[Cite as *Sanchez v. Dept. of Rehab. & Corr.*, 2019-Ohio-2534.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Juan Sanchez,	:	
Plaintiff-Appellant,	:	
		No. 18AP-765
v.	:	(Ct. of Cl. No. 2017-00796JD)
Ohio Department of Rehabilitation and Correction,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 25, 2019

On brief: *Juan Sanchez*, pro se.

On brief: [*Dave Yost*], Attorney General, and *Jeanna V. Jacobus*, for appellee.

APPEAL from the Court of Claims of Ohio

SADLER, J.

{¶ 1} Plaintiff-appellant, Juan Sanchez, appeals from a judgment of the Court of Claims of Ohio granting summary judgment to defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"). For the following reasons, we affirm the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} Appellant, an inmate at the Chillicothe Correctional Institution ("CCI"), filed a complaint against appellee in September 2017 alleging that his second toe of his right foot had to be amputated due to "inappropriate medical care and diagnosis by the attending [n]urse [p]ractitioner" during the time period of March 20 through June 24, 2016.

(Sept. 29, 2017 Compl. at 1-2.) Appellant attached to his complaint two exhibits. Exhibit A consists of appellant's "handwritten copy of his [m]edical [r]ecord" that "[o]utline[s] treatment from [his] medical file," and exhibit B consists of the decision of the chief inspector on appellant's administrative grievance appeal. (July 11, 2018 Mot. at 1; Compl. at 2.)

{¶ 3} Pursuant to Civ.R. 53, the matter was referred to a magistrate, and a case management conference was held on December 20, 2017. The magistrate ordered appellant to furnish appellee the names of expert witnesses and a copy of their reports on or before March 30, 2018, and that no discovery would be permitted after May 25, 2018 without leave of the court.

{¶ 4} On March 12, 2018, appellant filed a document entitled "Notice of Expert Witness and Request for Subpoena of Medical Records." Within it, appellant identified Mr. John Smiley, a retired nurse of 30 years, as his expert witness and indicates Mr. Smiley would be tasked with reviewing his medical records to determine what the proper course of medical treatment should have been to prevent the loss of his toe. Appellant noted "[o]ther expert witnesses may be employed as the situation requires to establish a case of deliberate indifference." (March 12, 2018 Notice at 1.) Appellant requested the clerk issue a subpoena to the health care administrator of CCI to produce medical records pertaining to his right foot and toe amputation.

{¶ 5} On March 19, 2018, appellee filed a memorandum contra appellant's request for a subpoena arguing that, under Civ.R. 45, a subpoena is not the proper method for seeking discovery from a party and that, regardless, appellant's medical records could not be provided because the procedures set forth in R.C. 5120.21(C) were not followed.

{¶ 6} On May 7, 2018, appellant filed a motion to stay the proceedings and request for an order for the return of all missing legal documents and a judicial notice of retaliation by appellee. (May 7, 2018 Mot. at 1.) Appellant contended yard officers took his legal papers and work during a "shake down" for contraband. (Ex. A, attached to May 7, 2018 Mot.)

{¶ 7} Appellant filed answers to appellee's request for admissions on May 17, 2018. Appellant denied he did not have a doctor who will testify as an expert on his behalf that appellee was negligent in providing medical care, and stated:

> This matter before the court is not a "negligent" case, but rather a case of "deliberate indifference." In addition, I have been in touch with a doctor, through the expert witness I provided in this matter. Said doctor will provide additional expert testimony once the medial records are sent to Mr. John W. Smiley. Until such time I cannot provide any additional information since such information is currently unknown to me.

(Answers to Req. for Admissions at 1.) Appellant likewise denied he did not send a copy of a report from any expert witness to appellee on or before March 30, 2018. To this question he answered:

> The attorney for [appellee] prohibited any report to be send [sic] to it as counsel has unfairly denied the medical record requested to permit the expert witness to evaluate whether or not [appellee] acted with indifference to a known medical condition * * *. As [appellee] and their counsel are aware, a timely request for the medical records have been requested, whether correctly or not, the [appellee]'s attorney cannot deny that the records needed for the expert witness to evaluate were formally requested, and understood, notwithstanding the form the request was made in.

(Answers to Req. for Admissions at 1.)

{¶ 8} On May 22, 2018, appellant filed a motion for discovery pursuant to Civ.R. 34 asking for all medical records and reports made by appellee's medical staff, The Ohio State University Hospital, and all other attendees involved with his medical treatment to be forwarded to Mr. Smiley to allow Mr. Smiley, and any other expert that he may employ, to produce a report. Appellee filed a memorandum contra again stating appellant had not followed the procedures required by R.C. 5120.21(C). Appellant filed a reply in which he states he has not sought to take personal possession of the medical records, but rather has repeatedly sought for the medical records to be directly sent to his expert before he would proceed with any next step in this case.

{¶ 9} Appellee moved for summary judgment contending that although appellant provided a name of Mr. Smiley as his expert, he failed to comply with the court's case management order requiring his expert report to be filed on or before March 30, 2018. Appellee maintained that because appellant failed to submit an expert report as required by L.C.C.R. 8(E) in support of his allegations, he would be precluded from presenting any

expert testimony at trial. Without any expert testimony, appellee argued, appellant would be unable to establish a prima facie case of medical negligence. Appellee additionally argued that deliberate indifference is a constitutional claim over which the Court of Claims lacks jurisdiction. Accordingly, appellee contended that no genuine issues of material fact remained as to appellee's liability. Appellee supported its motion with an affidavit of counsel averring appellant had not furnished a copy of any expert reports and a copy of appellant's responses to appellee's request for admissions.

{¶ 10} On June 22, 2018, the magistrate entered an order denying appellant's previous motions for discovery and to stay proceedings; a judge reviewed and approved the order on July 18, 2018. Thereafter, appellant asked for and received an extension of time to file a response to summary judgment. On the day a response was due, appellant asked for a second extension of time, which the trial court denied. Ultimately, appellant not did not file a memorandum in opposition to summary judgment.

{¶ 11} The trial court held a non-oral hearing on the motion pursuant to L.C.C.R. 4(D), and, on August 21, 2018, granted appellee's motion for summary judgment. In doing so, the trial court found appellant's claim arose out of medical diagnosis, care, or treatment that he received at CCI, and therefore stated a claim for "medical malpractice."[1] (Jgmt. Entry at 2.) "To the extent [appellant's] complaint can be construed to raise a claim for deliberate indifference," the trial court dismissed the complaint. (Jgmt. Entry at 4.) As to the medical malpractice claim, the trial court found appellee supported its motion with the affidavit of counsel and request for admissions, and appellant did not file a response to summary judgment. Appellant thereby failed to controvert evidence submitted by appellee that appellant lacked an expert witness to testify regarding the medical malpractice claim. Based on the foregoing, the trial court concluded that there are no genuine issues of material fact and that appellee is entitled to judgment as a matter of law.

{¶ 12} Appellant filed a timely appeal.

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[1] We note this court has used the terms "medical malpractice" and "medical negligence" interchangeably. See e.g. *Hernandez v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 17AP-37, 2017-Ohio-8646, ¶ 1-2, 13-14; *Foy v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 16AP-723, 2017-Ohio-1065, ¶ 9, 17, 21, 23-25; *Greiser v. Janis*, 10th Dist. No. 17AP-3, 2017-Ohio-8896, ¶ 17-21. Because the trial court in this case labeled the claim "medical malpractice," we will use this term throughout the opinion.

II. ASSIGNMENTS OF ERROR

{¶ 13} Appellant assigns the following as trial court error:

> [1.] THE COURT OF CLAIMS GRANTED APPELLEES' MOTION FOR SUMMARY JUDGMENT TO THE PREJUDICE OF APPELLANT WHO PRESENTED A GENUINE ISSUE OF MATERIAL FACT THAT THE APPELLEE'S [sic] DID IN FACT ACT WITH DELIBERATE INDIFFERENCE TO A KNOWN OR SHOULD HAVE BEEN KNOWN MEDICAL CONDITION WHICH RESULTED IN THE LOSS OF A TOE DUE TO CLEAR MEDICAL NEGLIGENCE.
>
> [2.] THE COURT OF CLAIMS DENIED APPELLANT'S VARIOUS EFFORTS TO OBTAIN HIS MEDICAL RECORDS AND/OR HAVE THOSE RECORDS SENT TO HIS EXPERT WITNESS, RESTRICTING APPELLANT'S DUE PROCESS, EQUAL PROTECTION, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES AND OHIO CONSTITUTIONS.

III. STANDARD OF REVIEW

{¶ 14} Appellate review of summary judgments is de novo. *MacDonald v. Authentic Invests., LLC*, 10th Dist. No. 15AP-801, 2016-Ohio-4640, ¶ 22; *Titenok v. Wal-Mart Stores E., Inc.*, 10th Dist. No. 12AP-799, 2013-Ohio-2745, ¶ 6. Summary judgment is proper only when the party moving for summary judgment demonstrates (1) no genuine issue of material fact exists, (2) the moving parties are entitled to judgment as a matter of law, and (3) reasonable minds could 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 most strongly construed in its favor. Civ.R. 56; *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181 (1997).

{¶ 15} Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party, however, cannot discharge its initial burden under this rule with a conclusory assertion that the nonmoving party has no evidence to prove its case; the moving party must specifically point to evidence of a type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmoving party has no evidence to support the nonmoving party's claims. *Dresher at 293*; *Vahila v. Hall*, 77 Ohio St.3d 421 (1997).

Once the moving party discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

IV. LEGAL ANALYSIS

A. Appellant's Second Assignment of Error

{¶ 16} For clarity of analysis, we will address appellant's assignments of error out of order. In his second assignment of error, appellant contends that under R.C. 5120.21(C),[2] the trial court denied his efforts to obtain his medical records and/or have those records sent to his expert witness, which restricted his due process and equal protection rights.

{¶ 17} R.C. 5120.21 addresses record keeping in the department of rehabilitation and correction. R.C. 5120.21(C), at issue in this case, states:

> (1) As used in this division, "medical record" means any document or combination of documents that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.
>
> (2) A separate medical record of every inmate in an institution governed by the department shall be compiled, maintained, and kept apart from and independently of any other record pertaining to the inmate. *Upon the signed written request of the inmate to whom the record pertains together with the written request of either a licensed attorney at law or a licensed physician designated by the inmate, the department shall make the inmate's medical record available to the designated attorney or physician.* The record may be inspected or copied by the inmate's designated attorney or physician. * * * An inmate's medical record shall be made available to a physician or to an attorney designated in writing by the inmate not more than once every twelve months.

(Emphasis added.)

{¶ 18} "R.C. 5120.21(C)(2) 's 'limitation of a prisoner's right of access to his own medical records is a restriction on his liberty imposed incident to his incarceration.' " *Nicely v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-197, 2009-Ohio-4386, ¶ 9,

[2] Appellant also cites R.C. 2307.42, a statute that was repealed in 2001 and does not otherwise appear relevant to appellant's argument. Therefore, we will confine our discussion to R.C. 5120.21.

quoting *Goings v. Dept. of Rehab. & Corr.*, 10th Dist. No. 90AP-1041 (May 28, 1991). Under R.C. 5120.21(C)(2), "an inmate is not entirely denied access to his medical records but is * * * granted access under certain circumstances. One is that they be requested by the inmate jointly with his physician." *Goings* (rejecting an inmate's argument that R.C. 5120.21(C)(2) is unfair because it requires him to find a sympathetic physician willing to request his records).

{¶ 19} Here, it is undisputed that appellant was able to personally access his medical record and takes notes. However, appellant did not have an attorney or physician request a copy of his record in writing pursuant to R.C. 5120.21(C)(2), and a copy of his medical record was never delivered to Mr. Smiley. Appellant did not disclose any expert report to support his medical malpractice claim, and appellant did not oppose summary judgment.

{¶ 20} As cited above, this court has recognized the limitation imposed in R.C. 5120.21(C)(2) as a restriction on liberty imposed incident to incarceration without fundamental unfairness compared to non-inmate medical malpractice litigants. *Nicely* at ¶ 9; *Goings*. Although appellant references due process and equal protection in his assignment of error, appellant does not set forth a legal argument with supporting authority directly challenging the constitutionality of R.C. 5120.21(C)(2) under either equal protection or due process constitutional theories, or a legal argument distinguishing the rationale of *Nicely* and *Goings*.

{¶ 21} A pro se litigant is held to the same standard as litigants who are represented by counsel. *State ex rel. Neil v. French*, 153 Ohio St.3d 271, 2018-Ohio-2692, ¶ 10. "An appellant must support their assignments of error with an argument, which includes citation to legal authority." *State v. Hubbard*, 10th Dist. No. 11AP-945, 2013-Ohio-2735, ¶ 34, citing App.R. 16(A)(7) and 12(A)(2). *See also State v. Sims*, 10th Dist. No. 14AP-1025, 2016-Ohio-4763, ¶ 11 (stating general rule that an appellant bears the burden of affirmatively demonstrating error on appeal); *State v. Smith*, 9th Dist. No. 15AP0001n, 2017-Ohio-359, ¶ 22 (noting that it is not the duty of an appellate court to create an argument on an appellant's behalf). We decline to craft a constitutional argument on appellant's behalf and find appellant has not met his burden of demonstrating error on appeal.

{¶ 22} Accordingly, we overrule appellant's second assignment of error.

B. Appellant's First Assignment of Error

{¶ 23} Under his first assignment of error, appellant contends the trial court erred in granting appellee's motion for summary judgment because appellant presented a genuine issue of material fact that appellee acted with deliberate indifference to a medical condition which resulted in the loss of appellant's toe "due to clear medical negligence." (Appellant's Brief at I, 5.) For the following reasons, we disagree.

{¶ 24} As preliminary issue, appellant's assignment of error mentions both deliberate indifference and medical negligence. The trial court dismissed appellant's claim to the extent it related to deliberate indifference for lack of subject-matter jurisdiction. Appellant does not challenge the trial court's characterization of his claim as one for medical malpractice or the propriety of the trial court's dismissal of his claim as it relates to deliberate indifference. In appellant's brief to this court, he argues deliberate indifference "amounted to medical negligence." (Appellant's Brief at 4.)

{¶ 25} Our review of appellant's brief shows appellant essentially challenges the trial court's ruling in appellee's favor on the medical malpractice claim, and we will therefore proceed to address his appeal on this basis. To the extent appellant's assignment of error is based on a separate claim of deliberate indifference, he has failed to demonstrate reversible error. *Sims*, 2016-Ohio-4763, at ¶ 11 (stating general rule that an appellant bears the burden of affirmatively demonstrating error on appeal); *Hubbard*, 2013-Ohio-2735, at ¶ 34, citing App.R. 16(A)(7) and 12(A)(2) ("[a]n appellant must support their assignments of error with an argument, which includes citation to legal authority"); *Smith*, 2017-Ohio-359, at ¶ 22 (noting that it is not the duty of an appellate court to create an argument on an appellant's behalf).

{¶ 26} "[A]n inmate is under no different burden than any other plaintiff in a medical malpractice claim." *Nicely* at ¶ 9. In order to establish medical malpractice, a plaintiff must prove: (1) the standard of care recognized by the medical community; (2) the defendant's breach of that standard of care; and (3) proximate cause between the medical evidence and the plaintiff's injuries. *Evans v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 16AP-767, 2018-Ohio-1035, ¶ 39; *Hernandez v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 17AP-37, 2017-Ohio-8646, ¶ 13. Generally, "[a] medical malpractice claimant must provide proof of the recognized standard of care in the medical community through expert

testimony." *Evans*, citing *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 131-32 (1976). " 'That expert testimony must explain what a physician of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances.' " *Grieser v. Janis*, 10th Dist. No. 17AP-3, 2017-Ohio-8896, ¶ 18, quoting *Stanley v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 12AP-999, 2013-Ohio-5140, ¶ 19. "Failure to provide expert testimony establishing the recognized standards of care in the medical specialty community is fatal to the presentation of a prima facie case of medical [malpractice]." *Janis* at ¶ 20; *Evans* at ¶ 42.

{¶ 27} By local rule of the Court of Claims, parties are required to exchange, in advance of trial and in accordance with the schedule established by the court, written reports of expert witnesses expected to testify. L.C.C.R. (8)(E). The rule prohibits a party from calling an expert witness to testify unless a written report has been procured from that witness. L.C.C.R. (8)(E). Under the local rule, "if a party is unable to obtain a written report from an expert, the party must demonstrate that a good faith effort was made to obtain the report and must advise the court and the opposing party of the name and address of the expert, the subject of the expert's expertise together with the expert's qualifications and a detailed summary of the expert's testimony." L.C.C.R. (8)(E). If good cause is not demonstrated, the court may exclude testimony of the expert. L.C.C.R. (8)(E). *See also Vaught v. Cleveland Clinic Found.*, 98 Ohio St.3d 485, 2003-Ohio-2181, ¶ 21 ("a party must make a good-faith effort to submit a written expert report once a court has established a deadline for filing expert witness reports").

{¶ 28} Because expert medical testimony is required to support a medical malpractice claim, summary judgment in favor of the defendant is proper where the plaintiff both fails to produce an expert report and does not move for and receive a continuance under Civ.R. 56(F). *Hernandez* at ¶ 15-18; *Frost v. Cleveland Rehab. & Special Care Ctr., Inc.*, 8th Dist. No. 89694, 2008-Ohio-1718, ¶ 15. As explained by *Hernandez* at ¶ 17:

> Civ.R. 56(F) provides the sole remedy for a party who must respond to a motion for summary judgment before it has completed adequate discovery. *Mootispaw v. Mohr*, 10th Dist. No. 15AP-885, 2016-Ohio-1246, ¶ 10; *Commons at Royal Landing, LLC v. Whitehall*, 10th Dist. No. 15AP-240, 2016-Ohio-362, ¶ 8. Pursuant to Civ.R. 56(F), a party may request that the trial court defer ruling on the motion for summary judgment pending the completion of discovery. *Mootispaw* at

> ¶ 10; *Commons at Royal Landing* at ¶ 9. When a party fails to move for a Civ.R. 56(F) continuance, a trial court may grant summary judgment to the moving party even if discovery remains incomplete. *Mootispaw* at ¶ 10; *Commons at Royal Landing* at ¶ 11. Moreover, the party that fails to move for a Civ.R. 56(F) continuance does not preserve his right to challenge the adequacy of discovery on appeal. *Mootispaw* at ¶ 10.

{¶ 29} In this case, appellee moved for summary judgment contending that, because appellant failed to submit an expert report as required by L.C.C.R. 8(E) in support of his claim, he should be precluded from presenting any expert testimony at trial and, as a result, would be unable to establish a prima facie case of medical malpractice. An affidavit of appellee's counsel and appellant's responses to the request for admissions supported the motion.

{¶ 30} Appellant contends that appellee did not present any evidence or identify portions of the records that demonstrated an absence of genuine issues of material facts as to the essential elements of the nonmoving parties claim. First, appellant points to the record at large to show he notified appellee of his expert witness, Mr. Smiley, in a timely fashion, and contends appellee made false statements to the Court of Claims that he did not identify his expert.

{¶ 31} We agree that appellant did identify Mr. Smiley, but find this fact to be of no consequence in light of appellant's failure to then provide a report from any medical expert. Appellee's motion for summary judgment and supporting affidavit do not allege appellant failed to identify any expert. Rather, appellee argued and supported its motion with evidence that appellant failed to provide a report from a medical expert witness, a fact appellant does not dispute. As provided above, the failure of a medical malpractice claimant to ultimately produce a report from a proffered medical expert bars that witness from testifying under L.C.C.R. 8(E) and negates an element of the claim as a consequence. *Hernandez* at ¶ 15-18.

{¶ 32} Second, appellant argues the standard of care is not in contention in this case since appellee failed to establish that the medical staff did apply the correct standard of care, and appellant provided evidence to establish the claim by way of the exhibits attached to his complaint. As provided above, the medical malpractice claimant has the burden of

establishing the standard of care, and this must be done through expert testimony. *Evans*, citing *Bruni*. Therefore, these arguments run counter to established law and lack merit. To the extent this argument could be construed as challenging the necessity of an expert in this case at all, we disagree that, on this record, "the standard of care in the case is so obvious that non-experts could reasonably be expected to evaluate the impact of the defendant's conduct." *Campbell v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 04AP-96, 2004-Ohio-6072, ¶ 10.

{¶ 33} Considering all of the above and having independently reviewed this issue, we find appellee met its initial burden under Civ.R. 56. Because appellee met its initial burden, the burden shifted to appellant to demonstrate specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

{¶ 34} In this case, appellant did not oppose appellee's motion for summary judgment despite receiving an extension of time. On appeal, appellant now makes several arguments for why he nonetheless did meet his reciprocal burden or should be excused for not doing so.

{¶ 35} Appellant's primary argument is that he was unfairly prevented from filing a timely report from his expert because, despite his diligent efforts (including "kites" to administration, request for a subpoena, and moving for discovery), he was unable to have his official medical record sent to Mr. Smiley, and Mr. Smiley was uncomfortable with writing a report based on exhibits A and B. (Appellant's Brief at 7.) Appellant acknowledges he was able to view his medical record himself, but also contends he was effectively prevented from gaining access to his medical records under R.C. 5120.21(C)(2), and was forbidden from obtaining a second medical opinion by institutional policy.

{¶ 36} In this case, it is undisputed that appellant did not follow the procedure in R.C. 5120.21(C). As previously stated, this court has specifically rejected the argument that appellee failed to provide discovery of a medical record needed to produce an expert report to defeat summary judgment where an inmate undisputedly failed to meet the requirements of R.C. 5120.21(C). *Hernandez* at ¶ 9, 15-16. Furthermore, in our resolution of appellant's second assignment of error, we found appellant failed to demonstrate R.C. 5120.21(C) is unconstitutional, and case law from this court determined the law is essentially fair. Therefore, we disagree with the premise that appellee unfairly prevented

appellant from being able to provide an expert with his medical record in this case, and find appellant has not demonstrated his inability to have his medical record sent to his expert in this case prevents summary judgment in favor of appellee under Civ.R. 56(E).

{¶ 37} Appellant additionally suggests he could not file an opposition to summary judgment because his legal documents were seized and never returned by CCI staff. However, appellant was granted one extension by the trial court, and does not challenge the trial court's decision to deny his second request for an extension of time. We further note appellant never expressly moved for a Civ.R. 56(F) continuance.[3] As a result, appellant has not demonstrated his alleged lack of legal documents excuses his failure to respond to summary judgment or demands reversal of the trial court decision in this case.

{¶ 38} Considering all of the above, because appellee discharged its initial burden and appellant did not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial, summary judgment in favor of appellee is appropriate. *Dresher* at 293; *Vahila* at 430; Civ.R. 56(E).

{¶ 39} Accordingly, appellant's first assignment of error is overruled.

V. CONCLUSION

{¶ 40} Having overruled appellant's first and second assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and LUPER SCHUSTER, JJ., concur.

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[3] We note "L.C.C.R. 4(B) provides that '[a]ll extensions of time shall be made by written motion which states the specific basis of the extension and which is supported by documentation and, if appropriate, affidavit [and] shall be accompanied by a proposed order which states the duration of the extension.' " *McDougald v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 17AP-285, 2017-Ohio-8378, ¶ 18, quoting L.C.C.R 4(B).