

IN THE SUPREME COURT OF OHIO
CASE NO. 2007-1832

JOHN AND JUNE ROE, Individually :
and as parents and next friends of :
Jane Roe, a minor :
Appellants, :
vs. :
PLANNED PARENTHOOD :
SOUTHWEST OHIO REGION, et al. :
Appellees. :

On appeal from the Hamilton County Court of Appeals, First Appellate District

APPEAL NO. C060557
TRIAL NO. A0502691

MEMORANDUM IN OPPOSITION TO JURISDICTION OF DEFENDANTS-
APPELLEES PLANNED PARENTHOOD SOUTHWEST OHIO REGION
AND ROSLYN KADE, M.D.

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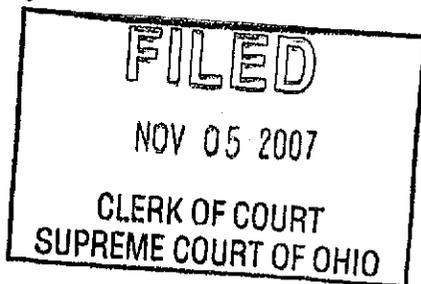


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I. STATEMENT IN OPPOSITION TO JURISDICTION

The reasoned application of this Court's decision in *Biddle v. Warren General Hospital* does not present a substantial constitutional question or an issue of public or great general interest. Because the First District simply applied the balancing test established by this Court in 1999 in holding that ten years' worth of medical records of unrepresented non-party minors were not subject to discovery, this Court should not accept jurisdiction. Neither the visibility of Planned Parenthood, nor the fact that the records sought are abortion records, changes the fundamental reality that the intermediate court applied settled law to resolve a discovery dispute.

Appellants neither dispute that *Biddle* is the correct standard to be applied, nor do they seek to change it. In the hopes of convincing the Court to lift its hand when it need not, plaintiffs instead mischaracterize the holding of the Court below and attempt to manufacture constitutional issues out of whole cloth. The Court never held that the Roes were required to introduce evidence of their claims before they could obtain discovery. The Court never determined that the records were constitutionally protected from disclosure. And there is no split of authority among Ohio courts awaiting resolution.

Appellate courts throughout Ohio have routinely and effectively applied the *Biddle* analysis to questions of privilege. No further guidance on the issue is required and, even if it were, this is not the case upon which to provide it. The Roes' claims are premised on Planned Parenthood's failure to detect Jane Roe's multiple admitted falsehoods. Their factual allegations about Planned Parenthood's treatment of Jane Roe belie their conclusory assertion that Planned Parenthood intentionally or systematically violated the law. The Roes seek recovery based, in part, on a statute that was enjoined when it was allegedly violated. This is not a decision

involving any substantial constitutional question, and it is not one implicating matters of public or general interest. The Court should decline to exercise jurisdiction and dismiss the appeal.

II. STATEMENT OF FACTS

On March 30, 2004, fourteen-year-old Jane Roe obtained an abortion from Planned Parenthood. Before the abortion, Planned Parenthood informed Jane Roe that her parents had to be notified of the abortion, pursuant to Ohio law. Jane Roe lied to Planned Parenthood and told them that her parents already knew that she intended to have the procedure, and, when Planned Parenthood persisted and explained that notice nevertheless needed to be given, she gave Planned Parenthood a cell phone number that she said was her father's. Planned Parenthood called that number and gave notice of her scheduled abortion to the person who answered the phone and identified himself as Jane Roe's father. On the day of the abortion, accompanied by an individual she falsely identified as her step brother, Jane Roe executed a number of documents indicating her informed consent to the procedure. When questioned by Planned Parenthood, Jane Roe lied and said that the boy who impregnated her went to her school.

In April of 2004, the authorities conducted a criminal investigation into a sexual relationship between John Haller, a twenty-one-year old, and Jane Roe. Haller was ultimately convicted of seven counts of sexual battery, and sentenced to three years in prison. The Roes thereafter brought suit against Planned Parenthood, alleging that it performed an unlawful abortion on Jane Roe because it failed to notify or secure the consent of a parent in advance of the abortion. As Planned Parenthood learned from the Roes' complaint, John Haller posed as Jane Roe's father during the telephone conversation in which Planned Parenthood provided notice of the scheduled abortion. The Roes also claim that Planned Parenthood failed to secure the informed consent of Jane Roe, violated Ohio's child abuse reporting statute, and inflicted

emotional distress on Jane Roe. Planned Parenthood asserts that it complied with Ohio law in all respects.

III. STATEMENT OF THE CASE

Though the complaint is premised on Planned Parenthood's treatment of Jane Roe, the Roes nevertheless requested discovery of the medical records of every minor who sought an abortion from Planned Parenthood for a ten-year period, from 1996 through 2006—records containing information about patients' gynecological histories, number of sexual partners, contraceptive methods, and medical histories generally. Defendants objected to production of the records and plaintiffs moved to compel. The trial court entered an order compelling disclosure of ten years of redacted non-party medical records. Planned Parenthood appealed.

On appeal, the First District Court of Appeals reviewed the trial court's order de novo, in keeping with the standard of review it articulated in *Alcorn v. Franciscan Hospital Mt. Airy*, 1st Dist. No. C-060061, 2006-Ohio-5896. Following this Court's holding in *Biddle v. Warren General Hospital*, 86 Ohio St.3d 395, 1999-Ohio-115, 715 N.E.2d 518, the appellate court analyzed whether the records sought by the Roes are necessary to the claims being asserted. It concluded, in a unanimous, seventeen-page opinion, that the medical records sought by the Roes are protected by the physician-patient privilege and are not necessary to further or promote the Roes' interests. Therefore, without reaching the constitutional privacy interests implicated, the court held that the records are not discoverable, reversing the decision of the trial court and remanding for further proceedings.¹

¹ The First District Court of Appeals panel that decided this appeal was composed of Judges Hildebrandt, Painter, and Cunningham. The version of the Opinion included in Appellants' Appendix, which does not comply with S.Ct. R III(D), incorrectly lists Judge Hendon instead of Judge Hildebrandt.

IV. APPELLEES' RESPONSE TO APPELLANTS' PROPOSITIONS OF LAW

Appellees' Position On Appellants' Proposition of Law No. 1:

The Court of Appeals' Decision Raises No Due Process Issues Because (1) the Court Properly Reviewed De Novo the Trial Court's Order and (2) the Court Did Not Require Appellants to Introduce Evidence to Establish Their Claims Before Discovery.

A. The Court Of Appeals Properly Reviewed De Novo The Trial Court's Order Compelling Disclosure Of Privileged Materials.

The First District Court of Appeals' de novo review of the trial court's decision was proper and in line with its own precedent. As it previously held in *Alcorn v. Franciscan Hospital Mt. Airy*, 2006-Ohio-5896, ¶9, “[t]he propriety of disclosure [of privileged medical information] is a question of law, and we review the trial court’s decision de novo.” The Roes’ assertion that the Court of Appeals “explicitly held” in *Alcorn* that “its review of precisely the same type of discovery order [was] under the ‘abuse of discretion’ standard” is incorrect.² (Appellants’ Memorandum at 6.)

While discovery orders are as a general matter reviewed under an abuse of discretion standard, de novo review applies to questions of law, and numerous cases have reviewed de novo the legal question of privilege. See, e.g., *Huntsman v. Aultman Hosp.*, 160 Ohio App.3d 196, 2005-Ohio-1482, 826 N.E.2d 384 (5th Dist.); *Wright v. Perioperative Medical Consultants*, 1st Dist. No. C-060586, 2007-Ohio-3090, ¶9; *Rulong v. Rulong*, 8th Dist. No. 84953, 2004-Ohio-6919, ¶7. The Court of Appeals’ Opinion is entirely consistent with that approach. In this case, it was asked to determine whether the statutory physician-patient privilege could properly be abrogated under the circumstances presented. Its routine application of the de novo standard to

² The Roes likewise claim that the Court of Appeals specifically addressed the standard of review in *Richards v. Kerlakian*. It did not. In that case, the Court of Appeals stated only, after finding that the trial court applied the correct legal standard, that the discovery order was not an abuse of discretion. 162 Ohio App.3d 823, 2005-Ohio-4414, 835 N.E.2d 768, ¶8 (1st Dist.).

review this question of law does not implicate a public or great general interest. This Court should decline to exercise jurisdiction in this case.

B. The Court Of Appeals Did Not Hold That The Roes Were Required To Offer Evidence To Support Their Claims In Order To Obtain The Requested Medical Records.

The Court should not exercise jurisdiction to consider a due process claim manufactured out of whole cloth. Applying *Biddle v. Warren General Hospital*, the Court of Appeals squarely held that the Roes are not entitled to privileged, non-party medical records because the records are “*not necessary to protect or further a countervailing interest that outweighed the minors’ privilege.*” (Emphasis added.) Judgment Entry, ¶¶33, 36, 38. Nevertheless, the Roes—who notably never cite to the Court of Appeals’ written opinion—claim that the Court of Appeals “held that Appellants are not entitled to discover the evidence necessary to prove their claims because they failed to offer evidence to support their claims” and that, “[s]pecifically, it ruled, in order to establish their right to obtain the information they seek from Appellees, Appellants were required first to offer evidence to support their claims.” (Appellants’ Memo. at 2, 7) (exclamation mark omitted). Appellants’ argument fails for the simple reason that the Court of Appeals’ Opinion is devoid of any such holding.³

While the Court of Appeals did note that the Roes had “offered no evidence” to support their assertion that Planned Parenthood systematically and intentionally violates Ohio law and that the record was “devoid” of any such evidence, it continued by stating that, “even if the Roes rooted around in these patients’ medical records and found evidence that Planned Parenthood

³ Based on *Thatcher v. Pennsylvania, O. & D.R. Co.* (1929), 121 Ohio St. 205, 7 Ohio Law Abs. 379, 29 Ohio Law Rep. 365, 167 N.E. 682, it may also be the case that the Roes are precluded from raising any purported constitutional issue in this Court, as they filed a motion for reconsideration with the Court of Appeals and failed to raise any due process claim at that time. See also *State ex rel. Royal v. City of Columbus* (1965), 3 Ohio St.2d 154, 209 N.E.2d 405; *In re Hitchcock* (1996), 120 Ohio App.3d 88, 696 N.E.2d 1090 (8th Dist.).

had violated Ohio law” in other cases, such evidence has no bearing on, and indeed is not necessary to establish, whether it violated the law in its treatment of Jane Roe—the sole issue determinative of liability in this case. Judgment Entry, ¶40. Accordingly, the Court did not impose some novel “evidentiary burden,” as the Roes claim, but merely pointed out, in dicta, that even if the Roes *had* presented such evidence, they still could not meet the necessity threshold because evidence of other violations is not necessary to establish that Planned Parenthood’s treatment of Jane Roe was in violation of Ohio law.⁴

In the face of a written opinion so plainly focused on the *Biddle* necessity standard, it is disingenuous of the Roes to invite jurisdiction on this illusory basis. Neither due process, nor any other substantial constitutional question, is implicated by the appellate court’s decision. This is not an appeal of right, and the Court should decline to exercise its discretionary jurisdiction.

⁴ It would not, however, be inappropriate—or a violation of due process—when a plaintiff claims she needs ten year’s worth of medical records to prove an alleged intentional and systematic violation of the law for a court to consider that even the plaintiff’s allegations about her *own* treatment do not suggest an intentional violation of the law. The United States Supreme Court’s holding in the case of *Bell Atlantic Corp. v. Twombly* (2007), 127 S.Ct. 1955, 167 L.Ed.2d 929, supports such an approach. In holding that Fed. R. Civ. P. 8(a) requires plaintiffs to “plausibly” allege facts entitling them to relief in order to withstand a 12(b)(6) motion to dismiss, the Court stated: “Asking for plausible grounds to infer [misconduct] . . . simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal [conduct].” A “bare assertion” of misconduct, such as the allegation of intentional and systematic misconduct in the Roes’ complaint here, “will not suffice,” said the Court, “lest a plaintiff with ‘a largely groundless claim’ be allowed to ‘take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.” It is a fair question whether the Roes’ allegations could even withstand a motion to dismiss in the wake of *Twombly*. There can be no question that their bare allegation of intentional and systemic statutory violations does not entitle them to wholesale roving through ten years’ worth of confidential medical records of non-party minors.

Appellees' Position On Appellants' Proposition of Law No. 2:

The Court of Appeals' Decision Was The Result Of A Routine Application of *Biddle*, Which Holds That Disclosure of Privileged Medical Records Is Permitted Only When Necessary to Protect or Further a Countervailing Interest That Outweighs the Patients' Interest in Confidentiality.

The Court of Appeals' decision was the result of a faithful application of the well-established *Biddle* test, and the Roes' only real complaint is with the result. In *Biddle v. Warren General Hospital* this Court held that abrogation of R.C. 2317.02's physician-patient privilege is not permitted unless an enumerated statutory exception or a common-law duty applies or if "necessary to protect or further a countervailing interest that outweighs the patient's interest in confidentiality." *Biddle* at syllabus, ¶2. Here, the Court of Appeals applied the *Biddle* standard and determined that disclosure of ten years' worth of non-party medical records, without patient authorization, is not necessary to further a countervailing interest in this case.⁵

While the Roes take exception to the appellate court's determination, they simply do not, and cannot, find fault with the test applied by the Court – only the result achieved. But such displeasure is not an adequate basis for an appeal to this Court. What the Roes request of this Court is nothing more than a reconsideration of the *merits* of their arguments—albeit without ever explaining how the records could be necessary to their claims. There is a glaring lack of any public or great general interest, as *Biddle* conclusively established the test to be applied by courts of appeal in these circumstances.

Perhaps because the Roes cannot find fault with the test applied by the appellate court, they try instead to assert that a conflict of authority exists among Ohio appellate courts in regard to the balancing test to be applied when weighing a party's interest in privileged records against

⁵ The second point, concerning Plaintiffs' interest in punitive damages, is discussed below in response to Appellants' Proposition of Law No. 4.

non-party patients' interest in confidentiality. (Appellants' Memo. at 8-9.) They fail, however, to even describe how those tests purportedly differ.

In fact, the cases cited by the Roes evidence not a divergence in the tests applied by appellate courts, but, rather, different outcomes as a result of the application of the *same* test – that is, the *Biddle* test. The different outcomes reflect the different factual circumstances at issue, not the use of different tests.⁶

There is no conflict among the Courts of Appeals and no need for further guidance from the Court at this time. The *Biddle* balancing test is well-settled: in the absence of patient authorization, privileged, non-party medical records are not subject to discovery unless necessary to protect or further a countervailing interest that outweighs patient confidentiality. The routine application of that test by the Court of Appeals does not implicate a public or great general interest. This Court should decline to exercise jurisdiction.

⁶ For instance, in *Richards v. Kerlakian*, the First District Court of Appeals ordered disclosure of approximately thirty operative reports (as compared to ten years' worth of entire patient files, including gynecological and sexual histories) redacted of both identifying information and "physician/patient discussions" (those discussions are *not* to be redacted under the trial court's order here) because the Court determined that the records were necessary "to develop a primary claim against Good Samaritan on the issue of negligent credentialing." 162 Ohio App.3d 823, 2005-Ohio-4414, 835 N.E.2d 768, ¶¶1, 4, 6.

In *Alcorn v. Franciscan Hospital Mt. Airy Campus*, 1st Dist. No. C-060061, 2006-Ohio-5896, ¶11, the First District Court of Appeals held that the plaintiff could receive the records of the single patient who had assaulted her because "[a]bsent the medical records of the patient, the [plaintiff] would, as a practical matter, have been prevented from establishing a breach of duty on the part of the hospital."

In *Walker v. Firelands Community Hospital*, class action plaintiffs sought the names of patients who were members of a class of persons who delivered a stillborn child or suffered a miscarriage at the defendant hospital, and in that case the Sixth District Court of Appeals found no countervailing interest outweighing patient confidentiality because "*the patient* would decide what her interests are, not a physician, a lawyer, or the court." (Emphasis added.) 6th Dist. No. E-03-009, 2004-Ohio-681, ¶24 (citing *Biddle*, 86 Ohio St.3d at 408) (notification could be made to the patient by the hospital, which would ask the patient if she waived the right to confidentiality).

Appellees' Position On Appellants' Proposition of Law No. 3:

The Court of Appeals Did Not Hold that Medical Records Are Constitutionally Protected.

Remarkably, the Roes claim that “Judge Painter recognized that Planned Parenthood’s medical records are entitled to constitutional protection merely because its patients had abortions.” (Appellants’ Memo. at 10.) The unanimous Opinion of the Court of Appeals did no such thing. What the Opinion states—and all that it states on the issue—is that, “under the proper circumstances, the physician-patient privilege between an abortion patient and her physician *may* be afforded constitutional protection under the penumbra of privacy rights.” (Emphasis added.) Judgment Entry, ¶45. While Planned Parenthood argued in its brief that the records at issue were protected by a constitutional privacy right, the Court expressly *declined* to address the issue, because it found the “lack of necessity” determinative of the appeal. *Id.* The Roes’ assertion that “medical records do not have constitutional protection” is, in addition to an incorrect statement of the law,⁷ not grounded in the language or reasoning of the Court of Appeals’ Opinion. The appellate decision implicates no substantial constitutional question and no public or great general interest. This Court should decline to exercise jurisdiction.

⁷ The United States Supreme Court has held that the Fourteenth Amendment “protects an individual’s right to control the nature and extent of information released about that individual.” *Bloch v. Ribar* (C.A.6, 1998), 156 F.3d 673, 683 (citing *Whalen v. Roe* (1977), 429 U.S. 589, 599-600, 97 S.Ct. 869, 876-877, 51 L.Ed.2d 64). This protection extends to “personal information in general and medical information in particular.” *Planned Parenthood of Indiana v. Carter* (Ind. App. 2006), 854 N.E.2d 853. The Sixth Circuit Court of Appeal has held that the informational right of privacy should be respected when a fundamental liberty interest is involved. *Bloch v. Ribar*, 156 F.3d at 683-684 (citing *J.P. v. DeSanti* (C.A.6, 1981), 653 F.2d 1080, 1090). The right to an abortion is such a fundamental liberty interest. *Roe v. Wade* (1973), 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147; *Planned Parenthood of Southeastern Pa. v. Casey* (1992), 505 U.S. 833, 112 S.Ct. 2791, 120 L.Ed.2d 674. Accordingly, medical records can, in proper circumstances, be protected by a constitutional privacy right.

Appellees' Position On Appellants' Proposition of Law No. 4:

The Court Of Appeals Determined, As A Result Of Its Routine Application Of The *Biddle* Test, That Medical Records Of Non-Parties Were Not Necessary To Establish Appellants' Claims For Punitive Damages.

In a straightforward application of *Biddle*, the Court of Appeals determined that ten years' worth of minors' medical records are not necessary to establish the Roes' punitive damages claims.⁸ It further noted that, even if it could somehow be assumed that the records are necessary to the Roes' interest in punitive damages, such an interest is "speculative at this stage of the proceedings" and thus could not outweigh the patients' interest in maintaining confidentiality. Judgment Entry, ¶38.

This holding is an unremarkable application of *Biddle*—which itself suggests that a monetary interest does not outweigh patient confidentiality—and presents no conflict with other cases. Indeed, the Court of Appeals' decision is in accord with the decisions of other courts of appeal on this issue. See, e.g., *Walker v. Firelands Community Hospital* 6th Dist. No. E-03-009, 2004-Ohio-681; *Sirca v. Medina Cty. Dept. of Human Svcs.* (2001), 145 Ohio App.3d 182, 762 N.E.2d 407 (9th Dist.). In *Sirca v. Medina Cty. Dept. of Human Svcs.*, for example, the Ninth District Court of Appeals determined that "the mere prospect that [a party] could ultimately be compelled to pay a large sum to victorious plaintiffs does not outweigh the interest of a third party in retaining the confidentiality of his treatment history." *Id.* at 186-187.

Notably, the Roes do not actually challenge the court's determination that the non-party records are not necessary to further their interest in punitive damages. Instead, they repeatedly assert that those records might contain information that is "relevant" to their claim for punitive

⁸ The records were not necessary to support a claim for punitive damages because: (1) R.C. 2151.421 does not even provide for punitive damages as a remedy; and (2) R.C. 2919.12 and 2317.56, the other two statutes under which the Roes bring claims, provide for punitive damages *based on the harm to a plaintiff herself*. Judgment Entry, ¶33.

damages. (Appellants' Memo. at 11-13.) Under *Biddle*, however, relevancy is not the applicable standard; necessity is. And the records of non-party minors cannot be necessary to establish punitive damages because, pursuant to the United States Supreme Court's decision in *Philip Morris*, those records will not show "actual harm" to third parties.⁹

The Court of Appeals determined that ten years' worth of non-party records were not necessary to further or protect the Roes' interest in punitive damages. The Roes' argument is one for a different outcome; not one that identifies any error in the Court of Appeals' analysis. Put simply, the Court of Appeals' decision implicates no public or great general interest. The Court should decline to exercise jurisdiction.

⁹ In *Philip Morris USA v. Williams*, 127 S.Ct. 1057 (2007), 166 L.Ed.2d 940, the Supreme Court held that a state may not constitutionally punish a defendant for alleged harm inflicted on individuals not involved in the litigation. *Id.* at 1063 ("[T]he Constitution's Due Process Clause forbids a state to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties or those whom they directly represent, i.e., injury that it inflicts upon those who are, essentially, strangers to the litigation."). The Court explained that such an award would violate due process because the defendant would not have an opportunity to defend against the charge of harm to the non-party. *Id.* And while the Supreme Court opined, in dicta, that harm to others could be relevant to the "reprehensibility" of a defendant's conduct, it explicitly referenced *actual* harm to third parties—not, as here, speculative harm. *Id.* at 1064 ("While evidence of *actual harm* to nonparties can help to show that the conduct that harmed the plaintiff also posed a substantial risk to the general public, and so was particularly reprehensible, a jury may not go further and use a punitive damages verdict to punish a defendant directly for harms to those nonparties.").

The redacted non-party medical records at issue here could not establish "actual" harm to third parties. To determine whether Planned Parenthood violated the law in regard to any individual patient and whether that patient suffered harm as a result, the Roes would need to learn the patient's name in order to contact and depose her and her parents, and otherwise investigate the facts surrounding the patient's treatment at Planned Parenthood. The records, standing alone, could never show actual harm. And unless such information were investigated and could be introduced at trial, Planned Parenthood would, pursuant to *Philip Morris*, be deprived of its due process right to defend against each charge and to show that under the circumstances of another case, no violation of the law occurred, or that other patients suffered no injury. See *id.* at 1063. Accordingly, the medical records cannot be necessary to establish the punitive damages to which plaintiffs claim to be entitled.

Appellees' Position On Appellants' Proposition of Law No. 5:

The Roes Have Waived Any Argument As To The Availability Of Punitive Damages Under R.C. 2151.421.

The Roes take issue with the Court's determination that, because R.C. 2151.421, the abuse reporting statute, "does not provide for punitive damages, the Roes' punitive-damages justification under R.C. 2151.421 is without merit." Judgment Entry at ¶37. On appeal to the First District, however, the Roes either waived this argument or conceded that it is wrong.

Planned Parenthood argued in its Amended Brief on appeal: "§2151.421 does not provide for punitive damages. Thus, the records are not, and cannot be, necessary to establish a claim under this statute." The Roes, in response, never argued that a plaintiff *could* obtain punitive damages for a violation of R.C. 2151.421. Instead, they responded that they "sought discovery that relates directly to *both* liability and remedy aspects of the claims they have made in this litigation." (emphasis in original). Their failure to raise the argument in the appeal to the First District precludes them from raising it here. See, e.g., *State ex rel. BSW Development Group v. City of Dayton*, 83 Ohio St.3d 338, 1998-Ohio-287, 699 N.E.2d 1271; *Belvedere Condominium Unit Owners' Assn. v. R.E. Roark Cos., Inc.*, 67 Ohio St.3d 274, 1993-Ohio-119, 617 N.E.2d 1075; *State ex rel. Royal v. City of Columbus* (1965), 3 Ohio St.2d 154, 209 N.E.2d 405; *State ex rel. Zollner v. Indus. Comm.*, 66 Ohio St.3d 276, 278, 1993-Ohio-49, 611 N.E.2d 830, 832 ("A party who fails to raise an argument in the court below waives his or her right to raise it here.").¹⁰

¹⁰ In any event, the eleventh-hour argument that R.C. 2151.421 somehow *does* provide for punitive damages fails on its merits as well. The duty and consequent liability imposed by R.C. 2151.421 did not exist at common law. See *David M. v. Erie County Dept. of Human Svcs.* (June 30, 1994), 6th Dist. No. E-93-40. When a statute such as R.C. 2151.421 imposes liability in derogation of the common law, punitive damages are not available unless the General Assembly expressly provides for their recovery in the statute. See *Byrley v. Nationwide Life Ins. Co.*

Appellees' Position On Appellants' Proposition of Law No. 6:

R.C. 2151.421 Provides That Abuse Reports Made Under That Section Are “Confidential” And “Shall Not Be Used As Evidence In Any Civil Action Or Proceeding Against The Person Who Made The Report.”

The Court need not exercise jurisdiction to consider whether abuse reports made under R.C. 2151.421 are confidential. That section expressly states both that “a report made under this section is confidential” and that “[n]o person shall permit or encourage the unauthorized dissemination of the contents of any report made under this section.” R.C. 2151.421(H)(1), (2). The Roes contest the Court of Appeal’s holding that the abuse reports made by Planned Parenthood are confidential and privileged pursuant to R.C. 2151.421. (Appellants’ Memo. at 4.) Their only basis for doing so, however, is a preposterous assertion that Planned Parenthood and its medical director, Roslyn Kade, are not “the persons who made the abuse reports that Appellants seek and intend to use in this action.” *Id.* at 15. The Roes fail to explain how that is the case (indeed, Planned Parenthood, acting through its employees, is in fact the entity that made the reports), and further fail to cite to any authority for its bald assertion that they are entitled to the reports at issue. Because the Court of Appeals merely applied the plain language of R.C. 2151.421 and determined that abuse reports made under R.C. 2151.421 “are confidential and inadmissible as evidence in any civil proceeding,” there is no public or great general interest implicated in this matter. This Court should decline to exercise jurisdiction.

(1994), 94 Ohio App.3d 1, 21, 640 N.E.2d 187 (6th Dist.) (citing *Kleybolte v. Buffon* (1913) 89 Ohio St. 61, 66, 105 N.E. 192); see also *Hauter v. McIlwaine* (June 11, 1982), 6th Dist. No. L-81-364. It did not do so here.

V. CONCLUSION

For the reasons set forth above, Planned Parenthood Southwest Ohio Region and Roslyn Kade, M.D. respectfully request that this Court decline to exercise discretionary jurisdiction and dismiss this appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served via electronic and U.S. mail on this 5th day of November, 2007, to the following:

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