

[Cite as *Price v. Dept. of Rehab. & Corr.*, 2008-Ohio-5727.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TERRELL PRICE

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

[Cite as *Price v. Dept. of Rehab. & Corr.*, 2008-Ohio-5727.]

Case No. 2007-06543

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DECISION

Case No. 2007-06543

Judge Joseph T. Clark
Magistrate Steven A. Larson

DECISION

{¶ 1} On July 28, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file 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 defendant at the Belmont Correctional Institution (BeCI) pursuant to R.C. 5120.16. Plaintiff alleges that over an unspecified period of time he was denied proper medical care and ignored by BeCI employees when he complained of pain in his chest and requested medical attention. Defendant argues that plaintiff received proper medical care while incarcerated at BeCI.

{¶ 5} In support of the motion, defendant submitted the affidavit of Inder Gujral, M.D., who states:

{¶ 6} “1. I currently serve as the Medical Director at [BeCI].

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

{¶ 8} “3. I have been a licensed Physician in Ohio since 1982, and I currently practice in the field of internal medicine.

{¶ 9} “4. I am familiar with accepted standards of medical care for internal medicine. I devote more than three-fourths of my professional time to the active clinical practice of medicine.

{¶ 10} “5. I have reviewed the medical records of [plaintiff] from April 2005 to April 2006, and I treated [plaintiff] as an inmate at [BeCI].

{¶ 11} “6. [Plaintiff] presented to the infirmary on April 22, 2005 with pain in his abdomen and nausea. He was sent to the local E.R. for evaluation. A CAT scan of his abdomen did not show any acute pathology of the abdomen, but incidentally a nodule was noted in the lower right chest. It was advised that a CT scan of the lung should be ordered. Information was provided to [plaintiff] and a CT scan of the chest was ordered.

{¶ 12} “7. On May 11, 2005, [plaintiff] signed an Against Medical Advice Release of Responsibility indicating that he refused the CT scan.

{¶ 13} “8. On May 26, 2005, [plaintiff] signed an Against Medical Advice Release of Responsibility indicating that he refused to see the doctor.

{¶ 14} “9. On September 22, 2005, [plaintiff] reported difficulty breathing and pain in the lower chest. A chest x-ray was taken and [plaintiff] was appropriately treated.

{¶ 15} “10. A chest CT scan was conducted on October 3, 2005. The patient was seen for a pulmonary consult on November 16, 2005. A chest CT scan was also performed on November 23, 2005.

{¶ 16} “11. On November 25, 2005, [plaintiff] was seen in segregation by the medical staff. He complained of intermittent chest pain as was taken to Inmate Health Services and an EKG was obtained.

{¶ 17} “12. On December 17, 2005, [plaintiff] was seen in segregation by the medical staff during pill call. He complained of intermittent chest pain and was taken to Inmate Health Services. An EKG was obtained.

{¶ 18} “13. [Plaintiff] was seen for a cardiothoracic consult on December 21, 2005.

{¶ 19} “14. On January 5, 2006, [plaintiff] reported to a corrections officer that he was spitting up blood and experiencing chest pain. He was seen by the medical staff and no blood was noted in the sputum sample. On January 7, 2006, [plaintiff] reported that he was spitting up blood. He was taken to Inmate Health Services but he was unable to produce a specimen.

{¶ 20} “15. A chest CT scan was performed on January 13, 2006 at the Ohio State University Medical Center.

{¶ 21} “16. [Plaintiff] was seen for a pulmonary consult on March 2, 2006 and a thoracic surgery consult on March 15, 2006.

{¶ 22} “17. [Plaintiff] was seen for a pulmonary consult via Telemedicine on April 6, 2006. A chest CT scan was conducted on April 20, 2006.

{¶ 23} “18. On April 28, 2006, [plaintiff] underwent a limited right thoracotomy with wedge resection of a large mediastinal cyst at The Ohio State University Medical Center. The pathology reported indicated that the cyst was benign. He was discharged in stable condition on May 4, 2006.

{¶ 24} “19. Based upon my training, education, experience and treatment of [plaintiff] it is my opinion, to a reasonable degree of medical probability, that the care [plaintiff] received while in the care of [defendant] meets acceptable standards of medical care. It is my opinion that the treatment received was reasonable, appropriate, and within the accepted standards of medical care.”

{¶ 25} Plaintiff did not file either a response to defendant’s motion or any affidavit to dispute the averments made by Dr. Gujral.

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

{¶ 27} “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.”

{¶ 28} 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.*

{¶ 29} Based upon a review of both the undisputed testimony provided by Dr. Gujral and plaintiff’s medical records, 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 defendant is entitled to judgment as a matter of law. Accordingly, defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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DECISION



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JUDGMENT ENTRY

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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.

JOSEPH T. CLARK
Judge

cc:

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Filed October 2, 2008
To S.C. reporter November 3, 2008