IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-10482

Summary Calendar

CONNIE CARRINGTON,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
DEPARTMENT OF DEFENSE, and
UNITED STATES AIR FORCE,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(1:92-CV-149)

(January 17, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:[*]

Following a bench trial, the district court found that Connie Carrington did not establish a Privacy Act violation. We agree with the district court and, therefore, affirm.

I.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Connie Carrington (Carrington) is married to James Carrington, who, at all times relevant to the issues in this case, was an enlisted member of the United States Air Force. In March 1991, Carrington sought medical treatment at the Dyess Air Force Base Hospital and was diagnosed with herpes, a sexually transmitted disease. Thereafter, Heather LaQuerre, a civil service employee in the hospital's Flight Medicine Department, revealed to a co-worker that Carrington had contracted herpes. There was evidence that two other employees heard LaQuerre's statement.

Carrington filed suit against the United States, the Department of Defense, and the Air Force alleging violations of the Privacy Act, 5 U.S.C. § 552a, and the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680. At the close of the bench trial, Carrington dropped the FTCA claim, and the district court found in favor of the government on her Privacy Act claim. Carrington filed a timely appeal.

II.

We review a district court's factual findings for clear error; however, when, as is the case here, the district court adopts verbatim the prevailing party's proposed findings of fact and conclusions of law, we may consider the court's lack of personal attention to factual findings when applying the clearly erroneous rule. Amstar Corp. v. Domino's Pizza, Inc., 615 F.2d 252, 258 (5th Cir.), cert. denied, 449 U.S. 899 (1980).

The Privacy Act provides that an agency may not lawfully disclose any record that is contained in a system of records unless an enumerated exception applies. 5 U.S.C. § 552a(b). An individual may recover actual damages if the agency, acting intentionally or willfully, "fails to comply with any . . . provision of [the Act] . . . in such a way as to have an adverse effect on an individual." Id. § 552a(g)(1)(D), (g)(4). We have held that in order to establish that an agency acted intentionally or willfully within the meaning of the Privacy Act, the plaintiff must show that the agency acted grossly negligent. See Chapman v. National Aeronautics & Space Admin., 736 F.2d 238, 243 (5th Cir.) (per curiam), cert. denied, 469 U.S. 1038 (1984).[1]

Carrington maintains that the government acted intentionally and willfully by failing to maintain sufficient safeguards and training to prevent LeQuerre's disclosure. The district court found, however, that "[a]t all times relevant to this lawsuit, Defendants maintained the [sic] sufficient safeguards to insure the confidentiality of patient medical records in the Flight Medicine Department of the Hospital in compliance with the requirements of the Privacy Act." Order (Findings of Fact) at 4.

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[1] In stating that the standard for recovery is gross negligence, the Chapman court relied on Edison v. Department of the Army, 672 F.2d 840 (11th Cir. 1982). In Edison, the court found that the standard for recovery is "somewhat greater than gross negligence." Id. at 846. Because we agree with the district court that the government's conduct does not amount to gross negligence, much less anything greater than gross negligence, we do not take this opportunity to clarify this point of law.

The district court's conclusion that the government maintained sufficient safeguards finds support in the record. The Department of Defense and the Air Force have regulations outlining the procedures pertaining to the maintenance and security of records, employee training, and the lawful disclosure of information contained in those records. See, e.g., Air Force Reg. 12-35 (Air Force Privacy Act Program). Carol Shamblin was responsible for Privacy Act training at the hospital when the incident occurred. She testified that LeQuerre would have received training when she first began working in the department and through periodic routings of pamphlets regarding Privacy Act regulations. Shamblin confirmed that all employees received the routings by checking the sign-off sheets attached to the pamphlets against a master list of all employees. In addition to Privacy Act training, each medical record contained a Privacy Act notation indicating the confidential nature of its contents.

LeQuerre testified that she did not remember receiving Privacy Act training and that she did not believe it occurred. The district court was not clearly erroneous when it resolved this credibility determination in favor of Shamblin. See Dardar v. Lafourche Realty Co., Inc., 985 F.2d 824, 827 (5th Cir. 1993).

The hospital's training program does not amount to gross negligence. See Andrews v. Veterans Admin., 838 F.2d 418, 425 (10th Cir.), cert. denied, 488 U.S. 817 (1988) (some training and distribution of Federal Personnel Manual not grossly negligence). As such, Carrington failed to establish an essential element of her

claim under the Privacy Act. Accordingly, we decline to consider her remaining points of error, and the decision of the district court is

AFFIRMED.