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THE HOSPITAL HAD STANDING, COULD SEEK INJUNCTIVE RELIEF TO PROTECT ITS PATIENT RECORDS
COMMUNITY HOSPITAL GROUP, INC. v. BLUME GOLDFADEN BERKOWITZ DONNELLY
FRIED & FORTE, P.C., APPELLATE DIVISION, A-5561-03T1, MARCH 30, 2006, APPROVED
FOR PUBLICATION MARCH 30, 2006. BY COBURN, P.J. ALSO ON PANEL: COLLESTER AND
LISA. APPEALED FROM THE CHANCERY DIVISION, MIDDLESEX COUNTY. (7 PAGES)

Jennifer R. Sentivan

A hospital has standing in its own right to bring an action for injunctive relief to protect its medical records when a third party has obtained them in a manner other than through an authorization and release.

The Community Hospital Group, Inc. sued the law firm of Blume Goldfaden Berkowitz Donnelly Fried & Forte and attorney Carol L. Forte to enjoin the use and disclosure of confidential information concerning its patients' health and to compel the return of that information. The trial court dismissed the action, concluding that Community Hospital did not have standing to pursue an injunction on behalf of its patients.

In an opinion reported at [381 N.J. Super. 119 \(2005\)](#), the Appellate Division affirmed the judgment and resolved all of the issues presented to it. Community Hospital then filed a petition for certification with the New Jersey Supreme Court that sought reversal of the Appellate Division's judgment. Community Hospital's argument for reversal was based in part on a theory that had not been presented to the Appellate Division: whether Community Hospital had standing in its own right to protect its business records. The Supreme Court entered an order that temporarily remanded the matter to the Appellate Division for resolution of that issue.

The Appellate Division noted that Community Hospital had filed its action after it had learned that the Blume firm and Forte were in possession of the hospital records of two of its patients that had not been released based on the patients' authorization and after the Blume firm and Forte had refused to tell Community Hospital how they obtained the records. The court found that, at that point, Community Hospital was entitled to infer that the records might have been obtained by improper means, which possibly were enabled by "its own failure to adequately protect its records."

The Appellate Division noted that, under the Hospital Patients Bill of Rights Act, [N.J.S.A. 26:2H-12.7, et seq.](#), patients are entitled to the "privacy and confidentiality of all records pertaining to [their] treatment." The Act allows for the imposition of administrative penalties -- including fines and suspension or revocation of all licenses -- if the hospital violates the patients' rights.

The court in [Kinsella v. NYT Television](#), 382 N.J. Super. 102 (App. Div. 2005), noted that, even before the enactment of the Act, New Jersey courts held that "a patient has a privacy interest in withholding disclosure of information concerning his or her hospital admittance." The Appellate Division in this case noted that breach of that duty could justify a civil action against the hospital for the patient's damages and that a hospital which has failed to protect a patient's records "could expect injury to its reputation, affecting in turn its economic viability."

The court in [Ferriauolo v. Manno](#), 1 N.J. 105 (1948), endorsed the proposition that acts which destroy "a complainant's business, custom and profits do an irreparable injury and authorize the issue of a preliminary injunction." The case law points out that those acts must be wrongful. The Appellate Division in this case noted that in other contexts, such as the disclosure of trade secrets, the power to grant injunctive relief to a corporate entity to protect its business, custom, and profits "is firmly established and not dependent on preexisting express agreements with the individuals against whom the restraints are sought."

The Appellate Division observed that the parties had not submitted any authority that was directly on point. The court found that this case, "though novel," appeared to be analogous to the protection of trade secrets because it also involves "an attempt by a corporation to avoid or ameliorate allegedly wrongful acts destructive of its business." The case law has noted that the "genius of the Anglo-American common law is its readiness to proliferate needed remedies for newly evident wrongs and to apply existing remedies with liberality to new aspects of recognized wrongs."

The Appellate Division concluded that the right asserted by Community Hospital was, "if anything, weightier than the right of a corporation to protect its trade secrets because the foundation of that right is not merely self-protection." Additionally, the court found that recognizing that right "would tend to enhance" a patient's privacy, which serves the mandate of the Act.

The court in [Al Walker, Inc. v. Borough of Stanhope](#), 23 N.J. 657 (1957), found standing because there was "real and substantial interference" with the corporation's business and because "the serious legal questions" that the corporation had raised should be "passed upon without undue delay" in the interest of the public and the corporation. The Appellate Division concluded that the same could be said in this case. The court reasoned that, if the records had been wrongly obtained, it could adversely affect Community Hospital's "reputation and viability" and that the form of injunctive relief sought "raises serious legal questions that should be answered." Therefore, the court concluded that Community Hospital had standing to pursue the action for itself.

The Blume firm and Forte asserted that this action was moot. However, the appeals court found that that assertion depended on reference to materials from another case and that it had denied the request by the Blume firm and Forte to include those materials in the record. The court noted that Community Hospital was aware of those materials. The court concluded that, although Community Hospital might have had standing in general, further litigation in light of those materials might be frivolous. The appeals court did not suggest a view on that point, but it wished to indicate that its answer to the Supreme Court's question did not imply "that further proceedings in the trial court in this particular case are necessarily warranted."

Because the Supreme Court had retained jurisdiction of this matter, the Appellate Division could not enter a dispositive directive to the parties and to the trial court. However, the Appellate Division found that, if its reasoning was correct, reversal of the trial court's judgment would be appropriate with a remand for further proceedings.

For appellant/cross-respondent Community Hospital Group, Inc.: Jeffrey M. **Pollock (Fox Rothschild)**, attorneys). For respondents/cross-appellants Blume Goldfaden Berkowitz Donnelly Fried & Forte, P.C. and Carol L. Forte: Cynthia M. Craig (Blume Goldfaden Berkowitz Donnelly Fried & Forte). For amicus curiae New Jersey Hospital Association: Ross A. Lewin (Windels Marx Lane & Mittendorf; Ellen M. Christoffersen on the brief). For amicus curiae Association of Trial Lawyers of America-New Jersey: Abbott S. Brown (Bendit Weinstock, attorneys). For amicus curiae Trial Attorneys of New Jersey: Edwin R. Matthews (Bourne Noll & Kenyon).

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