[Cite as Smith v. Ross Correctional Inst., 2004-Ohio-6579.]

IN THE COURT OF CLAIMS OF OHIO

JACKIE SMITH :

Plaintiff :	CASE NO. 2003-10449 Judge Fred J. Shoemaker	
V.	:	Magistrate Steven A. Larson
ROSS CORRECTIONAL INSTITUTION	:	MAGISTRATE DECISION

Defendant :

{¶ 1} Plaintiff brought this action against defendant alleging medical negligence. The issues of liability and damages were bifurcated and on October 14, 2004, the case proceeded to trial at Ross Correctional Institution (RCI) on the issue of liability.

 $\{\P 2\}$ Plaintiff alleged that he received inadequate medical treatment for a lesion on the bottom of his right foot and that, as a result, he developed an infection, which ultimately caused him to lose two of his toes to amputation.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Evidence at trial showed that plaintiff is an insulin-dependant diabetic. Plaintiff testified that in July 2001 he developed a "wart" the size of a pinhole on the bottom of his right foot. Plaintiff was referred to Dr. Julia Ruffin, a podiatrist who worked part-time at RCI, for treatment of the lesion. Dr. Ruffin gave plaintiff a topical cream to apply to the affected area, told him to keep it clean and covered with an adhesive pad, and to follow up with her in two weeks.

{¶ 4} Plaintiff alleges that Dr. Ruffin provided inadequate medical care because she failed to prescribe antibiotics to prevent the lesion from becoming infected, to regularly monitor his condition as the lesion became progressively worse, and to timely refer him to a medical doctor after his condition worsened.

{¶ 5} On October 7, 2001, plaintiff was admitted to the Inmate Health Services (IHS), a medical ward within RCI, because his right foot had become so swollen that he was having trouble walking. Dr. James E. Coulter, a physician at RCI, testified that he treated plaintiff for his swollen foot after his admission to IHS, and that he prescribed an antibiotic to help prevent infection. On October 9, plaintiff was ordered to soak his foot in Betadine, an iodine-based antiseptic solution. During the early morning hours of October 10, plaintiff's body temperature began to spike which, according to Dr. Coulter, was an indication of a possible infection.

 $\{\P 6\}$ Plaintiff was immediately transferred to the emergency room at Adela Hospital in Chillicothe where he was diagnosed as having an infection in his right foot. Plaintiff was then transferred to the Ohio State University Medical Center (OSUMC) where he underwent surgery to amputate two of his toes in an effort to halt the spread of the infection.

{¶ 7} Dr. Coulter testified that he had previously treated plaintiff for diabetes which he explained was a serious chronic disease that, if not properly managed, could cause a multitude of related health problems, including poor circulation to the extremities. Dr. Coulter stated he had counseled plaintiff about the necessity to make changes to his lifestyle and diet in order to properly manage his diabetes, and that he instructed plaintiff to follow a strict diet, to routinely monitor his blood sugar level and to administer insulin on schedule. Dr. Coulter testified that plaintiff was, however, often noncompliant with his treatment regimen and that such noncompliance contributed to the complications plaintiff suffered.

 $\{\P 8\}$ Dr. Coulter also pointed out that the IHS admission records note that plaintiff's right foot was swollen but that there was no sign of redness, drainage, or increased body temperature which are indicators of an infection. (Defendant's Exhibit A, p. 62.) Dr. Coulter explained that plaintiff's body temperature abruptly spiked on October 10, which was a sign that plaintiff had experienced a rapid onset of infection in his foot. Dr. Coulter concluded that plaintiff's infection likely did not begin until October 10. Based upon this conclusion, Dr. Coulter opined that Dr. Ruffin's failure to prescribe antibiotics or to refer plaintiff to a medical doctor was not the cause of the infection. {¶ 9} 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.

{**¶ 10**} The only medical testimony in this case was that of Dr. Coulter, plaintiff's treating physician at RCI. Dr. Coulter testified that when plaintiff was admitted to IHS on October 7, 2001, subsequent to Dr. Ruffin's treatment, there were no signs of infection. Dr. Coulter opined that plaintiff subsequently experienced a rapid onset of infection, which was not unusual for a diabetic.

{¶ 11} In Dr. Coulter's opinion, the treatment plaintiff received from Dr. Ruffin met or exceeded the appropriate standard of care and was not the cause of the infection in his right foot. Furthermore, plaintiff failed to present any evidence that Dr. Ruffin's treatment fell below the standard of acceptable medical care for a podiatrist.

{¶ 12} Based upon Dr. Coulter's testimony, the court finds that defendant did not breach its duty of care to plaintiff with regard to plaintiff's medical treatment.

{¶ 13} Plaintiff also asserts a claim of general negligence based upon defendant's alleged failure to timely deliver the medical care prescribed to him. In this regard, the court notes that "[p]risoners are entitled to adequate medical care, but they are not entitled to 'every amenity which some person may think is needed to avoid mental, physical and emotional deterioration." *Gumple v. Wilkinson, et al.* (Aug. 31, 1994), Lorain App. No. 94CA005858, quoting *Newman v. Alabama* [C.A. 5, 1977], 559 F.2d 283, 291.

{**¶ 14**} According to Dr. Coulter, the onset of plaintiff's infection occurred after he was admitted to IHS. When his temperature spiked on October 10, he was immediately transferred to the local emergency room for diagnosis and treatment. Once doctors determined that plaintiff had a rapidly advancing infection in his foot, he was transferred to OSUMC for surgery the next morning.

{¶ 15} Based upon the totality of the evidence, the court concludes that plaintiff's medical treatment met or exceeded the standard of care in the profession. The court further finds that there was no delay in the delivery of appropriate medical treatment once plaintiff's foot became infected. Therefore, plaintiff has failed to prove his claim by a preponderance of the evidence. Judgment is recommended in favor of defendant.

 $\{\P \ 16\}$ 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

Entry cc:

Plaintiff, Pro se

Jackie Smith, #286-072 P.O. Box 7010 16149 State Route 104 Orient, Ohio 45601

Eric A. Walker Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130 Attorney for Defendant

LM/cmd Filed November 8, 2004 To S.C. reporter December 6, 2004