[Cite as *Gill v. Grafton Correctional Inst.*, 2009-Ohio-2351.]

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

ALI GILL

Plaintiff

v.

GRAFTON CORRECTIONAL INST.

Defendant
Case No. 2008-05818

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

DECISION

{¶ 1} On March 3, 2009, defendant filed a motion for partial summary judgment pursuant to Civ.R. 56(B) combined with a motion to transfer the remainder of plaintiff's case to the administrative docket. On March 20, 2009, plaintiff filed a memorandum contra. Defendant's March 31, 2009, motion for leave to respond to plaintiff's memorandum contra is DENIED. Defendant's motions for summary judgment and for transfer are 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, plaintiff was an inmate in the custody and control of defendant at Grafton Correctional Institution pursuant to R.C. 5120.16. Plaintiff alleges that on or about August 27, 2007, employees of defendant conducted a "shakedown" of his cell. Plaintiff alleges that during the shakedown, his medications, soap powder, and vitamins were scattered on the floor and destroyed, and that defendant discarded what plaintiff described as his medically prescribed "egg-crate" mattress and six-inch-wide leather belt. Plaintiff states that his medication was replaced 16 days later. Plaintiff seeks the reissue of his belt and egg-crate mattress which he claims to have use of as a "medical service," and damages for pain and suffering as a result of being denied his medications.

{¶ 5} Defendant argues that plaintiff does not have a valid doctor's order to possess the mattress and belt and that they were therefore confiscated pursuant to defendant's policy. Defendant further argues that plaintiff suffered no ill effect as a result of being without his medication.

{¶ 6} In support of its motion for summary judgment, defendant provided the affidavits of David Hannah, R.N. and Norberto Juan, M.D. Nurse Hannah states in his affidavit:

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

{¶ 8} "2. I am employed by the Ohio Department of Rehabilitation and Correction (DRC) as a Nurse at [defendant]. I have occupied this position since July 15, 1996. I have been a Registered Nurse in the state of Ohio since June 28, 1995.

{¶ 9} "3. Through my employment at [defendant] I have personal knowledge of [defendant's] policies and procedures regarding inmate medical care.

{¶ 10} "4. As a policy and procedure at [defendant], a doctor's order authorizing an inmate to possess a medical device is valid for one year. If an inmate has a doctor's order to possess a medical device, the order must be reviewed and re-approved each year in order for the order to be valid.

{¶ 11} "5. Inmates are not permitted to possess a medical device without a valid doctor's order. If an inmate is in possession of a medical device that lacks a valid doctor's order, the medical device constitutes contraband.

{¶ 12} "6. As a policy and procedure at [defendant], a medical device that has deteriorated and is determined to be unusable should be removed from an inmate's possession and constitutes contraband. The inmate is no longer permitted to possess such items.

{¶ 13} "* * *

{¶ 14} "8. I have reviewed the medical records of [plaintiff]. Further, I have personal knowledge of the medical care he received and the doctor's orders written during his incarceration.

{¶ 15} "9. [Plaintiff's] medical records contain no valid order authorizing/issuing [plaintiff] to have a six inch leather belt.

{¶ 16} "10. [Plaintiff's] medical records contain no valid order authorizing [plaintiff] to have an egg-crate mattress.

{¶ 17} "11. Accordingly, based on the above-outlined * * * policies and procedures, the egg-crate mattress cover and six-inch wide leather belt were properly removed from [plaintiff's] cell on or about August 27, 2007."

{¶ 18} Dr. Juan states in his affidavit:

{¶ 19} "1. I have personal knowledge and I am competent to testify to the facts contained in this Affidavit.

{¶ 20} "2. I am employed by [DRC] as a physician at [defendant]. I have occupied this position since 2004.

{¶ 21} "4. I have been a licensed Doctor of Medicine in the state of Ohio since 1976.

{¶ 22} "5. I am familiar with accepted standards of medical care.

{¶ 23} "* * *

{¶ 24} "7. I have reviewed the medical records of [plaintiff]. Further, I have personal knowledge of the medical care he received and the doctor's orders written during his incarceration. I have personally treated [plaintiff] during his incarceration.

{¶ 25} "8. I have reviewed the Complaint filed in the above-captioned case and am aware [plaintiff] is alleging that he was without his prescribed medication (Piroxleam, Acetaminophen, and Glucosamine) from August 27, 2007 until September 11, 2007.

{¶ 26} "9. On August 27, 2007, [plaintiff] was prescribed Piroxleam, Acetaminophen, and Glucosamine.

{¶ 27} "10. The prescriptions for Piroxleam, Glucosamine, and Acetaminophen were filled on August 30, 2007.

{¶ 28} "* * *

{¶ 29} "13. [Plaintiff] did not pick up his medication until September 11, 2007.

{¶ 30} "14. Based on my training, education, experience and treatment of [plaintiff], it is my opinion to a reasonable degree of medical certainty that this alleged delay of medication has not resulted in any harm to [plaintiff].

{¶ 31} "15. Based on my training, education, experience and treatment of [plaintiff], it is my opinion to a reasonable degree of medical certainty, that his medical care and treatment at [defendant] during all times relevant to the Complaint met the acceptable standards of medical care and treatment."

{¶ 32} Plaintiff provided his own affidavit with his response to defendant's motions. In the affidavit, plaintiff describes the various medical conditions from which he suffers. Plaintiff further states that he received the leather belt from medical staff at the Mansfield Correctional Institution before he was transferred to defendant in 2000, and that he received the egg-crate mattress as the result of a doctor's order in 2002. Plaintiff attached a copy of a December 23, 2002 doctor's order prescribing an egg-crate mattress for six months. (Plaintiff's Affidavit, Exhibit A.) Finally, plaintiff states that he does not "seek compensation for my destroyed vitamins or soap powder."

{¶ 33} Based upon the testimony provided by Dr. Juan and nurse Hannah, and in consideration of plaintiff's failure to present evidence to the contrary, the court finds that the leather belt and egg-crate mattress that plaintiff possessed were not medically necessary and that he did not have a valid doctor's order or other documentation that

entitled him to possess those items. While plaintiff asserts that he had an order for the mattress, the court finds that the order expired in 2003, and that plaintiff failed to provide any evidence that the order was renewed.

{¶ 34} Based upon the foregoing, the court finds that no genuine issue of material fact remains for trial and defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED. Inasmuch as plaintiff does not seek recompense for his damaged vitamins and soap powder, defendant's motion to transfer is DENIED as moot. Judgment shall be rendered in favor of defendant.

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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.

_____
CLARK B. WEAVER SR.
Judge

cc:

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MR/cmd
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