[Cite as *Bradshaw v. Mansfield Corr. Inst.*, 2004-Ohio-5443.]

IN THE COURT OF CLAIMS OF OHIO

DENNIS J. BRADSHAW	:	
Plaintiff	:	CASE NO. 2003-11895
		Judge Fred J. Shoemaker
v.	:	Magistrate Steven A. Larson
MANSFIELD CORRECTIONAL INSTITUTION	:	DECISION
	:	
Defendant		

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

{¶ 1} On July 29, 2004, defendant filed a motion for summary judgment. Plaintiff was granted an extension of time to September 3, 2004, to file a response. Plaintiff however, has not filed a response. 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} Civ.R. 56(C) states, in part, as follows:

{¶ 3} "*** 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.

{¶ 4} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant's Mansfield Correctional Institution at all times relevant to this action. R.C. 5120.16. In plaintiff's complaint, plaintiff alleges that: "*** [T]hey are negligently diagnosing what is causing my entire left arm to go completely numb for periods of 15 minutes to as long as 4 hours in span. *** The only pain reliever he gives [me] is Ibuprofen 600 mg tablets. I've been taking this medication for about 4 ½ years and I believe now they are causing kidney problems. *** They are not giving my condition the medical care that it requires." Thus, the crux of plaintiff's complaint is that he sustained personal injuries as a result of medical malpractice by defendant.

{¶ 5} 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.

{¶ 6} In support of the motion for summary judgment, defendant submitted the affidavit of Arvenise Melton, R.N., a medical professional in defendant's employ. Melton's affidavit provides in relevant part:

{¶ 7} "***

{¶ 8} "2. As a result of my job duties during that time, I am familiar with the medical history of inmate Dennis Bradshaw, #A380584, and have reviewed his medical files.

{¶ 9} "***

{¶ 10} "9. Thus, Mr. Bradshaw's medical record reflects that he has been seen, treated and advised as to how to proceed with the use of his shoulder. Many accommodations have been made by DRC for Mr. Bradshaw's shoulder injury – work restrictions, advising him not to lift over 20 pounds (permanently), bottom bunk restrictions, advising him not to participate in sports activities (permanently), advising no physical recreation. However, he continues to re-injure the same shoulder with his own ill-advised activities. If Mr. Bradshaw continues to aggravate his old injury with such activities as sliding into a base while playing softball, lifting weights and doing push-ups

he will continue to experience pain. Medically, there is nothing further that can be done for his shoulder."

{¶ 11} In further support of the motion for summary judgment, defendant submitted the affidavit of Inder Gujral, M.D., another medical professional in defendant's employ. Dr. Gujral's affidavit provides in relevant part:

{¶ 12} "***

{¶ 13} "2. I am familiar with inmate Dennis J. Bradshaw, #A380584, and his medical history.

{¶ 14} "***

{¶ 15} "6. During his incarceration with the Department of Rehabilitation and Correction, Mr. Bradshaw has been treated for his pre-existing shoulder problems. This treatment has been appropriate and within the generally accepted standard of care in the medical profession for the treatment of such shoulder problems."

{¶ 16} As stated above, plaintiff has not responded to defendant's motion for summary judgment. Although plaintiff filed a motion on August 11, 2004, to introduce exhibits consisting of informal complaints, grievances, and kites, he has not submitted any expert witness reports to support his allegations nor has he identified any expert witnesses. At best, plaintiff's exhibits evidence his continued complaints about his injury and his care; the exhibits do not document a breach of the standard of care as required under *Bruni*, supra.

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

{¶ 18} "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-1663.

{¶ 19} 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 in the care and treatment of plaintiff. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 20} Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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	:	
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Based upon the evidence and for the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED. 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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FRED J. SHOEMAKER
Judge

Entry cc:

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AS/LP/cmd
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