



The language in Section 7111 of the Mental Health Procedures Act that is central to this appeal states: “All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone,” subject to certain exceptions not relevant herein. 50 P.S. § 7111(a). I would be hard-pressed to conceive of a more emphatic directive from our General Assembly. Indeed, this Court, in addressing Section 7111, has deemed it “unambiguous,” “unmistakable,” and “mandatory,” concluding:

The release of the documents is contingent upon the person's written consent and the documents may not be released “*to anyone*” without such consent. The terms of the provision are eminently clear and unmistakable and the core meaning of this confidentiality section of the Mental Health Procedures Act is without doubt—there shall be no disclosure of the treatment documents to anyone.

Zane v. Friends Hosp., 836 A.2d 25, 32 (Pa. 2003); see also id. at 33 (“Unless there is consent or if one of the exceptions applies, documents regarding treatment shall be kept confidential and may not be released or their contents disclosed to anyone.”). Yet, despite this manifest statutory mandate, and our holding in Zane, the majority finds room for an implied waiver. As, in my view, the statutory language is, indeed, unmistakable — i.e., the only way in which information covered by Section 7111 may be disclosed is pursuant to a written release — I cannot join the majority’s pronouncement to the contrary.

Nevertheless, I recognize the inequity that drives the majority’s analysis: it is untenable for a plaintiff to sue for relief where matters otherwise protected by Section 7111 are critical to the defense of that action, but, at the same time, expect those matters to remain confidential and expect to proceed with the suit. However, instead of running afoul of a statutory mandate in an effort to avoid such an unjust result, I would

encourage that such matters be addressed in the context of discovery, in a manner such as that initiated by Appellees below.

Here, Appellees filed interrogatories and sought access to information pertaining to Appellant James Octave's mental health treatment; when Appellants objected, Appellees filed a motion to compel Appellants to provide written consent pursuant to Section 7111, detailing in the motion the relevance of that information to their defense. See Motion to Compel, 2/25/10 (R.R. at 73). The trial court was then in a position to assess the significance of the information to the defense, and, had it deemed the information sufficiently material, issue an order compelling the authorizations be executed.<sup>1</sup> Such an approach respects the command of Section 7111 — by ensuring that Section 7111 information is released only pursuant to written consent — but allows the trial court to fashion an appropriate discovery sanction should a plaintiff refuse to provide the consent, including dismissal of the case.

Discovery matters are vested in the trial court's sound discretion. Rae v. Pennsylvania Funeral Directors Ass'n, 977 A.2d 1121 (Pa. 2009). Further, under Pa.R.Civ.P. 4019, courts are afforded wide discretion in fashioning remedies or sanctions for violations of discovery rules and orders. City of Philadelphia v. FOP Lodge No. 5 (Breary), 985 A.2d 1259, 1269 (Pa. 2009). In a case such as the instant one, a trial court, with the pleadings, motions, and arguments of the parties before it, can best decide if a defendant's stated need for a plaintiff's mental health information is substantial enough to warrant ordering a plaintiff to execute Section 7111 consent for release of the information. Similarly, should a plaintiff refuse to provide the consent, the

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<sup>1</sup> The trial court denied Appellees' motion, concluding that, after Appellants amended their complaint, James Octave's mental health treatment records were no longer relevant. I agree with the majority's implicit conclusion that this determination was in error.

trial court is in the best position to decide the appropriate sanction for that refusal, including dismissal. With respect to the appropriate sanction, we have provided clear guidance in how a trial court must make that determination.<sup>2</sup> See id. at 1270 (in assessing severity and materiality of a discovery sanction, trial court must assess: (1) the prejudice endured by the non-offending party and the ability of the offending party to cure; (2) the offending party's willfulness or bad faith in failing to provide the requested discovery materials; (3) the importance of the excluded evidence; and (4) the number of discovery violations by the offending party). While the sanction of dismissal is disfavored, id. at 1269-70, I can certainly envision a case where dismissal would be the appropriate result where access to a plaintiff's mental health information was pivotal to a defense, but refused. Indeed, the instant matter may be an example of such a case.

Accordingly, I disagree with the majority's decision to affirm the Commonwealth Court's extra-statutory determination that Section 7111 protections may be implicitly waived, and so would reverse that decision. However, because I agree with the majority that the requested information was material to Appellee's defense, I would remand the matter to the trial court to grant Appellee's motion to compel the execution of Section 7111 consent. Should Appellants refuse, I would leave the appropriate sanction to the trial court's discretion, pursuant to the considerations set forth in City of Philadelphia, supra.

Accordingly, I dissent.

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<sup>2</sup> Of course, these determinations are then subject to appellate review for an abuse of discretion.