

returned to plaintiff on April 11, 2001. Plaintiff subsequently signed up for nurses' sick call and was seen by Lola Malone, RN, on April 12, 2001. According to Malone, plaintiff stated that he was experiencing vision difficulty, that the change in his vision had occurred "overnight," but that he did not inform her of a blind spot. She scheduled plaintiff for a routine appointment with the eye doctor on June 12, 2001.

{¶ 4} Plaintiff alleges that on or about May 25, 2001, the vision in his left eye suddenly became significantly blurred, but he did not seek further medical treatment at that time. On June 12, 2001, plaintiff kept his scheduled appointment with the eye doctor and was then referred to The Ohio State University Hospital where he was diagnosed with a detached retina with macular involvement. Despite a series of surgeries, plaintiff's vision could not be totally restored.

{¶ 5} Plaintiff alleges that defendant's nursing staff was negligent in its failure to recognize the urgent nature of his eye condition and in its failure to recommend that he be seen immediately by a doctor. Plaintiff asserts that the nurses' failure to recognize the need for immediate treatment resulted in his retina becoming fully detached on May 25, 2001, rendering hopeless any chance for a complete recovery.

{¶ 6} Malone testified that she became a registered nurse in 1986 and began her employment with defendant in October 2000. Malone described symptoms of a possible retinal detachment as a sudden change in vision, including seeing "floaters," black spots, or flashes of light.¹ Malone stated that these symptoms would present an emergency situation, and that a patient reporting such

¹Malone was acutely familiar with the signs and symptoms of a retinal detachment; she testified that she had herself suffered from symptoms associated with a retinal detachment in 1998 and that she was sensitive to those kinds of symptoms.

symptoms should be seen by a doctor within 24 to 48 hours. Malone recalled that when she examined plaintiff at nurses' sick call, he told her that he wanted to be put on the list to see the eye doctor because he was having problems with the vision in his left eye and that the vision problems had happened "overnight." Malone testified that she tried to ascertain a specific date of onset by asking him what he meant by "overnight" – overnight last night or overnight six months ago – that plaintiff had simply stated "overnight" and that he did not clearly describe his physical situation. Malone further testified that plaintiff did not tell her about a blind spot and that, if he had, she would have written "blind spot" in her notes and immediately referred him for consultation with the eye doctor because a blind spot is a clear medical emergency. Malone testified that she assumed that plaintiff wanted to see the eye doctor to get a new prescription for eyeglasses because he wore thick corrective lenses. Malone added that she never saw plaintiff's kite because copies of kites requesting medical treatment were not kept in inmates' medical records and that plaintiff did not present his kite to her at nurses' sick call.

{¶ 7} Malone opined that nurses have an obligation to determine when inmate patients need to see a doctor; that the "night nurse" who received plaintiff's kite did not follow established guidelines because she failed to advise the nurse on the following shift that plaintiff had a blind spot in his vision and failed to schedule plaintiff to see an eye or medical doctor for consultation. Malone added that "at a minimum" the complaints in plaintiff's kite should have been forwarded to the nurse on the next shift.

{¶ 8} Plaintiff testified that he told Malone about the blind spot and although he was concerned about it, he did not know that his condition was an emergency.

{¶ 9} Plaintiff's expert, Robert Newcomb, O.D., testified that he had been a professor of clinical optometry at The Ohio State University since 1997; that he treated patients in the clinic one to two days per week; and that he had general knowledge of nursing standards of conduct. Newcomb explained that the retina is a thin layer of tissue located on the back of the eye and that a blind spot is a symptom of a retinal detachment. He further explained that if not treated, a retina will continue to detach until the central part of the retina, known as the macula, detaches, which can result in a permanent loss of central vision. Newcomb testified that the recommended course of treatment for retinal detachment with macular involvement would be to schedule eye surgery within three days of diagnosis; however, the recommended course of treatment for retinal detachment without macular involvement would be to schedule eye surgery within 24 hours of diagnosis.

{¶ 10} Newcomb opined to a reasonable degree of optometric probability that on April 9, 2001, plaintiff showed signs of a retinal detachment because he described a sudden change in vision with a blind spot. Newcomb further opined that plaintiff suffered macular involvement when his vision became blurred in May 2001. Because of the macular involvement, Dr. Newcomb opined that plaintiff had virtually no chance of recovery of his central vision.

{¶ 11} Plaintiff also submitted the deposition testimony of Louis J. Chorich, III, M.D., the ophthalmologist who treated plaintiff on June 20, 2001, and subsequently performed plaintiff's eye surgeries. Dr. Chorich testified that the most critical issue with a detached retina is whether the macula is still intact. If the macula is intact, the patient is treated on a more urgent basis because more rapid treatment would give the best opportunity for

visual recovery. Chorich stated that while he would not necessarily expect a nurse to recognize symptoms of a detached retina, he would expect a nurse to recognize unexplained vision loss as a potential emergency.

{¶ 12} Newcomb opined that the treatment provided to plaintiff by the night nurse fell below the standard of care because she did not recognize that the symptoms set forth in plaintiff's kite required further consultation with a physician. Newcomb characterized the symptoms that plaintiff listed in his kite as a "red flag" and stated that the night nurse had an obligation to consult with a physician about plaintiff's loss of vision and that she also should have arranged for plaintiff to see a physician the following day. Newcomb opined that if the night nurse had scheduled an appointment for plaintiff to meet with a physician on an urgent basis, plaintiff could have had surgery to repair his retina before macular involvement set in and that any damage would have been limited to his peripheral vision. Newcomb also criticized Malone for writing "happened overnight" in her notes but not referring plaintiff to an eye doctor on an emergency basis. However, Newcomb agreed that a patient must accurately report symptoms to a nurse in order to be treated appropriately.

{¶ 13} Plaintiff's other expert, Roderic Gottula, M.D., testified that he had practiced medicine in the field of family practice from 1976 to 2000. Gottula was the Chief Medical Officer of the Colorado Department of Corrections from 1991 to 1995. He served on several national committees regarding inmate health care and as the Medical Director of the Jefferson County Jail in Colorado for approximately six months in 1995, where he promulgated guidelines for nurses. Since 2000, Gottula has owned an organization known as Correctional Medical Legal Consultants, where he has earned approximately 40 percent of his income by providing

expert witness services, with the remainder from a combination of reviewing disability claims for firefighters and police officers and developing computer software. Gottula is currently the president of American Correctional Health Services Association. He testified that he did not then maintain a separate clinical practice and that the last time he taught at a medical school was during the 2000-2001 school year. Gottula further testified that he has worked with nurses for over 25 years.

{¶ 14} Gottula opined that a blind spot is a sign of a retinal detachment and that the standard of care required that plaintiff receive further testing of his eyesight. Gottula further opined that the standard of care required the night nurse to schedule plaintiff for sick call with a doctor and to pass the information from plaintiff's kite to the nurse on the following shift. Gottula opined that if those two things had been done, a retinal detachment would most likely have been diagnosed. Gottula further opined that plaintiff had sustained an advancement of retinal detachment with macular involvement in May, and that after the macular involvement occurred, the likelihood of surgical success was diminished. Gottula also opined that Malone did not meet the standard of care because she did not evaluate plaintiff thoroughly, and that if plaintiff were unable or unwilling to give her additional information about his condition, she should have written that he was uncooperative in her notes. However, Gottula conceded that a nurse's care does not fall below the standard of care if a patient does not tell her of his symptoms.

{¶ 15} Defendant's expert, Jacqueline Moore, RN, Ph.D., testified that she was the health administrator for the Cook County Juvenile Temporary Detention Center in Illinois and that she spent 20 to 40 hours per week supervising 15 nurses. Moore also stated that she worked approximately one 8-hour shift per month at the

detention center as a practicing nurse. In 1990, Moore founded Jacqueline Moore & Associates, a consulting firm in the field of correctional health care. She testified that she spent more than 50 percent of her time in the active clinical practice of nursing.

Moore stated that the standard of care required nurses to use their clinical judgment in assessing patients and making appropriate referrals. Moore opined that Malone met the standard of care when she scheduled plaintiff for a routine appointment with the eye doctor, because she was not presented with a copy of plaintiff's kite and because plaintiff did not inform her of the blind spot.

{¶ 16} Moore also stated that immediate referral to a physician is mandatory if a patient says that he had a sudden change in vision. Moore stated that the information from the kite should have been passed on to the next shift's nurse, so that plaintiff could have been referred to a doctor; that the night nurse should have recognized that the kite contained important medical information; and that the night nurse's failure to pass that information on fell below the standard of care.

{¶ 17} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The Supreme Court of Ohio has held that, "[b]ecause nurses are persons of superior knowledge and skill, nurses must employ that degree of care and skill that a nurse practitioner of ordinary care, skill and diligence should employ in like circumstances. Whether a nurse has satisfied or breached the duty of care owed to the patient is determined by the applicable standard of conduct, which is proved by expert

testimony." *Berdyck v. Shinde*, 66 Ohio St.3d 573, 1993-Ohio-183, paragraph 3 of the syllabus.

{¶ 18} At trial, defendant objected to the testimony of Drs. Newcomb, Chorich, and Gottula on the basis that they did not meet the requirements of Evid.R. 601(D) or R.C. 2743.43. Plaintiff also objected to the testimony of Jacqueline Moore on the basis that she did not qualify as an expert pursuant to R.C. 2743.43. The parties filed post-trial briefs regarding their objections. Based upon the arguments set forth in the briefs, the court finds that Drs. Newcomb, Chorich, and Gottula, as well as Jacqueline Moore, were all competent to testify in this matter. However, very little weight shall be given to Dr. Gottula's testimony because the court finds that Dr. Gottula lacked familiarity with the standards of nursing care in Ohio.

{¶ 19} The court was most interested in the testimony of nurse Malone. The court finds that her testimony was credible regarding plaintiff's unwillingness to talk to her about his condition. The court further finds that Malone's testimony was credible regarding what plaintiff reported to her and that she was not presented with a copy of the kite wherein he described a blind spot. Based upon the evidence presented, the court finds that plaintiff has failed to prove by a preponderance of the evidence that Malone's actions fell below the standard of care when she scheduled plaintiff for a routine eye appointment.

{¶ 20} However, the court finds that plaintiff has proven by a preponderance of the evidence that the night nurse failed to use ordinary care when she did not forward the information in plaintiff's kite to the nurse on the next shift or schedule plaintiff to see the eye doctor on an emergency basis.

{¶ 21} Defendant argues that plaintiff was comparatively negligent once his vision changed in mid-May and he did not seek

further medical assistance. The court finds that plaintiff followed proper procedure by going to sick call and waiting for his eye appointment. Furthermore, the court finds that based upon the testimony from Drs. Chorich and Newcomb, any failure of plaintiff to seek further treatment at that time did not affect the outcome. Therefore, the court finds that plaintiff was not comparatively negligent.

{¶ 22} For the foregoing reasons, the court finds that plaintiff has proven his case of negligence regarding the conduct of the night nurse by a preponderance of the evidence and accordingly, judgment shall be rendered in favor of plaintiff.

IN THE COURT OF CLAIMS OF OHIO

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| RANDALL ADKINS | : | |
| Plaintiff | : | CASE NO. 2004-01397 |
| v. | : | Judge J. Craig Wright |
| | : | <u>JUDGMENT ENTRY</u> |
| DEPARTMENT OF REHABILITATION AND CORRECTION | : | |
| Defendant | : | |
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{¶ 23} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

J. CRAIG WRIGHT
Judge

Entry cc:

Gerald S. Leeseberg
175 S. Third Street
Penthouse One
Columbus, Ohio 43215

Attorney for Plaintiff

Anne B. Strait
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

HTS/cmd
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