



his cap constituted an emergency because his tooth was exposed; and that he had gone to the dental clinic but that no one was there. He stated in his complaint that he had spoken to a dentist who told him that he was scheduled for an appointment, but who refused to tell plaintiff the date and time that he was scheduled. (Defendant's Exhibit 3.)

{¶4} On January 16, 2003, Thomas G. Fellner, DDS, a licensed dentist who worked part time at RiCI, responded to plaintiff's Informal Complaint Resolution by writing, "An emergency, in the dental arena, would be a swelling that could be potentially life endangering. Another example would be trauma to the face resulting in serious injuries to teeth or soft tissue. You have niether [sic], ergo, no emergency." He further explained in his response that it was against institutional policy to give inmates the specific date and time of their appointments. Finally, Dr. Fellner commented that the dental clinic was sometimes empty because inmates failed to keep their scheduled appointments. (Defendant's Exhibit 3.)

{¶5} Plaintiff continued the complaint process by filing a Notification of Grievance with the Inspector of Institutional Services, which was dated by plaintiff as January 27, 2003, and received by the Institutional Inspector on January 29, 2003. (Defendant's Exhibit 4.) In his grievance, plaintiff reiterated his complaint that he had a dental emergency which was not being addressed in a timely manner. He informed the Institutional Inspector that he had contacted the State Medical Board regarding the lack of proper medical care for inmates and that it was his belief that his pain and suffering was worth \$100 for each day that he had to wait for treatment.

{¶6} On February 4, 2003, plaintiff's crown was re-cemented to his tooth without complication by Dr. Calver, another dentist working part time at RiCI. (Plaintiff's Exhibit 1.) Plaintiff testified that he had not had any problems with his tooth since it was repaired.

{¶7} On February 12, 2003, the Inspector of Institutional Services responded to plaintiff's grievance stating that Ohio Department of Rehabilitation and Correction (DRC) Policy had been followed regarding his dental treatment and that an Inspector has no

authority to override medical decisions. On February 20, 2003, plaintiff filed an appeal of the Inspector's Disposition of Grievance to the chief inspector in Columbus, Ohio, citing alleged violations of both institutional policies and plaintiff's constitutional rights. (Defendant's Exhibit 5.) The response, if any, by the chief inspector to plaintiff's appeal was not presented at trial by either party.

{¶8} Dr. Fellner testified that the dental clinic at RiCI received plaintiff's kite on January 6, 2003, whereupon plaintiff was scheduled for the first available dental appointment, that being February 4, 2003. Dr. Fellner explained that neither plaintiff's kite nor his informal complaint mentioned any symptom, such as pain or swelling, that would cause the dental clinic personnel to classify plaintiff's request as an emergency. Dr. Fellner further explained that the loss of a crown was something that required treatment, but that the loss did not necessarily cause pain. By way of example, Dr. Fellner testified that patients who lose crowns while on vacation often wait until they return home for treatment.

{¶9} According to Dr. Fellner, a tooth is made up of three layers: the enamel, the hard exterior covering; the dentin, a hard middle layer; and the pulp, or nerve, which is live tissue. After reviewing plaintiff's dental records, Dr. Fellner concluded that the loss of plaintiff's crown did not expose the nerve of the tooth as claimed by plaintiff. If the nerve of the tooth were exposed, Dr. Fellner explained, the dentist would not have been able to simply re-cement the crown onto the tooth as indicated in plaintiff's dental records. Additionally, Dr. Fellner did not find any reference to an exposed nerve in plaintiff's dental records, which he stated would be routinely recorded. (Defendant's Exhibit 1.)

{¶10} Plaintiff testified that he notified the dental clinic that he had lost a crown by sending a kite on January 4, 2003; that he received what he perceived to be a vague response to his kite: "You're scheduled"; that he filed an Informal Complaint Resolution which was answered by Dr. Fellner; and that he did not mention that he was experiencing pain or had swelling, but that he believed the dentist would assume that he was in pain

because of the nature of his complaint. Plaintiff further testified that losing his crown constituted a dental emergency that required immediate medical attention, especially since re-cementing a crown should only take a few minutes. Plaintiff contends that the 30-day delay from the time he reported the loss of his crown on January 4, 2003, to the re-cementing of his crown on February 4, 2003, fell below the community standard for dental care and violated DRC policy regarding medical care.

{¶11} To establish a claim of medical [dental] malpractice, plaintiff “must show the existence of a standard of care within the medical community, breach of that standard of care by the defendant, and proximate cause between the medical negligence and the injury sustained.” *Taylor v. McCullough-Hyde Mem. Hosp.* (1996), 116 Ohio App.3d 595, 599; citing *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. These elements must be established by expert testimony unless the negligent conduct “is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it.” *Bruni*, supra at 130.

{¶12} The only medical expert testimony in this case was that of Dr. Fellner. Dr. Fellner concluded that, in his professional opinion, plaintiff’s case was not a dental emergency; that plaintiff was not in pain from the loss of his crown; that plaintiff’s treatment to replace his crown while in the custody of defendant met or exceeded the appropriate standard of care in the dental community and conformed to the policies of DRC regarding dental care.

{¶13} Plaintiff also asserts a claim of general negligence based upon defendant’s alleged failure to timely deliver the dental care. “In this regard, the court notes that prisoners are entitled to adequate medical [dental] care, but they are not entitled to ‘every amenity which some person may think is needed to avoid mental, physical and emotional deterioration.’” *Gumple v. Wilkinson, et al.* (Aug. 31, 1994), Lorain App. No. 94CA005858, unreported; citing *Newman v. Alabama* [C.A. 5, 1977], 559 F.2d 283, 291.

{¶14} According to Dr. Fellner, plaintiff notified the dental clinic that his crown had come off. The information contained in plaintiff's kite was evaluated; plaintiff never mentioned that he was either in pain or experiencing serious discomfort as a result of losing his crown. Dr. Fellner testified that, upon receipt of the kite, plaintiff was scheduled for the first available appointment with a dentist and that plaintiff's loss of his crown did not warrant emergency treatment. Consequently, the court finds that it was not unreasonable, under the circumstances, for there to be some delay in scheduling plaintiff for treatment.

{¶15} Based upon the totality of the evidence, the court concludes that plaintiff received dental treatment that met or exceeded the appropriate standard of care in the dental profession. The court further finds that any delay in the re-cementing of plaintiff's crown was reasonable under the circumstances. In short, plaintiff has failed to prove any of his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶16} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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STEVEN A. LARSON  
Magistrate

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MAGISTRATE DECISION

Columbus, Ohio 43215-3130

SAL/cmd

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