

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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RAYSHAN WATLEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-06876

Judge J. Craig Wright
Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

{¶ 1} On August 27, 2008, defendants filed a motion for summary judgment pursuant to Civ.R. 56(B). On September 19, 2008, plaintiff filed a response. The motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 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} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendants at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C. 5120.16. Plaintiff alleges that he did not receive proper and timely medical attention on October 16, 2006, when he complained of both chest pain and bleeding from the wrist. Defendants argue that plaintiff received proper medical care while incarcerated at SOCF.

{¶ 5} In support of the motion, defendants submitted the affidavit of James McWeeney, M.D. who states:

{¶ 6} “1. I am licensed as a physician in good standing in the State of Ohio, and I devote more than one-half of my professional time to the active clinical practice in my medical field;

{¶ 7} “2. I am currently employed as an employee by [defendant] as the Physician at [SOCF];

{¶ 8} “3. As the physician at SOCF, I supervise and have personal knowledge of the activities and duties relating to the medical care and treatment of inmates that are incarcerated at SOCF;

{¶ 9} “4. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 10} “* * *

{¶ 11} “6. I have reviewed the medical file of [plaintiff] for the dates October through November 2006, with particular attention to the following dates: October 16, 2006, October 27, 2006, and November 5, 2006;

{¶ 12} “7. According to his medical file, [plaintiff’s] medical health care and treatment at SOCF on October 16, 2006, October 27, 2006, and November 5, 2006 met the appropriate standard of care;

{¶ 13} “8. The medical care [plaintiff] received at SOCF did not proximately result in the injuries that he alleges in his complaint.”

{¶ 14} Plaintiff did not file any affidavit to dispute the averments made by Dr. McWeeney.

{¶ 15} Civ.R. 56(E) provides, in part:

{¶ 16} “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

{¶ 17} In order to establish liability, plaintiff must produce evidence to establish both the relevant standard of care and proximate cause. See *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony which must construe what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶ 18} Based upon a review of both the undisputed affidavit testimony provided by Dr. McWeeney, and in consideration of plaintiff’s failure to provide the court with any evidence showing that a genuine issue of fact exists for trial, the court finds that defendants are entitled to judgment as a matter of law. Accordingly, defendants’ motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendants. 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

Case No. 2006-06876

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ENTRY

cc:

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MR/cmd
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