

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

**November 29, 2005**

**Clerk of Court**

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LEESA WITT,

Plaintiff-Appellant,

v

SMART DOCUMENT SOLUTIONS,  
LLC, a Georgia Limited Liability  
Company,

Defendant-Appellee.

No. 05-1098  
(D.C. No. 04-MK-417 (BNB))  
(D. Colo.)

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**ORDER AND JUDGMENT** \*

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Before **KELLY, McKAY** , and **McCONNELL** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Appellant Leesa Witt appeals the district court's dismissal of her complaint against Appellee Smart Document Solutions, LLC (SDS), for failure to state a claim upon which relief could be granted. In her complaint, Ms. Witt alleged that she executed a release form provided by her physician in order to obtain a copy of all of her medical records. She designated her place of work as the address to which the records should be mailed. She alleged that the release form was transmitted to SDS, a company in the business of storing and distributing medical records, and that SDS compiled her medical records, placed them in an improperly addressed envelope, and mailed them to "an unknown or uncertain recipient." *Aplt. App.*, at 3. She alleged that the records were "opened by and read by persons to whom the records were not released" and that she later "received her opened medical records in an unsealed, interoffice mailing envelope." *Id.*

Ms. Witt asserted four claims for relief in her complaint: (1) unreasonable disclosure of private facts; (2) intrusion upon seclusion; (3) breach of contract; and (4) negligent infliction of emotional distress. *Id.*, at 3-6. SDS filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6), which the district court granted. This appeal followed.

On appeal, we conduct a de novo review of a district court's dismissal of a complaint for failure to state a claim upon which relief may be granted. *Beedle v.*

*Wilson*, 422 F.3d 1059, 1063 (10th Cir. 2005). We consider all well-pleaded factual allegations in the complaint to be true and we view them in the light most favorable to the nonmoving party. *Id.* “The issue in reviewing the sufficiency of a complaint is not whether the plaintiff will prevail, but whether the plaintiff is entitled to offer evidence to support her claims.” *Id.* (internal quotation marks omitted). Pursuant to this standard, we have carefully reviewed the briefs, the record, and the applicable law. Exercising our jurisdiction under 28 U.S.C. § 1291, we AFFIRM the district court’s dismissal of the complaint for substantially the reasons stated in that court’s order filed January 19, 2005.

Entered for the Court

Monroe G. McKay  
Circuit Judge