

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

MICHAEL THORNE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2008-08663

Judge Joseph T. Clark

Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

{¶ 1} On December 5, 2008, defendants 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 the Department of Rehabilitation and Correction at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C. 5120.16. Plaintiff alleges that defendants have failed to provide him with proper mental health treatment while he has been incarcerated at SOCF. Defendants argue that plaintiff's mental health treatment has met the applicable standard of care.

{¶ 5} In support of their motion for summary judgment, defendants provided the affidavit of Abbas Bawazer, M.D. Dr. Bawazer states:

{¶ 6} "1. I am a licensed physician in the state of Ohio. I work as a psychiatrist at [SOCF].

{¶ 7} "2. [Plaintiff] is an inmate who is incarcerated at SOCF. He has been an inmate at SOCF since February 16, 2006 to the present. I have read the complaint that [plaintiff] has filed against the defendants in Case No. 2008-08663.

{¶ 8} "3. As a psychiatrist, I treat inmates at SOCF who have various kinds of mental illnesses. I have provided mental health care and treatment to [plaintiff]. I have read and am familiar with [plaintiff's] mental health records. [Plaintiff] has been diagnosed with paranoid schizophrenia; he has had the diagnosis since March 9, 2006.

{¶ 9} "4. Based upon my personal knowledge of [plaintiff] and review of his records, it is my professional opinion that physicians and other mental health professionals at SOCF have not denied [plaintiff] mental health treatment as he has alleged in his complaint. Indeed, it is my professional opinion that physicians such as myself and other mental health professionals have provided [plaintiff] with competent mental health care and treatment during his incarceration. Whether [plaintiff] was housed in a mental health unit was based upon a careful review of his mental records as well as an evaluation."

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

{¶ 11} Civ.R. 56(E) provides in part:

{¶ 12} “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.”

{¶ 13} 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.*

{¶ 14} Based upon the undisputed affidavit provided by Dr. Bawazer 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.

JOSEPH T. CLARK
Judge

cc:

Case No. 2008-08663

- 4 -

ENTRY

Eric A. Walker
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Michael Thorne, #431-492
P.O. Box 45699
Lucasville, Ohio 45699

MR/cmd
Filed May 26, 2009
To S.C. reporter June 15, 2009