

[Cite as *Johnson v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-626.]

IN THE COURT OF CLAIMS OF OHIO
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SYLVESTER JOHNSON	:	
	:	
Plaintiff	:	CASE NO. 2004-11040
	:	Judge J. Craig Wright
v.	:	
	:	<u>DECISION</u>
OHIO DEPARTMENT OF	:	
REHABILITATION AND CORRECTION	:	
	:	
Defendant	:	
	:	
: : : : : : : : : : : :		

{¶ 1} Defendant filed a motion for summary judgment on December 6, 2005, and plaintiff filed an unsigned response on December 27, 2005. The motion is now before the court for a non-oral hearing.

{¶ 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, *Gilbert v. Summit County* (2004), 104 Ohio

St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff originally filed his claim under Case No. 2002-09650 on October 29, 2002, but he dismissed that action on December 31, 2003, by filing a notice of voluntary dismissal.

{¶ 5} Defendant argues that plaintiff filed this action outside the applicable one-year statute of limitations for medical claims. Plaintiff argues that his claim is not a medical claim, but an action for bodily injury for which there is a two-year statute of limitations.

{¶ 6} On October 31, 2000, plaintiff was transferred from the Hamilton County Jail to defendant's custody at the Orient Correctional Institution (OCI). At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 7} There is no dispute that plaintiff suffers from a skin disease known as psoriasis and that he began taking prescription medication for his condition in 1990. Paragraph 3 of plaintiff's complaint states that:

{¶ 8} "Upon arrival in the custody of defendant, plaintiff reported to the *physician* who examined him that he had a long history of severe psoriasis, which had been previously controlled through a combination of daily doses of Soriatane 25 MG capsules and Hydroxyzine HCL 25 tablets ***." (Emphasis added.)

{¶ 9} Plaintiff alleges that he was denied his medication when he was transferred to defendant's custody at OCI and that he suffered symptoms of psoriasis with increasing severity from the time he was transferred to OCI until he was transferred to an institutional hospital at Pickaway Correctional Institution (PCI)

in December 2000. Plaintiff did receive treatment at PCI where he remained until shortly before his release on March 2, 2001.

{¶ 10} R.C. 2305.113 states in pertinent part: "(A) Except as otherwise provided in this section, an action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the cause of action accrued."

{¶ 11} "Medical claim" is defined in R.C. 2305.113(E) as:

{¶ 12} "(3) 'Medical claim' means any claim that is asserted in any civil action against a *** hospital, *** that arises out of the medical diagnosis, care, or treatment of any person."

{¶ 13} The term "hospital" is defined in R.C. 2305.113(E)(1) as "any person, corporation, association, board, or authority that is responsible for the operation of any hospital licensed or registered in the state, *including, but not limited to, those that are owned or operated by the state*, political subdivisions, any person, any corporation, or any combination of the state, political subdivisions, persons, and corporations. 'Hospital' also includes any person, corporation, association, board, entity, or authority that is *responsible for the operation of any clinic that employs a full-time staff of physicians practicing in more than one recognized medical specialty and rendering advice, diagnosis, care, and treatment to individuals.* ***." (Emphasis added.)

{¶ 14} It is clear that defendant can be properly defined as a "hospital" as that term is defined in R.C. 2305.113. In this case, defendant employs physicians and medical support staff in its clinics. Thus, plaintiff has made a claim against a "hospital" for purposes of R.C. 2305.113(E).

{¶ 15} It is also clear that plaintiff's action arises out of "the medical diagnosis, care, or treatment" that he received. As

stated above, plaintiff claims that he did not receive the medication required to control his psoriasis. Thus, plaintiff's claim is based on a *lack* or *omission* of care and is, therefore, a "medical claim." See R.C. 2305.113(E)(3).

{¶ 16} Defendant argues that plaintiff's medical claim accrued, at the latest, upon his release date of March 2, 2001. The court agrees. Plaintiff filed the action in Case No. 2002-09650 on October 29, 2002. Plaintiff did not file his action in Case No. 2002-09650 within the time period allowed by law and, thus, he could not have timely filed the instant action. Defendant's motion for summary judgment shall be granted.

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

JUDGMENT ENTRY

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.

J. CRAIG WRIGHT
Judge

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