[Cite as *Keeley v. Croft*, 2017-Ohio-9386.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

DAVID KEELEY	)	CASE NO. 17 BE 0016
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	OPINION
	)	
GARY CROFT, et al.	)	
	)	
DEFENDANTS-APPELLEES	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas of Belmont County, Ohio Case No. 14 CV 187
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellant:	David Keeley, *Pro se* 119 Cornerstone Drive Marietta, Ohio 45750
For Defendants-Appellees:	Atty. Michael DeWine Ohio Attorney General Atty. Kelly N. Brogan Assistant Attorney General Criminal Justice Section 150 E Gay Street, 16th Floor Columbus, Ohio 43215

JUDGES:
Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Mary DeGenaro

Dated: December 29, 2017

[Cite as *Keeley v. Croft,* 2017-Ohio-9386.]
WAITE, J.

{¶1} Appellant David Keeley files a *pro se* appeal of a February 16, 2017, judgment of the Belmont County Court of Common Pleas granting Appellees' motion for summary judgment and dismissing his civil rights action filed pursuant to 42 U.S.C. 1983. Appellant presents a number of issues on appeal. First, Appellant argues the trial court erred in granting summary judgment in favor of Appellees, as he contends they were subject to liability under 42 U.S.C. 1983 and the evidence showed both that Appellees caused delay in Appellant's surgery and that they acted with deliberate indifference regarding his serious medical issue. Second, Appellant asserts the trial court erred in not ordering Appellees to comply with his discovery requests and in failing to sanction Appellees for inaccurate statements made during Appellant's deposition. For the foregoing reasons, Appellant's assignments of error are without merit and the judgment of the trial court is affirmed.

Procedural and Factual History

{¶2} On June 19, 2014, Appellant filed a *pro se* complaint against the following Appellees: Gary Croft ("Croft"), Chief Inspector at Belmont Correctional Institution ("BCCI"); Mona Parks ("Parks"), Assistant Chief Inspector at BCCI; Brad Eller ("Eller"), Health Care Administrator at BCCI; Kelly Riehle ("Riehle"), Institutional Inspector at BCCI; Paul Weidman ("Weidman"), physician at BCCI; Aaron Samuels, ("Samuels") physician at BCCI; Christopher Bagi ("Bagi"), Assistant Ohio Attorney General; and four unknown "John Doe" defendants. The complaint alleged violations of 42 U.S.C. 1983 regarding alleged denial of medical care for Appellant, an inmate

at BCCI. All Appellees except Bagi are employed by the Ohio Department of Rehabilitation and Correction ("ODRC").

{¶3} Appellant is incarcerated at BCCI for a stated prison term of seven years. During two fights with other BCCI inmates, on July 4, 2012 and July 18, 2012, Appellant sustained injuries to his left eye.

{¶4} In his complaint Appellant raised a single claim of deliberate indifference based on denial of medical care. Appellant alleged that Appellees were deliberately indifferent to his serious medical issue, in violation of the Eighth Amendment, by failing to properly treat his eye injury and causing a delay in scheduling surgery and treatment of his eye, which in turn caused his condition to worsen. Appellant admitted in his complaint that after the first altercation resulted in the initial injury to the eye, he was taken to Ohio State University Hospital ("OSU") for emergency care and shortly thereafter to Franklin County Medical Center ("FMC") for follow up. However, Appellant contended that Appellees were deliberately indifferent to his medical needs because they failed to ensure that subsequent evaluations and hospital visits were undertaken in a timely manner. Due to this failure, his condition was exacerbated. Appellant also alleged that Appellees violated his rights by failing to expediently address his grievances and complaints relating to his eye injury.

{¶5} Appellees failed to file an answer to the complaint. Instead, the Ohio Attorney General's ("AG") Office filed a motion to dismiss the complaint on Appellees' behalf. In the motion the AG noted that Appellant had filed two previous actions involving the same allegations about his medical care. On May 29, 2013, Appellant

sued Croft, Parks and other ODRC officials for negligence. The case was dismissed for lack of subject matter jurisdiction. Appellee Bagi represented Appellees in that action. After that suit was dismissed, Appellant filed a second complaint against the same Appellees, this time adding Bagi as a named defendant. Raising the same allegations regarding delay and inadequacy of medical care, his second suit raised 42 U.S.C. 1983. His second suit was also dismissed by the trial court, because Appellant failed to satisfy the mandatory filing requirements of R.C. 2969.25 and 2969.26. Appellant was required to file an affidavit listing any previous actions filed by him, and did not.

{¶6} In the instant action, Appellant filed a motion seeking summary judgment against all Appellees on July 30, 2014. Appellant also filed a response to the AG's motion to dismiss. On August 25, 2014, the AG sought to have the motion to dismiss be converted into a motion for summary judgment. On September 24, 2014, the trial court granted Appellees' motion for summary judgment based on *res judicata.* Appellant appealed that decision and on June 1, 2015, we reversed the judgment of the trial court and remanded the case for further proceedings.

{¶7} On August 19, 2015, Appellees filed an answer to the complaint, denying that Appellees had been deliberately indifferent to Appellant's medical needs and raising a number of affirmative defenses, including qualified and absolute immunity. Appellee Bagi filed a motion for judgment on the pleadings on January 21, 2016. On that same day, the remaining Appellees filed another motion for summary judgment. Among their arguments, Appellees argued that the ODRC employees who

assisted in the grievance process were not subject to 42 U.S.C. 1983 liability, because liability under 42 U.S.C. 1983 cannot be imposed by means of the doctrine of *respondeat superior*; and that there was no genuine issue of material fact that the Appellee physicians were not deliberately indifferent to Appellant's injury. Appellant filed his response to this motion several months later, on September 16, 2016.

{¶8} On February 16, 2017, the trial court issued a judgment entry disposing of all pending matters, including: Appellee Bagi's motion for judgment on the pleadings; remaining Appellees' motion for summary judgment; a motion to compel discovery filed by Appellant; a motion by Appellees to strike Appellant's motion for summary judgment; a motion by appointed counsel for Appellant to either withdraw or be re-appointed; and Appellant's motion to continue representation by appointed counsel. The trial court granted Bagi's judgment on the pleadings and the attorney's motion to withdraw, and granted the remaining Appellees' motion for summary judgment. The trial court overruled Appellant's motion for summary judgment, motion to compel discovery, and motion to continue to receive appointed counsel. The court also overruled Appellees' motion to strike Appellant's motion for summary judgment.

{¶9} Appellant filed this appeal asserting three assignments of error.

ASSIGNMENT OF ERROR NO. 1

> DEFENDANT'S [SIC] CROFT (CHIEF INSPECTOR), PARKS (ASSISTANT CHIEF INSPECTOR MEDICAL), AND RIEHLE (INSTITUTIONAL INSPECTOR), ARE NOT ENTITLED TO SUMMARY JUDGMENT UNDER THE SUMMARY JUDGMENT STANDARD.

{¶10} In his first assignment, Appellant contends the trial court erred in granting summary judgment in favor of the non-physician Appellees: Croft, Parks and Riehle. Appellant does not argue that the court erred in granting summary judgment to Appellee Bagi. Hence, Appellant has waived any arguments as they pertain to this Appellee and the trial court's decision to grant him summary judgment is affirmed.

{¶11} Turning to the other three non-physician Appellees, in an appeal of a trial court's decision to grant summary judgment, an appellate court conducts a *de novo* review, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc*., 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995).

{¶12} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the

nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

{¶13} The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

{¶14} As Appellant does not contest summary judgment as it applies to Appellee Bagi, our review is limited to two remaining groups: physicians Weidman and Samuels, and non-physicians Croft, Parks and Riehle. Starting with this last group, Appellees alleged that none of them are liable under 42 U.S.C. 1983 because their participation in the grievance process precludes liability. Citing *Barnett v. Luttrell,* 414 F. App'x 784, 787 (6th Cir.2011), Appellees contend that a denial of a grievance, or failure to act on a grievance, precludes 42 U.S.C. 1983 liability. Appellees cite Appellant's deposition testimony, where he was asked the same line of

questions about these three Appellees. Each time, Appellant (1) admitted that these defendants were not directly responsible for his medical care; (2) admitted that he had no direct contact with these Appellees; and (3) that he was suing these Appellees solely because they allegedly failed to respond to the complaints in his grievances.

{¶15} 42 U.S.C. 1983 provides in part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

{¶16} In addressing whether a complaint has sufficiently alleged a 42 U.S.C. 1983 action this Court held in *Snell v. Seidler,* 7th Dist. No. 04 MO 15, 2005-Ohio-6785, ¶ 26-27:

> However, Ohio courts also consistently hold that a complaint alleging an action under 42 U.S.C. 1983 must meet two requirements: (1) there must be an allegation that the conduct in question was performed by a person acting under color of state law; and (2) the complaint must sufficiently allege that the conduct deprived the plaintiff of a federal right. *Cooperman v. University Surgical Assoc., Inc*. (1987), 32 Ohio

> St.3d 191, 199. See, also, *Schwarz v. Board of Trustees of OSU* (1987), 31 Ohio St.3d 267, 272; *Mullins v. Griffin* (1991), 78 Ohio App.3d 84, 87 (10th Dist.).
>
> Thus, a plaintiff who is asserting a federal civil rights action under 42 U.S.C. 1983 usually states, for instance, that the defendant acted under color of state law and violated the Fourteenth Amendment by depriving plaintiff of property without due process. See *St. Clair Corp. v. Cleveland* (1990), 49 Ohio St.3d 33, 34, 36 (noting that the actionable violation of the Fourteenth Amendment is not the deprivation of a property interest per se but the deprivation without due process and also requiring the plaintiff to allege that state remedies are inadequate).

{¶17} Regarding whether these non-physician Appellees are liable pursuant to 42 U.S.C. 1983, our analysis must begin with the status of the Appellees. In a 1983 claim, a defendant must prove that he was deprived of some constitutional right by state actors, and that these individuals were acting under color of law. Croft, Parks and Riehle are employees of ODRC. Croft is the Chief Medical Inspector of ODCR, Parks the Assistant Chief Medical Inspector for ODRC and Riehle is the Institutional Inspector at BCCI. All three were involved, on some level, with overseeing Appellant's treatment due to their supervision of BCCI staff and in handling the grievance filed against BCCI by Appellant as a result of his alleged delay in treatment. Appellant admitted in his deposition that none of these three Appellees were directly involved with his medical care. (Keeley Depo., pp. 24-27; 32-

34.) Appellant admittedly argues they are liable under 42 U.S.C. 1983 due to his belief that they delayed and mishandled his grievance.

{¶18} Appellant's memorandum in opposition to summary judgment included his own affidavit and approximately 49 separate exhibits outlining the grievance he filed at BCCI, as well as the treatment of his eye condition which primarily took place through OSU. The exhibits do not demonstrate any medical care was given by Croft, Parks or Riehle. The only role these Appellees played was in processing his grievance. Appellant's grievance was filed on August 31, 2012. When asked to explain the substance of the grievance, Appellant stated that he was originally attacked and sustained an eye injury on July 4, 2012. He was sent to OSU for treatment and returned eight days later, but was again assaulted by the same inmate. Appellant was labeled as the aggressor, and a ticket was issued against his behavior. Appellant claimed he received no medical attention after the second altercation and that the inmate was placed in the same house as Appellant following his return from OSU after the original attack. Appellant was not returned to OSU, despite being told by OSU medical staff that they wanted him to return in two weeks. Appellant indicated in the written grievance that he wanted certain relief:

> 1/. Medical treatment on his eye from OSU including the surgeries they spoke about to try and get some sight back. 2/. All susequent [sic] actions by Belmont personal [sic] against Keeley nullified and stricken. 3/. Evaluation on medical treatment with held [sic] conducted by OSU.

(9/16/16 Brief in Opp. to Summary Judgment, Exh. 5.)

{¶19} Appellant's exhibits reflect that the grievance process was carried through to exhaustion. Appellant presented no evidence to suggest that any of these Appellees failed to communicate or address Appellant's concerns. Appellant's grievance was denied and he appealed that denial through the appropriate ODRC channels. It was ultimately concluded that Appellant received the appropriate care from BCCI staff, his care was within the ODRC guidelines, and no further action would be taken regarding his grievance. (*Id*., Exh. 8b.)

{¶20} In looking at this evidence, the trial court stated:

> With his Brief, Plaintiff submitted his Affidavit and a group of Exhibits. After the Court's review of all of those materials, Plaintiff has failed to show either that any of the nonphysician Defendants were involved in providing medical care or were less than appropriate throughout the grievance process.

(2/16/17 J.E., p. 3.)

{¶21} "The denial of the grievance is not the same as the denial of a request to receive medical care." *Martin v. Harvey,* 14 F.App'x 307 (6th Cir.2001). In his opposition to summary judgment, Appellant failed to demonstrate that any of the non-physician Appellees were involved in the alleged denial of medical treatment. In his own deposition testimony he admitted that none of these Appellees provided medical care. Appellant named these three Appellees because of their position of supervisory authority over the grievance process and due to the alleged deficiencies in the medical treatment Appellant received while in the care of BCCI medical staff.

None of these Appellees participated in Appellant's medical care directly. At most, they oversaw Appellant's treatment plan and had supervisory abilities over other BCCI employees. It has long been held that the doctrine of *respondeat superior* cannot be used in a 42 U.S.C. 1983 lawsuit to impute liability onto supervisory personnel. See *Monell v. Dept. of Soc. Servs. of N.Y.,* 436 U.S. 658, 691-95, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Where, as here, a 1983 claim is based solely on *respondeat superior*, it will be dismissed. Appellant has failed to demonstrate Appellees Croft, Parks or Riehle directly participated or condoned a denial of medical care, and these Appellees can only be sued in a 1983 action on the basis of their own, direct actions. See *Copeland v. Machulis,* 57 F.3d 476, 481 (6th Cir.1995).

{¶22} Accordingly, the trial court properly granted summary judgment in favor of Appellees Croft, Parks and Riehle. Appellant presented no evidence that they directly engaged in denial of his medical care or performed any function beyond processing and administering Appellant's grievances. Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> DEFENDANT'S WIEDMAN [SIC] (CHIEF MEDICAL OFFICER, CMO), SAMUELS (CHIEF MEDICAL OFFICER, CMO), AND ELLER (HEALTH CARE ADMINISTRATOR, HCA), ARE NOT ENTITLED TO SUMMARY JUDGMENT UNDER THE SUMMARY JUDGMENT STANDARD.

{¶23} In his second assignment of error, Appellant contends judgment in favor of Appellees Weidman and Samuels was improper because they acted with

deliberate indifference to his serious medical issue by causing delay in his medical care, which resulted in great harm to Appellant. Appellees deny they caused any delays in Appellant's medical care, and claim that scheduling of his procedures was handled by OSU staff. They also assert that Appellant failed to provide any evidence that delay on their part contributed to a worsening of Appellant's injury.

{¶24} In order to establish a violation of the Eighth Amendment, Appellant must show that BCCI and its staff members acted with deliberate indifference to his serious medical needs. *Estelle v. Gamble,* 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). It is undisputed that Appellant's eye injury amounted to a serious medical condition. The question is whether Appellant has shown that the various defendants demonstrated deliberate indifference to his injury.

{¶25} Deliberate indifference requires more than mere negligence; more, even, than a showing that medical malpractice has occurred. *Id*. It requires proof of behavior that is akin to criminal recklessness. The defendant must know that the inmate faces a substantial risk of serious harm, and deliberately disregards that risk by failing to take reasonable measures to abate it. *Farmer v. Brennan,* 511 U.S. 825, 847, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). In cases where an inmate has received treatment for his medical condition, the inmate must show that his treatment was "so woefully inadequate as to amount to no treatment at all." (Citation omitted.) *Alspaugh v. McConnell,* 643 F.3d 162, 169 (6th Cir.2011).

{¶26} Appellees' motion for summary judgment contained Weidman's affidavit. In it, he outlines Appellant's entire medical treatment, including the dates of

treatment. Weidman includes references to all communications between himself and the medical staff at the two hospitals at issue, OSU and FMC. Appellees also attached 133 pages of Appellant's medical records to substantiate the treatment discussed in the affidavit. Those records show that after Appellant's initial injury on July 4, 2012, he was examined by the BCCI medical staff and was then referred to the OSU medical center emergency department by Weidman. OSU physicians treated Appellant's injury and Appellant was given a prescription for eye drops. Appellant returned to OSU approximately six days later for further evaluation, where he was diagnosed with a dislocated lens. (9/16/16 Brief in Opp. to Summary Judgment, Exh. 30a.) OSU medical staff suggested that surgery may be required and requested that Appellant return in two weeks for a follow-up. (*Id*., Exh. 30b.) The required BCCI form allowing this visit was completed by Weidman on July 16, 2012. (1/21/16 Defendant's Second Motion for Summary Judgment, Medical Record 22.)

{¶27} After his return to BCCI, Appellant and an inmate engaged in another fight on July 18, 2012. Appellant claimed no injuries after this second altercation.

{¶28} Weidman completed another consultation request form on September 29, 2012. (*Id*., Medical Record 29.) On October 9, 2012, Appellant was examined at the FMC ophthalmology clinic. OSU scheduled Appellant's follow-up appointment for November 20, 2012. On this date, the OSU physician recommended lens repositioning. (*Id*., Medical Record 32.)

{¶29} On January 2, 2013, Weidman completed a consultation request form for surgery at OSU. (*Id*., Medical Record 38.) In February of 2013, Weidman completed a second consultation form, as surgery had not yet been scheduled. (*Id*., Medical Record 39.) Weidman's staff contacted OSU directly, and were informed that because so much time had passed since the last evaluation, another evaluation was necessary in order to assess Appellant's status before surgery could be scheduled. (*Id*., Medical Records 40-43.)

{¶30} On March 23, 2013, Weidman completed another consultation form requesting pre-operative evaluation of Appellant. (*Id*., Medical Record 44.) Appellant was examined by OSU on June 25, 2013, which recommended a date that was the "NEXT AVAILABLE FOR SURGICAL MEASUREMENTS AND SURGICAL PLANNING." (*Id*., Medical Record 46.)

{¶31} On June 27, 2013, Samuels conducted a preoperative history and physical. On July 15, 2013, another consultation form was completed by Weidman requesting surgical repositioning. (*Id*., Medical Record 48.) On August 14, 2013, Weidman completed one more consultation request to OSU after it was noted that preoperative measurements were needed before surgery. Weidman indicated on the form that this was Appellant's "9th round trip" in this matter. (*Id*., Medical Record 49.)

{¶32} Appellant underwent surgical lens repositioning on September 17, 2013. Appellant was sent to FMC for postoperative recovery until September 19, 2013, when he returned to the BCCI infirmary until September 23, 2013. OSU informed BCCI medical staff that no clinic was available that week, so Appellant was

scheduled to go to FMC for his one-week follow up. Weidman prepared a consultation request on September 23, 2013 and Appellant was taken to FMC for follow up that day. Appellant did not return to the BCCI infirmary until September 25, 2013, after which he was returned to the general prison population with instructions to use the prescription eye drops dispensed by FMC.

{¶33} Appellant returned to FMC on October 15, 2013 for another follow up. Weidman completed a consultation request form requesting a post-operative evaluation by OSU. (*Id*., Medical Record 83.) Appellant was seen at FMC on October 29, 2013 and Weidman once again completed a request to OSU requesting Appellant be evaluated at OSU. (*Id*., Medical Record 84.)

{¶34} Appellant was finally seen by OSU on November 5, 2013, where they attempted to remove Appellant's sutures, but the sutures were "buried in conj., broke off when attempted to remove." OSU physicians decided they would leave the sutures in place and make attempts to remove them over the next few months. Appellant was to return in four weeks. (*Id*., Medical Record 87.)

{¶35} On November 9, 2013, Weidman completed yet another consultation request noting that an appointment for Appellant had already been made for January 14, 2014. (*Id*., Medical Record 95.) Appellant was seen by OSU on January 14. It was determined that the sutures were buried and would remain in place. Follow up was to occur at any medical facility: OSU, FMC or BCCI. (*Id*., Medical Record 96-99.)

{¶36} On April 7, 2014, Appellant was seen at FMC and was prescribed eye drops. The FMC physician also completed a consultation request to OSU for evaluation of his "decentered lens." (*Id*., Medical Record 101.)

{¶37} Over the course of the next few months, Weidman continued to request that OSU treat Appellant's lens problem and because of the development of "traumatic glaucoma." (*Id*., Medical Record 121-132.)

{¶38} According to the evidence presented by Appellees in their motion for summary judgment, whenever Appellant required medical follow-up, a consultation request form was completed. There is no contradictory evidence from Appellant demonstrating that the physician Appellees failed to complete evaluations or requests for follow-up by outside specialists. Appellant does not provide any other evidentiary materials in support of his claim they were deliberately indifferent or to refute the treatment timeline evidence Appellees included in their summary judgment motion.

{¶39} The burden was on Appellant to demonstrate that Appellees acted with deliberate indifference to his serious medical issue. The record is replete with evidence that physician Appellees were diligent in seeking treatment for Appellant and in follow-up. Appellant does not dispute that the ultimate scheduling of follow-up at OSU was not in the control of Appellees, but rested with OSU. Appellant also provides no evidence showing that Appellees' conduct is causally connected to either his injury or any worsening of his condition. See *Santiago v. Ringle,* 734 F.3d 585 (6th Cir.2013).

{¶40} Because Appellant provided no evidence to rebut the physician Appellees' evidence, there was no issue of fact left to be determined. Summary judgment was properly granted to the physician Appellees based on the record. Appellant's second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

THE DEFENDANTS NEVER COMPLIED WITH DISCOVERY AND PRESENTED INACCURATE STATEMENTS IN THEIR MOTION FOR SUMMARY JUDGMENT.

{¶41} In his third assignment of error Appellant contends counsel for Appellees asked misleading questions at his deposition and that Appellees failed to comply with discovery. Specifically, he alleges that Appellees failed to provide evidence whether surgery on Appellant's eye had been ordered or was simply discussed during Appellant's medical visits between September 25 and November 30, 2012.

{¶42} In general, we review the trial court's ruling on discovery matters under an abuse of discretion standard. *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, ¶ 13.

{¶43} Regarding the questioning of Appellant at deposition, Appellant's complaint is of little consequence, because both Appellant and Appellees submitted copious medical records pertaining to Appellant's injury. These included written reports regarding Appellant's visits and treatment plan. Appellant's deposition

testimony clearly did nothing to rebut this evidence, and Appellant introduced no evidence of his own to contradict or throw into question these medical reports.

{¶44} Further, this record reflects that Appellees responded to all of Appellant's discovery requests. Appellant contends that two medical exhibits sent to him by Appellees were blank. Appellant also complains that he was denied discovery prior to his deposition. The record shows that Appellant's request for discovery did not occur until September 23, 2015, well after his deposition occurred. Additionally, Appellant admitted at his deposition that he was in possession of all of the same medical records as Appellees. (Keeley Depo., p. 41.)

{¶45} Thus, the trial court did not err in its determination of Appellant's motions regarding discovery. Appellant's third assignment of error is without merit and is overruled.

{¶46} In conclusion, Appellant's assignments of error lack merit and are overruled. The judgment of the trial court is affirmed in full.

Donofrio, J., concurs.

DeGenaro, J., concurs.