

# Court of Claims of Ohio

The Ohio Judicial Center  
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SYLVESTER JOHNSON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2004-11040

Judge J. Craig Wright  
Magistrate Anderson M. Renick

## MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff testified that on October 31, 2000, he was transferred from the Hamilton County jail to defendant's custody at the Orient Correctional Institution (OCI) and that he was subsequently incarcerated at the Pickaway Correctional Institution (PCI). Plaintiff contends that, prior to his incarceration at OCI, he had been prescribed medication for psoriasis. Plaintiff testified that during his intake physical examination at OCI, he notified defendant's medical staff that he had been diagnosed with psoriasis and that he wanted to continue taking the prescription medications Soriatane and Hydroxyzine. Defendant's medical staff informed plaintiff that he needed to obtain a prescription from one of defendant's physicians before such medication could be administered to him. Plaintiff contends that he did not receive a

prescription for Hydroxyzine for several weeks and that he was not prescribed Soriatane until after his transfer to PCI.

{¶ 3} According to plaintiff, defendant was negligent in failing to provide him the proper medication to control his psoriasis and that, as a result, he experienced the symptoms of severe psoriasis while in defendant's custody. Defendant contends that plaintiff's claim is one for medical malpractice and that he cannot prevail without expert testimony.

{¶ 4} 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.* The exception to that rule is "in cases where the nature of the case is such that the lack of skill or care of the physician and surgeon is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it \* \* \*." *Id.* However, the exception is limited in scope and "relatively few courts in Ohio have found the common knowledge exception applicable so as to obviate the need for expert witness testimony on the malpractice issue." *Buerger v. Ohio Dept. of Rehab. & Corr.* (1989), 64 Ohio App.3d 394, 399.

{¶ 5} Plaintiff's allegations of negligence concern whether defendant's medical professionals selected an appropriate course of treatment for his condition. The court finds that these allegations pertain to matters that are not within the common knowledge and experience of laymen. Rather, plaintiff's allegations concern the professional skill and judgment used by the physicians who treated him. Therefore, expert testimony is

required both to establish the requisite standard of care and to show that defendant's employees deviated from that standard of care.

{¶ 6} Plaintiff did not introduce expert testimony and the only witnesses at trial were plaintiff and Tobbi Reeves-Valentine, R.N., the medical operations manager at PCI. Reeves-Valentine testified that she was familiar with defendant's policies for prescribing medication and that defendant's physicians have the sole discretion to determine what, if any, medication is prescribed to treat an inmate.

{¶ 7} Based upon the totality of the evidence, as well as plaintiff's failure to introduce expert testimony, the court finds that plaintiff has failed to prove his claim of negligence by a preponderance of the evidence. Accordingly, it is recommended that judgment be rendered in favor of defendant.

*A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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ANDERSON M. RENICK  
Magistrate

cc:

Case No. 2004-11040

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MAGISTRATE DECISION

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AMR/cmd  
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