

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Arthur Eugene Lynn, :  
 :  
Plaintiff, : Case No. 2:09-cv-907  
 :  
v. : JUDGE GRAHAM  
 :  
Ohio State University :  
Medical Center, et al., :  
 :  
Defendants.

OPINION AND ORDER

Plaintiff, Arthur Eugene Lynn, who is a prisoner at the Marion Correctional Institution, submitted a complaint against The Ohio State University Medical Center and a John Doe and Jane Doe, described as a radiologist and a registered nurse. He claims that the doctor and nurse were negligent in their treatment of him. On November 18, 2009, the Magistrate Judge recommended dismissal of the complaint. Mr. Lynn has filed an objection to the Report and Recommendation. For the following reasons, and after a *de novo* review of the case, his objection will be overruled and this case will be dismissed without prejudice.

The Report and Recommendation first concluded that Mr. Lynn could not sue the Ohio State University or its medical center in the United States District Court because of the jurisdictional bar found in the Eleventh Amendment to the United States Constitution. See Thorpe v. State of Ohio, 19 F.Supp. 2d 816, 820 n.6 (S.D. Ohio 1998). The federal courts are courts of limited, rather than general, jurisdiction, and not every case that has potential merit can be filed in a federal court. The Eleventh Amendment is one of many restrictions on federal court jurisdiction, and prohibits certain suits - suits brought by a citizen of a state against the state itself - from being

prosecuted in a federal court, even if such a case could properly be filed in a state court. The Report and Recommendation notes that this Court has held, in prior cases, that the Ohio State University, as well as the University Hospital or Medical Center, are arms of the State of Ohio, and that these entities enjoy the same Eleventh Amendment immunity from suit in federal court as does the State of Ohio. See, e.g., Thomson v. Ohio State University Hosp., 5 F.Supp. 2d 574 (S.D. Ohio 1998), aff'd 238 F.3d 424 (6th Cir. 2000). This is unquestionably a correct statement of the law.

Mr. Lynn argues in his objection that he did not intend to sue the State of Ohio, and that the mere fact that the hospital at which he received treatment has the words "State of Ohio" in its name should not make it part of the State. However, it is not the name that controls, but whether the hospital is part of a state university that is funded and controlled by the State of Ohio. The Ohio State University is considered part of the State of Ohio for purposes of the Eleventh Amendment, so any effort to sue the hospital itself is, from a legal standpoint, exactly the same as if the named defendant were the State of Ohio. Consequently, Mr. Lynn cannot sue the University Hospital or Medical Center in federal court.

The only other defendants are the unnamed doctor and nurse, and the only claim asserted against them is for medical negligence or medical malpractice. Again, as correctly noted in the Report and Recommendation, these individuals cannot be sued by Mr. Lynn for medical malpractice (which is a claim based on state tort law) in a federal court. The federal court has jurisdiction to hear cases based purely on state law only if the parties to the case are citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. §1332(a). Mr. Lynn and the two individual defendants are all citizens of the State of Ohio. Consequently, there is no jurisdiction to hear

Mr. Lynn's claims in the federal courts, although, again, these might be proper claims to file in a state court.

For these reasons, the Court holds that the Magistrate Judge correctly concluded that Mr. Lynn's claims do not fall within the limited jurisdiction of the United States District Courts. Therefore, the objection (#8) to the Report and Recommendation is OVERRULED and the Report and Recommendation is ADOPTED. This case is DISMISSED WITHOUT PREJUDICE for lack of jurisdiction. The Clerk shall mail a copy of the complaint and this dismissal order to the defendants.

Date: December 22, 2009

s/James L. Graham  
James L. Graham  
United States District Judge