

[Cite as *Merchant v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-2548.]

IN THE COURT OF CLAIMS OF OHIO

www.cco.state.oh.us

JAMES MERCHANT :
 :
 Plaintiff : CASE NO. 2005-04632
 : Judge J. Craig Wright
 v. : Magistrate Steven A. Larson
 :
 OHIO DEPARTMENT OF : DECISION
 REHABILITATION AND CORRECTION :
 Defendant :

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

{¶ 1} On March 6, 2006, defendant filed a motion for summary judgment. Plaintiff 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, *Gilbert v. Summit County*, 104 Ohio St.3d

660, 2004-Ohio-7108, citing, *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: "I was seen by the dentist for a routine extraction. The procedure was bungled, the tooth broken off and left below the gumline, and infection set in, requiring further surgery weeks later, following weeks of excruciating pain and suffering ***."

{¶ 5} In order to prevail on a claim of dental malpractice, 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. See *Rogoff v. King* (1993), 91 Ohio App.3d 438; citing, *Littleton v. Good Samaritan Hospital and Health Center* (1988), 39 Ohio St.3d 86; *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Id.* at 445. 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 Ray Feudo D.D.S., a medical professional in defendant's employ. Dr. Feudo's affidavit provides in relevant part:

{¶ 7} "5. On November 30, 2005, I reviewed the dental records of inmate James Merchant at the request of Assistant Attorney General Naomi Maletz.

{¶ 8} "6. I focused my review to the dental care James Merchant received on April 2, 2004.

{¶ 9} "7. The dental file contains an Informed Consent to Oral Surgery signed by James Merchant, dated April 2, 2004 *** that outlines the possible complications to oral surgery as follows: dry sockets; infection; swelling; bleeding and bruising; pain; injury to adjacent teeth, fillings or bone; decision to leave a small piece of root in the jaw when its removal would require extensive surgery and increased risk of complications; and opening into the sinus above the upper teeth.

{¶ 10} "8. In my experience, and based upon my education and training, the potential side effects and possible complications from a tooth extraction include pain, swelling, and infection.

{¶ 11} "9. It is my opinion, based upon my education, training and experience, that a dentist's decision to leave a portion of the root in the jaw during a tooth extraction is within the standard of care for the procedure.

{¶ 12} "10. After reviewing the dental records of James Merchant, and based upon my education, training and experience, it is my opinion that the standard of care was followed at all times with respect to the dental care provided to James Merchant by Dr. Calver at the DRC on April 2, 2004."

{¶ 13} As stated above, plaintiff has not responded to defendant's motion for summary judgment.

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

{¶ 15} "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*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. 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-1633.

{¶ 16} 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 for trial and defendant is entitled to judgment as a matter of law. Therefore, defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

JAMES MERCHANT

:

Plaintiff : CASE NO. 2005-04632
 v. : Judge J. Craig Wright
 : Magistrate Steven A. Larson

OHIO DEPARTMENT OF : JUDGMENT ENTRY
 REHABILITATION AND CORRECTION :
 Defendant :

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

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

Entry cc:

James Merchant, #314-785 Plaintiff, Pro se
 P.O. Box 8107
 Mansfield, Ohio 44901

Emily A. Smith Attorneys for Defendant
 Anne B. Strait
 Naomi H. Maletz
 Assistant Attorneys General
 150 East Gay Street, 23rd Floor
 Columbus, Ohio 43215-3130

Lisa M. Eschbacher
 Assistant Attorney General
 150 East Gay Street, 22nd Floor

Case No. 2005-04632

- 11 -

JUDGMENT ENTRY

Columbus, Ohio 43215-3130

JLH/LP/cmd

Filed April 28, 2006

To S.C. reporter May 23, 2006