

[Cite as *Hughley v. Pickaway Correctional Inst.*, 2003-Ohio-4437.]

IN THE COURT OF CLAIMS OF OHIO

TERRY A. HUGHLEY :
Plaintiff : CASE NO. 2002-06782
v. : MAGISTRATE DECISION
PICKAWAY CORRECTIONAL INST. : Lee Hogan, Magistrate
Defendant :

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{¶1} Plaintiff brought this action alleging that he sustained injury as a result of defendant’s negligence in failing to timely provide him with prescription medications that he was required to take on a daily basis.¹ The issues of liability and damages were bifurcated and the case proceeded to trial before a magistrate of this court on the issue of liability.

{¶2} When this cause of action arose, plaintiff was an inmate at Pickaway Correctional Institution (Pickaway) in the custody and control of defendant pursuant to R.C. 5120.16. He was transferred from Lorain Correctional Institution (LCI) to Pickaway on Friday, February 22, 2002. The following day he worked at least seven hours in the cafeteria. Afterward, he fell and injured his head while waiting in the “pill call” line. Plaintiff had not taken his prescription medications since Thursday, before he left LCI. The medications at issue are Combivir, Sustiva, and Prozac. The first

¹On January 14, 2003, the court issued an entry granting defendant’s motion for partial summary judgment on plaintiff’s claim of false imprisonment. The negligence claim was the only remaining claim before the court at the time of trial.

two were prescribed for treatment of HIV, the third to combat depression. Plaintiff contends that the lack of medication made him lightheaded and dizzy which, in turn, caused him to fall and strike his head. He maintains that he had a 30-day supply of his medications; that his medical records were transferred with him and that defendant was negligent in failing to provide the prescribed amount of medicine to him from the day that he arrived.

{¶3} In order to recover on his negligence claim, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, at 702.

{¶4} Upon consideration of the evidence, testimony, and arguments of the parties, the court finds that plaintiff has failed to establish a prima facie case.

{¶5} Although there is no dispute that plaintiff was not given his medications upon arrival at Pickaway, he admitted that he did receive a full medical evaluation. He also signed a statement acknowledging that he had attended an orientation meeting regarding inmate health services; that he received information regarding HIV infection, hepatitis and tuberculosis, and that he had an

opportunity to ask questions about health care delivery at Pickaway. (Defendant's Exhibit A.) He received a Health Center Pass indicating a start date of February 25, 2002. (Plaintiff's Exhibit 8.)

{¶6} Further, according to Dr. Angboku, defendant's witness and medical officer for the Pickaway facility at the time of plaintiff's incarceration, the short lapse of medication alleged in this case would not cause the symptoms described by plaintiff. To the contrary, Dr. Angboku testified that dizziness can be a side effect of taking Prozac and that, if such side effect did occur, it should subside when the medication was not being taken. Dr. Angboku also testified that HIV medications are frequently administered on an intermittent basis to avoid an individual building a resistance to the intended effect. Thus, Dr. Angboku testified that a two or three day lapse in taking the HIV antiviral medications would not adversely affect plaintiff's health. Plaintiff offered no medical testimony to counter this evidence.

In short, the evidence fails to establish that defendant breached any duty owed to plaintiff under the circumstances of this case or that, if a duty was breached, that it was the proximate cause of plaintiff's dizziness or fall. Accordingly, judgment is recommended for defendant.

{¶7} *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).*

LEE HOGAN
Magistrate

Entry cc:

Terry A. Hughley
8901 Detroit Avenue, Apt. 1-E
Cleveland, Ohio 44102

Plaintiff, Pro se

Eric A. Walker
Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

Attorney for Defendant

LH/cmd
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