

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOHN N. SEMERTZIDES, M.D., ¹	:	APPEAL NO. C-180659
	:	TRIAL NO. A-1803379
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
BETHESDA NORTH HOSPITAL,	:	
	:	
and	:	
	:	
TRI-HEALTH HOSPITALS, ²	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

John N. Semertzides, M.D., appeals from the trial court’s entry granting the motion by Bethesda North Hospital and TriHealth, Inc., (“the hospitals”) to dismiss Semertzides’s complaint pursuant to Civ.R. 12(B)(6).

The complaint against the hospitals asserted claims for breach of contract and tortious interference with a business contract, which were based on the hospitals’ revocation of privileges that had been granted to Semertzides. It alleged that the hospitals had granted Semertzides privileges to practice surgery through their

¹ The complaint also names the plaintiff as John N. Semertzides.

² Although the complaint names the defendant as Tri-Health Hospitals, the party is properly known as TriHealth, Inc.

organizations, thus establishing a business relationship between the parties. Semertzides alleged that he relied on his continued relationship with the hospitals as his sole means of support. The complaint further alleged that the parties' relationship created an implied contract of employment, and that the hospitals breached this contract when they revoked Semertzides's privileges following a peer-review investigation.

Regarding the peer-review proceedings, the complaint alleged that in 2009, a Hospital Surgical Advisory Committee raised questions concerning Semertzides's treatment of a particular patient, which became a catalyst for a review of all of Semertzides's patients by a Patient Care Committee. In October 2010, the hospitals implemented a remediation plan for Semertzides pursuant to the Health Care Quality Improvement Act ("HCQIA"). According to the complaint, the investigation into Semertzides's patient care lasted two years. Semertzides was placed on suspension during the investigation, and his privileges were ultimately revoked by the hospitals.

Per the complaint, members of an entity known as Queen City Surgical Consultants, Inc., ("Queen City") competitors of Semertzides, became part of the executive management overseeing the hospitals' surgical practice. The complaint alleged that, via their executive management role, these Queen City members became Semertzides's accusers, as well as the determiners of fact as to whether Semertzides had violated hospital bylaws. These individuals are not named as defendants.³

³ The complaint named "John and Jane Does" as additional defendants. But an action was never commenced against the Doe defendants because Semertzides did not identify them or serve them with the complaint. See Civ.R. 15(D); Civ.R. 3(A); *Kelly v. Swoish FT Blue Ash, LLC*, 1st Dist. Hamilton No. C-160461, 2017-Ohio-836, ¶ 6.

The complaint alleged that the hospitals' peer review was initiated to sever Semertzides's relationship with the hospitals and reduce competition, rather than to improve patient care, and that the hospitals had acted with malice and bad faith.

The hospitals filed a Civ.R. 12(B)(6) motion to dismiss, which the trial court granted.

In two related assignments of error, Semertzides argues that the trial court erred in granting the motion to dismiss his claim for breach of contract. He has abandoned his claim for tortious interference with a business contract. A Civ.R. 12(B)(6) motion to dismiss tests the sufficiency of a complaint. *Thomas v. Othman*, 2017-Ohio-8449, 99 N.E.3d 1189, ¶ 18 (1st Dist.). When ruling on the motion, the trial court must accept as true all factual allegations in the complaint, and must draw all reasonable inferences in favor of the nonmoving party. *Id.* We review a trial court's ruling on a Civ.R. 12(B)(6) motion to dismiss de novo. *Id.* at ¶ 19.

Before analyzing the merits of Semertzides's assignments of error, it is helpful to identify exactly what is at issue in this case. This is not an action against the physicians who complained about Semertzides or provided information during the peer-review proceedings. Nor is it an action asserting tort claims against the hospitals. Rather, distilled to its essence, the complaint asserts that the hospitals breached their implied contract of employment with Semertzides when his privileges were revoked following an investigation by the hospitals' peer-review committee. Following our review of the record, we hold that the hospitals were entitled to immunity in this breach-of-contract case under R.C. 2305.251(A).

R.C. 2305.251(A) provides that “[n]o health care entity shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee of the health care entity.” A health

care entity is defined in R.C. 2305.25(A)(1) as “an entity, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts as part of its regular business activities professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by health care providers, including both individuals who provide health care and entities that provide health care.”

Semertzides’s privileges were revoked following an investigation by the hospitals’ peer-review committee, and, consequently, R.C. 2305.251(A) provided the hospitals with immunity on Semertzides’s breach-of-contract claim. *See Gureasko v. Bethesda Hosp.*, 116 Ohio App.3d 724, 730, 689 N.E.2d 76 (1st Dist.1996).

In his appellate brief, Semertzides does not argue that the hospitals do not qualify as health care entities entitled generally to immunity. Rather, he contends that the grant of immunity was not absolute, and that the complaint contained factual averments to overcome the presumption of immunity under R.C. 2305.251(A). He relies on the complaint’s allegations that the hospitals acted with malice and bad faith, with the purpose to reduce competition, rather than to improve patient care.

R.C. 2305.251(D) provides that no person who provides information to a peer-review committee under R.C. 2305.251 shall be liable for damages for providing the information if the information was provided “without malice and in the reasonable belief that the information is warranted by the facts known to the person.” But this provision is inapplicable to this case. Semertzides has not filed suit against the persons who provided information to the peer-review committee, but rather, as explained above, against the hospitals that revoked his privileges. *See id.*

OHIO FIRST DISTRICT COURT OF APPEALS

at 735; *Talwar v. Kattan*, 3d Dist. Allen No. 1-98-83, 1999 WL 446435, *6 (June 17, 1999).

Because the hospitals were entitled to immunity under R.C. 2305.251(A), we hold that the trial court did not err in granting their motion to dismiss.

Semertzides's assignments of error are overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on January 22, 2020
per order of the court _____.
Presiding Judge