

[Cite as *Watley v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-3951.]

IN THE COURT OF CLAIMS OF OHIO  
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RAYSHAN WATLEY :  
 :  
 Plaintiff : CASE NO. 2004-01761  
 : Judge J. Craig Wright  
 v. : Magistrate Steven A. Larson  
 :  
 DEPARTMENT OF REHABILITATION : DECISION  
 AND CORRECTION :  
 :  
 Defendant :  
 : : : : : : : : : : : : : : : :

{¶ 1} On May 18, 2005, defendant filed a motion for summary judgment pursuant to Civ. R. 56. On May 25, 2005, defendant filed a motion to substitute the original affidavit of James McWenney, M.D. for a faxed affidavit previously filed. On June 22, 2005, this court granted leave to plaintiff to file a response on or before June 29, 2005. Plaintiff has not filed a response to either motion. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 2} Upon review, defendant’s May 25, 2005 motion to substitute original affidavit is hereby GRANTED instanter.

{¶ 3} Civ.R. 56(C) states, in part, as follows:

{¶ 4} "\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this

rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 5} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant's Southern Ohio Correctional Facility (SOCF) at all times relevant to this action. R.C. 5120.16. Plaintiff alleges in his complaint that in December 2003, he was taken to Corrections Medical Center (CMC) and given a wrist brace for torn ligaments in his wrist. Plaintiff also alleges that after he returned to SOCF, the brace was taken from him for approximately three weeks in order for the warden to remove two plastic support pieces from the brace. Plaintiff asserts that the removal of the plastic support pieces constitutes medical negligence.

{¶ 6} In order to prevail on a claim of medical malpractice or professional negligence, plaintiff must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and, 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Id.* at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶ 7} In support of the motion for summary judgment, defendant submitted the affidavit of Dr. James McWeeney. Dr. McWeeney's affidavit provides in relevant part:

{¶ 8} "\*\*\*

{¶ 9} "2. I currently serve as the Medical Director at the Southern Ohio Correctional Institution.

{¶ 10} "\*\*\*

{¶ 11} "6. I have reviewed the medical records of inmate Rayshan Watley, #A347-921, and I have treated Mr. Watley as an inmate at the Southern Ohio Correctional Institution.

{¶ 12} "7. Mr. Watley was diagnosed with carpal tunnel syndrome.

{¶ 13} "8. As part of his treatment, Mr. Watley was prescribed a wrist brace.

{¶ 14} "9. The metal and plastic splints in the support brace were determined to be a security risk.

{¶ 15} "10. The splints were removed from Mr. Watley's wrist brace and the brace was given back to him.

{¶ 16} "11. Based upon my training, education, experience and treatment of Mr. Watley it is my opinion, to a reasonable degree of medical certainty, that giving Mr. Watley a brace without the splints meets the acceptable standards of medical care for the treatment of carpal tunnel."

{¶ 17} Plaintiff has not provided defendant with an expert report pursuant to L.C.C.R. 7(E). Plaintiff has also failed to identify any medical expert who might give testimony in support of his assertion that the removal of the plastic support pieces from his wrist brace violated acceptable standards of care.

{¶ 18} The Tenth District Court of Appeals has stated:

{¶ 19} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc., et al. v. Law Offices of DeLibera, Lyons & Bibbo, et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶ 20} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant was not negligent. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 21} Defendant's motion for summary judgment shall be GRANTED.

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RAYSHAN WATLEY

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Plaintiff

:

CASE NO. 2004-01761

v. : Judge J. Craig Wright  
: Magistrate Steven A. Larson

DEPARTMENT OF REHABILITATION : JUDGMENT ENTRY  
AND CORRECTION :

Defendant

: : : : : : : : : : : : : : :

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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STEVEN A. LARSON  
Magistrate

Entry cc:

Rayshan Watley, #A347-921  
P.O. Box 45699  
Lucasville, Ohio 45699

Plaintiff, Pro se

Tracy M. Greuel  
Assistant Attorney General  
150 East Gay Street, 23rd Floor  
Columbus, Ohio 43215-3130  
AS/LP/dmh  
Filed July 12, 2005  
To S.C. reporter August 3, 2005

Attorney for Defendant