form did not violate the federal regulation. No confidential information was revealed by the verification forms that plaintiff was required to have signed while in the community.

Defendants did not violate plaintiff's rights under federal law and are entitled to judgment in their favor as a matter of law. Accordingly, defendants' motion for summary judgment will be granted and plaintiff's motion for summary judgment will be denied.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's motion for summary judgment is DENIED.

IT IS FURTHER ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants and against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 13<sup>th</sup> day of April, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge