

[Cite as *Newell v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-7111.]
IN THE COURT OF CLAIMS OF OHIO
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TIMOTHY NEWELL	:	
Plaintiff	:	CASE NO. 2002-06880
v.	:	Judge J. Craig Wright
	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	<u>MAGISTRATE DECISION</u>
Defendant	:	
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{¶ 1} Plaintiff brought this action against defendant, Grafton Correctional Institution, alleging medical negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability before a magistrate of the court on April 13, 2004, and reconvened on November 4, 2004, for the testimony of additional witnesses.

{¶ 2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff was prescribed the hormone Depo-Provera, which is used to decrease the frequency of intrusive and disturbing sexual thoughts. Plaintiff alleges that he suffered a loss of vision in his right eye in July or August 2001, after he developed a blood clot in a blood vessel of his eye as a direct result of receiving injections of Depo-Provera every 70-90 days beginning in June 2000. Plaintiff further alleges that the possible formation of blood clots (thromboembolism) was a recognized complication of Depo-Provera use. According to plaintiff, his treating psychiatrist, Dr. Woyshville, failed to inform him of the risk of developing a blood clot and did not provide him with a complete list of possible side

effects of the drug. Plaintiff insists that had he received such information, he would not have consented to its administration.

{¶ 3} Defendant denies liability and asserts that its employee, Dr. Woyshville, met the standard of care informing plaintiff of the risks associated with Depo-Provera. Defendant also maintains that plaintiff failed to prove that the administration of Depo-Provera caused the vein occlusion which led to his injury.

{¶ 4} To establish a claim of medical malpractice, plaintiff "must show the existence of a standard of care within the medical community, breach of that standard of care by the defendant, and proximate cause between the medical negligence and the injury sustained." *Taylor v. McCullough-Hyde Memorial Hospital* (1996), 116 Ohio App.3d 595, 599, citing *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 131-132. These elements must be established by expert testimony unless the negligent conduct "is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it ***." *Bruni*, supra, at 130.

{¶ 5} In addition, the elements necessary to show failure of informed consent were set forth by the Supreme Court of Ohio in *Nickell v. Gonzalez* (1985), 17 Ohio St.3d 136 at the syllabus, as follows:

{¶ 6} "The tort of lack of informed consent is established when:

{¶ 7} "(a) The physician fails to disclose to the patient and discuss the material risks and dangers inherently and potentially involved with respect to the proposed therapy, if any;

{¶ 8} "(b) The unrevealed risks and dangers which should have been disclosed by the physician actually materialize and are the proximate cause of the injury to the patient; and

{¶ 9} "(c) A reasonable person in the position of the patient would have decided against the therapy had the material risks and dangers inherent and incidental to treatment been disclosed to him or her prior to the therapy." (Emphasis added.)

{¶ 10} Plaintiff claims that Dr. Woysville was negligent because he did not fully disclose each and every possible effect of the drug known or listed by the manufacturer. According to plaintiff, defendant's medical personnel informed him that the drug could cause elevated blood pressure, testicular atrophy, breast enlargement, and weight gain. Dr. Woysville testified that he discussed the risks and benefits to plaintiff in detail, that plaintiff conveyed his understanding and acceptance, and that such discussions were documented in his medical records. Further, Dr. Woysville noted that plaintiff was very informed about the drug inasmuch as plaintiff had completed his own independent research. According to Dr. Woysville, plaintiff was aware of the risk of thromboembolism and agreed to take Vitamin E supplements to minimize such risk.

{¶ 11} In addition, testimony was presented by plaintiff's treating optometrist, Bradd Haney, and by Allison Robinson, M.D. Haney acknowledged that plaintiff suffered a blood clot to a vein in his right eye, but he was unable to render an opinion as to the cause of the occlusion. Dr. Robinson stated that he was not qualified to render an opinion whether the use of Depo-Provera was the proximate cause of hemorrhage in plaintiff's right eye. Dr. Robinson did testify that in order to provide informed consent regarding a medication, a physician should divulge the most common and major side effects of the drug; however, he maintained that it

would be nearly impossible to list all known side effects and risks on a single written form.

{¶ 12} Upon review of the testimony and evidence presented on this issue, the court finds that plaintiff failed to meet his burden of proof. Dr. Woyshville stated that he not only complied with the standard of care for physicians providing informed consent, he exceeded it. Plaintiff did not present the testimony of any physician to rebut Dr. Woyshville's statements as to the prevailing standard of care. Plaintiff also did not produce expert testimony that administration of Depo-Provera directly caused the vascular incident which reduced the sight in plaintiff's right eye.

In addition, to the extent that plaintiff implied that his medical condition is such that only common knowledge and experience are needed to understand it, the court disagrees. The testimony and evidence referenced such complex medical issues as androgen aversion therapy, retinal vein occlusion and thrombo-embolitic events.

{¶ 13} Based upon the totality of the evidence, the court concludes that plaintiff failed to prove that the medical treatment provided to him fell below the standard of care in the medical profession. The court further finds that defendant disclosed the material risks associated with Depo-Provera prior to obtaining plaintiff's consent and that the content of such disclosure met the standard of care for physicians and psychiatrists in the community.

Consequently, the court finds that plaintiff has failed to prove his claims by a preponderance of the evidence and, accordingly, judgment is recommended in favor of defendant.

{¶ 14} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party*

shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

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SJM/cmd
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