2012 IL App (5th) 100618-U

NOS. 5-10-0337 and 5-10-0618

(consolidated for appeal)

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MEGAN FUHLER and EMILY FUHLER, Minors, by Their Father and Next Friend, Mark Fuhler, Plaintiffs-Appellees, v. GATEWAY REGIONAL MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HEARTLAND CLINIC, BEHR, McCARTER & POTTER, P.C., and RICHARD BEHR, Defendants-Appellants.	)	Appeal from the Circuit Court of Madison County. Nos. 10-L-46 Honorable Ann E. Callis, Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Donovan and Justice Spomer concurred in the judgment.

ORDER

¶ 1 *Held*: Plaintiffs are able to seek relief against defendants under the Confidentiality Act, as the absolute litigation privilege does not apply to communication of mental health records.

¶ 2 Plaintiffs, Megan Fuhler and Emily Fuhler, minors, by their father and next friend, Mark Fuhler, filed suit against defendants, Gateway Regional Medical Center, Community Health Systems, Inc., Heartland Clinic (client defendants), and Behr, McCarter & Potter, P.C., and Richard Behr (defendants), in the circuit court of Madison County alleging that defendants had improperly disclosed private information about plaintiffs that had been contained in the mental health records of their mother, Jan Fuhler. The circuit court dismissed defendants Behr, McCarter & Potter, P.C., and Richard Behr, and plaintiffs

appealed (No. 5-10-0337). The circuit court certified for appeal a question regarding client defendants (No. 5-10-0618). The appeals were consolidated. The appeal raises issues as to (1) whether plaintiffs had standing to assert a claim under the Mental Health and Developmental Disabilities Confidentiality Act (Confidentiality Act) (740 ILCS 110/1 to 17 (West 2008)) and (2) whether defendants should be afforded protection under the absolute litigation privilege.

¶ 3 We reverse and remand.

¶ 4 FACTS

¶ 5 This is a consolidated appeal. The appeal consolidates the dismissal of attorneys Behr, McCarter & Potter, P.C., and Richard Behr, with the latter appeal based on a certified question regarding their clients.

¶ 6 Plaintiffs, Megan Fuhler and Emily Fuhler, are daughters of Jan Fuhler. Their complaint concerns the subpoenaing and communication of Jan's mental health records in two previous suits. The trial court originally dismissed plaintiffs' complaint. Upon reconsideration, the trial court affirmed its dismissal of defendants on the grounds that they were entitled to the protection of the absolute litigation privilege for their conduct in the prior litigation, but the court vacated its dismissal of the client defendants. Plaintiffs were granted leave to appeal the dismissal of defendants (No. 5-10-337 (Supreme Court Rule 304) (eff. Feb. 26, 2010)). The trial court then certified a question regarding the client defendants (No. 5-10-618 (Supreme Court Rule 308(a) (eff. Feb. 26, 2010)).

¶ 7 The certified question addresses the status of the client defendants, but it assumes the conduct of the attorney defendants is protected under the absolute litigation privilege. Thus, our discussion focuses on the attorneys as defendants.

¶ 8 Plaintiffs were not parties to either of the two previous suits. In the first of these suits, defendants represented the client defendants in a suit brought by Jan Fuhler for retaliatory

discharge. In the second, they represented the client defendants in a suit brought by Bonnie and Jimmy Seitz for medical malpractice.

¶ 9 In the 1990s Jan started working for Dr. Petrovich. Dr. Petrovich was eventually recruited to work at Gateway Regional Medical Center (Gateway). By January 2004, Jan was working in the same office as Dr. Petrovich and, according to her complaint for retaliatory discharge, she was as an employee of Gateway and Community Health Systems, Inc.

¶ 10 Jan filed her retaliatory discharge suit on September 15, 2004, and alleged that she met with Mark Benz, the chief executive officer for her employers, on January 30, 2004, and told him that Dr. Petrovich was abusing cocaine. On March 25, 2004, Jan's employment was terminated. Jan claimed in her retaliatory discharge suit that she was unjustly terminated for whistle-blowing activity. In the course of defending the retaliatory discharge suit, defendants sent a notice for records deposition with a subpoena to Jan's psychiatrist, Dr. Napier. Attorney Behr attests that he consulted with Jan's counsel before sending the subpoena. Behr attests that he forwarded the records he received to Jan's counsel, but did not forward them to Gateway.

¶ 11 In February 2006, Jan's retaliatory discharge suit was dismissed. Attorney Behr attests that at no time during that suit did Jan or her attorney express any concern about discovery of the psychiatric records.

¶ 12 On March 10, 2005, Bonnie and Jimmy Seitz filed a medical malpractice action against Gateway, Community Health Systems, Inc., Dr. Petrovich, and Mark Benz. The Seitzes alleged that Dr. Petrovich's employers allowed him to practice medicine while impaired. Defendants were again retained as defense counsel.

¶ 13 Jan was not a party to the Seitz suit, but was a potential witness to Dr. Petrovich's substance abuse and his employers' knowledge of the abuse. On behalf of their clients, defendants retained an expert in hospital administration, Dr. Heller. Defendants provided

Dr. Heller with numerous documents, including the records of Dr. Napier regarding Jan's psychiatric treatment. Dr. Heller issued his original report on July 28, 2008. On August 12, 2008, Dr. Heller issued a new report removing mention of the records of Dr. Napier. Dr. Heller submitted an affidavit stating that he did not rely on the records in making his report, nor did he disclose the substance of anything in Dr. Napier's records. In December 2008, the Seitz case was dismissed.

¶ 14 On January 19, 2010, plaintiffs filed the complaint in the present action. Plaintiffs alleged that the records of Dr. Napier's treatment of their mother contained information of a highly personal and sensitive nature about them. Plaintiffs allege that disclosure of the information humiliated them. The complaint contained numerous counts, including counts for publication of private facts and counts referring to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 C.F.R. § 164.508 (2008)).

¶ 15 Plaintiffs also filed counts referring to the Confidentiality Act. They alleged that the subpoena for Dr. Napier's records in the retaliatory discharge action violated the Confidentiality Act. Plaintiffs allege that defendants also violated the Confidentiality Act by sending those records to Dr. Heller.

¶ 16 Defendants in the present action (defendants and the client defendants) filed a combined motion to dismiss. In their motion to dismiss, defendants argued that plaintiffs could not base a private right of action on HIPAA, that defendants owed no common law duty to plaintiffs, that the publication of private facts was not to the public at large, and that plaintiffs had no standing under the Confidentiality Act. Defendants also claimed that they were protected by the absolute litigation privilege as the records of Jan Fuhler's mental health treatment were relevant to both the retaliatory discharge suit and the Seitz suit for medical malpractice. On June 25, 2010, the circuit court granted the motion to dismiss. 735 ILCS 5/2-619 (West 2010).

¶ 17 Plaintiffs filed a motion to reconsider arguing that the absolute litigation privilege did not apply. On July 13, 2010, the court entered an order denying the motion to reconsider in regard to defendants, but granting a reversal of the dismissal of the client defendants. The court found that defendants were protected by the absolute litigation privilege and that there was no just reason to delay enforcement or appeal of their dismissal. Supreme Court Rule 304(a) (No. 5-10-0337). Later, the court certified the following question:

> "When third party non-clients have sued an attorney in tort for his alleged litigation misconduct in the course of defending his clients in a prior lawsuit and the trial court has dismissed with prejudice those tort claims filed against the attorney because of the 'absolute litigation privilege,' was it error for the trial court to deny the Motion to Dismiss filed by the clients of that attorney who were also sued by the third parties for vicarious liability for their attorney's alleged litigation misconduct?" (No. 5-10-0618) (Supreme Court Rule 308(a)).

¶ 18 This court consolidated the appeals.

¶ 19 ANALYSIS

¶ 20 In their complaint, plaintiffs allege that defendants violated the Confidentiality Act (740 ILCS 110/1 to 17 (West 2008)). Plaintiffs complain that defendants first violated the statutory requirements for obtaining a subpoena and then improperly disclosed the information during the course of litigation.

¶ 21 Anyone seeking disclosure of mental health treatment must show the action is authorized by the Confidentiality Act. 740 ILCS 110/1 to 17 (West 2008). The Confidentiality Act provides that "[a]ll records and communications shall be confidential and shall not be disclosed except as provided in this Act." 740 ILCS 110/3(a) (West 2008).

¶ 22 The Confidentiality Act places a formidable burden on anyone seeking disclosure. *Norskog v. Pfeil*, 197 Ill. 2d 60, 71, 755 N.E.2d 1, 9 (2001). *Norskog* explains:

" 'The Confidentiality Act is carefully drawn to maintain the confidentiality of mental health records except in the specific circumstances explicitly enumerated.' [Citation.] In each instance where disclosure is allowed under the Act, the legislature has been careful to restrict disclosure to that which is necessary to accomplish a particular purpose. Exceptions to the Act are narrowly crafted. [Citation.] When viewed as a whole, the Act constitutes a 'strong statement' by the General Assembly about the importance of keeping mental health records confidential. [Citation.]" *Norskog*, 197 Ill. 2d at 71-72, 755 N.E.2d at 9-10.

¶ 23 Section 10 of the Confidentiality Act governs disclosure in civil, criminal, and administrative proceedings. 740 ILCS 110/10 (West 2008). Under paragraph (a) all records and communications of treatment are protected from discovery as privileged with the exception of specifically enumerated instances. 740 ILCS 110/10(a)(1) to (a)(12) (West 2008). Even in instances where the records are subject to discovery, a person seeking records is required to first obtain a court order and then submit the records for *in camera* review. 740 ILCS 110/10(b), (d) (West 2008).

¶ 24 Plaintiffs allege that defendants first violated the Confidentiality Act by obtaining the records in the retaliatory discharge case. Plaintiffs contend that the subpoena failed to comply with the Confidentiality Act. The Confidentiality Act provides:

"(d) No party to any proceeding ***, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. No such written order shall be issued without written notice of the motion to the recipient and the treatment provider. Prior to issuance of the order, each party or other person entitled to notice shall be permitted an opportunity to be heard pursuant to subsection (b) of this

Section." 740 ILCS 110/10(d) (West 2010).

¶ 25 Plaintiffs allege that defendants compounded the violation by communicating the information that was received in response to the subpoena. In particular, they allege that defendants transferred copies of Jan's psychiatric records from the file in her retaliatory discharge case to an expert defendants had retained in the Seitz case. Paragraph 10(a) prohibits the disclosure of information unless it falls under one of the listed exceptions. 740 ILCS 110/10(a) (West 2008). Such disclosure does not fall under any of the listed exceptions.

¶ 26 Defendants contend that since their communications were made during ongoing litigation, they are protected by the absolute litigation privilege. Attorneys are protected from claims of defamation for statements made during the course of litigation. *Edelman, Combs & Latturner v. Hinshaw & Culbertson*, 338 Ill. App. 3d 156, 165, 788 N.E.2d 740, 748 (2003). Illinois courts have recognized the privilege as defined by section 586 of the Restatement (Second) of Torts:

> "An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of, or during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding." Restatement (Second) of Torts § 586 (1977).

See *Golden v. Mullen*, 295 Ill. App. 3d 865, 870, 693 N.E.2d 385, 389 (1997).

¶ 27 When applicable, the privilege is absolute. The privilege is not dependent on the motives of an attorney or an attorney's knowledge of the accuracy of a statement. See *Weber v. Cueto*, 209 Ill. App. 3d 936, 942, 568 N.E.2d 513, 516 (1991). The sole requirement is that the communication is pertinent to the litigation. Pertinency is a broad umbrella, and the privilege will attach even where the defamatory statement is beyond the contested issues of

the litigation. *Atkinson v. Affronti*, 369 Ill. App. 3d 828, 832, 861 N.E.2d 251, 255 (2006). A statement fails to meet this requirement only if it has "no connection whatever with the litigation." Restatement (Second) of Torts § 586, cmt. *c*, at 248 (1977); *Golden*, 295 Ill. App. 3d at 870, 693 N.E.2d at 389.

¶ 28 The privilege derives from balancing the needs of the judicial system and potential individual harm. Public policy calls for attorneys to be given the "utmost freedom in their efforts to secure justice for their clients." Restatement (Second) of Torts § 586, cmt. *a*, at 247 (1977); *Edelman, Combs & Latturner*, 338 Ill. App. 3d at 165, 788 N.E.2d at 748. The great weight given to the need to be able to use defamatory material in litigation outweighs the harm to an individual's reputation. *Golden*, 295 Ill. App. 3d at 870, 693 N.E.2d at 389.

¶ 29 These policy concerns call for both absolute protection where the privilege is warranted and a cautious approach to the scope of cases the privilege covers. In other words, "[a] narrow class of cases exist in which defamatory statements are absolutely privileged." *Bushell v. Caterpillar, Inc.*, 291 Ill. App. 3d 559, 561, 683 N.E.2d 1286, 1287 (1997) (citing *Ringier America, Inc. v. Enviro-Technics, Ltd.*, 284 Ill. App. 3d 1102, 1105, 673 N.E. 2d 444, 446 (1996)). The question of whether an otherwise actionable defamatory statement is protected by the privilege is a question of law. *Bushell*, 291 Ill. App. 3d at 561, 683 N.E.2d at 1288.

¶ 30 Communication of mental health treatment falls outside the scope of the privilege. By definition, the privilege addresses defamation. Restatement (Second) of Torts § 586 (1977) ("absolutely privileged to publish defamatory matter"). Defendants point out that the privilege has, in limited instances, been expanded when the same policy concerns coincide with those for defamation. See *Golden*, 295 Ill. App. 3d at 872, 693 N.E.2d at 391 (false light claim factually identical to claim for defamation); see *Scheib v. Grant*, 22 F.3d 149 (7th Cir. 1994) (eavesdropping statute); *Loigman v. Township Committee of the Township of*

Middletown, 889 A.2d 426 (N.J. 2006); *Miller v. Reinert*, 839 N.E.2d 731 (Ind. Ct. App. 2005); *Hugel v. Milberg, Weiss, Bershad, Hynes & Lerach, LLP*, 175 F.3d 14 (1st Cir. 1999). Nonetheless, even the most liberal interpretation of the privilege would not warrant extending its application to the case of mental health records. The policy considerations underlying the absolute litigation privilege do not call for the protection of communication of mental health treatment.

¶ 31 Unlike claims for defamation, privacy concerns related to mental health treatment extend beyond issues of reputation into the most private of matters and the reliability of health care services. The Confidentiality Act "provides safeguards to balance a patient's privacy with the trial court's truth-seeking function." *Mandziara v. Canulli*, 299 Ill. App. 3d 593, 598, 701 N.E.2d 127, 132 (1998). The rights of patients and the integrity of the mental healthcare system as a whole demand the protection of records of treatment:

> " 'Presumably, the patient in psychotherapeutic treatment reveals the most private and secret aspects of his mind and soul. To casually allow public disclosure of such would desecrate any notion of an individual's right to privacy. At the same time, confidentiality is essential to the treatment process itself, which can be truly effective only when there is complete candor and revelation by the patient. Finally, confidentiality provides proper assurances and inducement for persons who need treatment to seek it.' " *Mandziara*, 299 Ill. App. 3d at 597, 701 N.E.2d at 131 (quoting *Laurent v. Brelji*, 74 Ill. App. 3d 214, 217, 392 N.E.2d 929, 931 (1979)).

Even if the absolute litigation privilege were to expand beyond the confines of actions for defamation, the plain language of the statutory provisions would control. See *Vancura v. Katris*, 238 Ill. 2d 352, 378, 939 N.E.2d 328, 345 (2010). In other words, common law " 'must give way' " to the statutory protections of the Confidentiality Act. *Mandziara*, 299

Ill. App. 3d at 598, 701 N.E.2d at 132 (quoting *Renzi v. Morrison*, 249 Ill. App. 3d 5, 8, 618 N.E.2d 794, 796 (1993)).

¶ 32 The General Assembly expressly declared that the Confidentiality Act controls the communication of mental health records. The Confidentiality Act governs communications both in and outside the context of litigation. Regardless of the context, "[a]ll records and communications" of mental health treatment are confidential unless expressly provided for in the Confidentiality Act. 740 ILCS 110/3 (West 2008). Section 10 regulates communications in the context of litigation. 740 ILCS 110/10 (West 2008).

¶ 33 Paragraph 10(d) sets the standards for the issuance of subpoenas. These standards demand strict compliance. *Mandziara*, 299 Ill. App. 3d at 597, 701 N.E.2d at 131. In *Mandziara*, the plaintiff, a divorced mother, was hospitalized after a suicide attempt. Her ex-husband later sought a custody modification. His attorney served a subpoena *duces tecum* on the records custodian of the hospital. The plaintiff sued her ex-husband and the hospital for violation of the Confidentiality Act. *Mandziara*, 299 Ill. App. 3d at 597, 701 N.E.2d at 131.

¶ 34 *Mandziara* held that substantial compliance with the requirements of paragraph 10(d) is insufficient. *Mandziara* rejected the subpoenaing attorney's defense:

> "Canulli [the ex-husband's attorney] contends he actually complied with the legislative intent of ensuring confidentiality by requesting that the Hospital's records custodian produce the records to the trial court for *in camera* review. That was not compliance. In every case, 'subpoenaed material is ordinarily to be delivered directly to the court because the subpoena is a judicial process or writ of the court.' *People v. Kaiser*, 239 Ill. App. 3d 295, 301, 606 N.E.2d 695 (1992). Mental health records initially would appear before the court, regardless of whether Canulli sought access

for himself or Jursich [the ex-husband]. Canulli knew or should have known disclosure would occur once the records reached the courtroom." *Mandziara*, 299 Ill. App. 3d at 598, 701 N.E.2d at 132.

¶ 35 Next, *Mandziara* noted that by asking for "any and all" records the subpoena was unnecessarily broad. Noting that the General Assembly had made a strong statement that mental health records are to be kept confidential unless a communication clearly falls within a specific exception, *Mandziara* concluded that the requesting attorney would have violated the Confidentiality Act even if the subpoenaed records had never been opened:

> "If we were to hold Canulli did not violate the [Confidentiality] Act merely because he did not look at Mandziara's records, we would be rewriting the statute, effectively eroding unmistakable legislative intent under the weight of judicial fiat.
>
> Section 10(d) clearly says: no subpoenas are to be served without court orders. Nothing in section 10(d) excuses a court order when the records are first examined by the trial judge. Canulli's subpoena violated the specific terms of section 10(d) because he served it without first obtaining a court order. Although Canulli no doubt was trying to protect his client's children, his motives have nothing to do with the legislative judgment that mental health records should not be surrendered as a matter of course. Whether the records should leave the hospital is a decision for an impartial judge to make, not a lawyer representing a client." *Mandziara*, 299 Ill. App. 3d at 599, 701 N.E.2d at 133.

¶ 36 In the case at hand, defendants assert that Jan's counsel acceded in the issuing of the subpoena. If so, this would not be grounds for dismissal. Although the actions of plaintiffs' counsel may be relevant to the nature and extent of damages, the alleged actions would still constitute a violation of the Confidential Act. See *Mandziara*, 299 Ill. App. 3d at 601, 701

N.E.2d at 134; *Kim v. St. Elizabeth's Hospital of the Hospital Sisters of the Third Order of St. Francis*, 395 Ill. App. 3d 1086, 1095, 918 N.E.2d 256, 264 (2009).

¶ 37 Section 10 also governs the disclosure of records in the course of litigation after they are received in response to a subpoena. Plaintiffs allege that after receiving the records in the retaliatory discharge case, defendants further violated restrictions on the transfer and communication of protected information. In particular, defendants allegedly transferred protected information to an expert retained in the Seitz case.

¶ 38 Defendants assert that Jan's psychiatric records were relevant to both of her suits. They contend that Jan's treatment was relevant to her suit for retaliatory discharge because she alleged that her employer had aggravated her preexisting psychological condition and that her treatment was relevant to a disputed conversation with Benz that was central to the Seitz suit. This would meet the low bar for relevancy of defamatory material under the absolute litigation privilege. *Atkinson*, 369 Ill. App. 3d at 832, 861 N.E.2d at 255.

¶ 39 Initially, this court notes that the record does not support defendants' assertion that Jan pled an aggravation of a preexisting condition in her retaliatory discharge suit. Defendants cite to their own motion to dismiss for the assertion that Jan alleged her employer aggravated her preexisting psychological conditions. The complaint for retaliatory discharge, attached as an exhibit to the motion to dismiss, belies this claim. Jan alleged that she "suffered significant loss of income and benefits, emotional distress, embarrassment, humiliation, liability for attorneys' fees and costs/expenses in bringing suit." A preexisting psychological condition was not pled by Jan, nor were her claims for damages predicated on such a condition.

¶ 40 In the end, defendants' reliance on the absolute litigation privilege is misplaced. The Confidentiality Act, not the absolute litigation privilege, governs the communication of mental health records. As with other aspects of litigation, section 10 of the Confidentiality

Act sets the standards for disclosure of information on grounds of materiality.

¶ 41 Section 10(a) enumerates the exceptions to the prohibition against disclosure of mental health records in the course of litigation. The first of the exceptions enumerated in paragraph 10(a) sets the standard for disclosure on grounds of materiality. 740 ILCS 110/10(a)(1) (West 2008). The exception permits a party to seek discovery of records when "the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense." 740 ILCS 110/10(a)(1) (West 2008).

¶ 42 Disclosure is allowed only after a court "finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from injury to the therapist-recipient relationship or to the recipient or other whom disclosure is likely to harm." 740 ILCS 110/10(a)(1) (West 2008).

¶ 43 Any relation of the records to the prior litigation falls well short of the standard established by section 10(a)(1). The question is not a matter of relevance or centrality, but is whether a recipient has introduced her mental condition as an essential element of her claim. *D.C. v. S.A.*, 178 Ill. 2d 551, 566, 687 N.E.2d 1032, 1040 (1997). Jan did not do so. 740 ILCS 110/10(a)(1) (West 2008).

¶ 44 Additionally, the alleged conduct violated the mandates for court review prior to disclosure of mental health records. The requirement that the recipient make her condition an element of her claim or defense is merely a threshold question leading to further inquiry. In instances where a person's mental condition is an element of her claim, the requesting party is subject to liability if it does not have a trial court make additional explicit findings under *in camera* review. 740 ILCS 110/10(a)(1) (West 2008); *Sassali v. Rockford Memorial*

Hospital, 296 Ill. App. 3d 80, 83, 693 N.E.2d 1287, 1289 (1998). One of those additional findings is whether disclosure is more important to interests of substantial justice than the potential injury to "the recipient or other whom disclosure is likely to harm." 740 ILCS 110/10(a)(1) (West 2008).

¶ 45 Defendants contend that plaintiffs did not have standing to assert their claims. Defendants assert that the patient-therapist privilege belonged to Jan, and not plaintiffs. Plaintiffs, however, are not asserting standing based on harm done to Jan, but on the damages personally incurred. None of the cases relied on by defendants indicate that those who suffer personal damage from failure to adhere to the Confidentiality Act lack standing. See *In re Jackson*, 81 Ill. App. 3d 136, 139, 400 N.E.2d 1087, 1089 (1980) (guardian *ad litem* could not assert privilege on behalf of parents when the parents did not object to testimony by social worker pertaining to the parents' mental capacities); *In re Marriage of Kerman*, 253 Ill. App. 3d 492, 496, 624 N.E.2d 870, 873 (1993) (parent in custody dispute has right to inspect records of child); *Wisniewski v. Kownacki*, 221 Ill. 2d 453, 496, 851 N.E.2d 1243, 1247 (2006) (employer attempt to assert privilege); *Cordts v. Chicago Tribune Co.*, 369 Ill. App. 3d 601, 607, 860 N.E.2d 444, 451 (2006) ("natural and proper interest" defense does not apply to actions under the Confidentiality Act).

¶ 46 The Confidentiality Act specifically provides standing for plaintiffs. The Confidentiality Act states:

> "**110/15. Actions by aggrieved parties for violation of Act; fees and costs**
>
> § 15. Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act." 740 ILCS 110/15 (West 2008).

¶ 47 In addition, the provisions of the Confidentiality Act that were allegedly violated do

not limit their protections to the recipients of mental health services. Paragraph 10(d) provides a strict protocol that must be followed by those seeking subpoenas, and does not mention recipients. This protocol must be followed by any party and "his or her attorney." 740 ILCS 110/10(d) (West 2008). Moreover, paragraph 10(a)(1) requires more than an opening of a door by a recipient through the introduction of her treatment as an element to her claim. Paragraph 10(a)(1) protects against potential injury "to the recipient or other whom disclosure is likely to harm." 740 ILCS 110/10(a) (West 2008).

¶ 48 Defendants claim plaintiffs failed to bring a direct action under the Confidentiality Act. Although plaintiffs did not cite to specific provisions in their complaint, the complaint was sufficient to place the court and defendants on notice that plaintiffs were invoking the Confidentiality Act. See *Cordts*, 369 Ill. App. 3d at 612, 860 N.E.2d at 454.

¶ 49 The trial court dismissed the attorney defendants from the complaint based on application of the absolute litigation privilege. The inapplicability of the absolute litigation privilege to the conduct of the attorney defendants answers the issues raised by plaintiffs in their initial appeal. The issues raised by defendants in response to that appeal, and any challenge to formal defects of the complaint, may be heard upon remand. See *Cordts*, 369 Ill. App. 3d at 612, 860 N.E.2d at 455. Furthermore, our conclusion that the absolute litigation privilege does not protect the alleged conduct of the attorney defendants makes the certified question regarding the client defendants moot.

¶ 50 Accordingly, the order of the circuit court dismissing defendants is hereby reversed and the matter is remanded.

¶ 51 Reversed and remanded.