

[Cite as *Conley v. Dept. of Rehab. & Corr.*, 2018-Ohio-5452.]

DOMINICK CONLEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00837JD

Judge Patrick M. McGrath
Magistrate Gary Peterson

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} On November 1, 2018, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response.¹ The motion is now before the court for 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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

¹On November 21, 2018, plaintiff filed a document captioned “motion for court review” wherein he states he is “appealing” the court’s “11/1/18” decision of the clerk. However, the clerk did not issue any decision in this case. Additionally, the motion does not contain a certificate of service as required by Civ.R. 5 and therefore cannot be considered by this court.

{¶4} According to the complaint, plaintiff is an inmate in the custody and control of defendant. The complaint goes on to provide that plaintiff injured his hand while using a machine to wax the floor. The complaint relates that plaintiff was evaluated by a medical doctor, presumably employed by defendant, and received x-rays of his injured hand. The complaint reports that the tendon in his finger is “broke” and that he no longer has feeling in his finger. Plaintiff alleges that the necessary treatment of his tendon is surgery, but despite this, defendant informed him that there is nothing that can be done to repair his tendon. Although plaintiff does not identify his cause of action, it is apparent that he disagrees with the medical decision not to surgically repair his tendon.

{¶5} Defendant moves for summary judgment arguing that plaintiff has stated a claim for medical malpractice and cannot prevail on such a claim because he has not identified an expert witness who will testify regarding any alleged breach of the applicable standard of care that proximately caused him harm.

{¶6} There is no doubt that plaintiff’s claim against defendant arises out of medical diagnosis, care, or treatment that he received while incarcerated. Therefore, plaintiff has stated a claim for medical malpractice. *Foy v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin Nos. 16AP-723 and 16AP-724, 2017-Ohio-1065, ¶ 23.

{¶7} In order to recover for medical malpractice, a plaintiff must prove: (1) the existence of a standard of care within the medical community; (2) the defendant’s breach of that standard; and (3) proximate cause between the medical evidence and the plaintiff’s injuries. *Adams v. Kurz*, 10th Dist. Franklin No. 09AP-1081, 2010-Ohio-2776, ¶ 11. A medical malpractice claimant must provide proof of the recognized standard of care in the medical community through expert testimony. *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 131-32, 346 N.E.2d 673 (1976); see also *Foy* at ¶ 23 (an inmate’s claim against the Department of Rehabilitation and Correction arising in the course of medical diagnosis, care, or treatment is a medical claim); *Gordon v. Ohio State Univ.*, 10th Dist.

Franklin No. 10AP-1058, 2011-Ohio-5057, ¶ 67 (“The *Bruni* standard applies to an inmate’s claim for medical malpractice.”).

{¶8} “The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the non-moving party’s claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party may not fulfill its initial burden simply by making a conclusory assertion that the non-moving party has no evidence to prove its case. *Id.* Rather, the moving party must support its motion by pointing to some evidence of the type set forth in Civ.R. 56(C), which affirmatively demonstrates that the non-moving party has no evidence to support the non-moving party’s claims.” *Schooley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 05AP-823, 2006-Ohio-2072, ¶ 9.

{¶9} In support of its motion, defendant submitted the affidavit of counsel for defendant and the affidavit of Kenneth Saul, M.D., plaintiff’s treating physician at Correction Reception Center. Counsel for defendant avers that as of November 1, 2018, plaintiff has not provided any reports from an expert witness who will testify on his behalf that defendant was negligent in providing him medical care. Dr. Saul avers that he is involved with plaintiff’s medical care and treatment. Dr. Saul states that he is familiar with the standard of care and has reviewed plaintiff’s medical chart. Based upon his education, experience, training, and background, Dr. Saul opines that the medical care and treatment plaintiff received was within the applicable standard of care and that plaintiff did not suffer any harm as a proximate result of such care and treatment.

{¶10} As mentioned previously, plaintiff did not file a response to defendant’s motion. Civ.R. 56(E) provides: “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon 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.”

{¶11} In this case, plaintiff failed to provide any evidence to controvert the evidence submitted by defendant and demonstrate a genuine issue of material fact. Indeed, plaintiff challenges the medical decision of defendant’s employees regarding the care, treatment, or diagnosis related to his tendon. However, plaintiff failed to provide counsel for defendant with the names of any expert witnesses or a copy of their reports by the deadline established by the court. See L.C.C.R. 8(E). Additionally, plaintiff failed to submit any evidence to controvert the opinion of Dr. Saul that the medical care plaintiff received complied with the applicable standard of care and did not proximately cause him harm. *Hernandez v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 17AP-37, 2017-Ohio-8646, ¶ 13-15 (trial court properly granted summary judgment to defendant where inmate failed to produce expert testimony addressing the standard of care, breach of that standard, and proximate cause of any injuries). Therefore, it must be concluded that plaintiff cannot prevail on his claim of medical negligence.

{¶12} Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Defendant’s motion for summary judgment is GRANTED and judgment is hereby rendered in favor of defendant. All previously scheduled events are VACATED. All other pending motions are DENIED as moot. 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.

PATRICK M. MCGRATH

Case No. 2017-00837JD

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ENTRY

Filed December 18, 2018
Sent to S.C. Reporter 1/14/19

Judge