

[Cite as *Likes v. Richland Correctional Inst.*, 2005-Ohio-732.]

IN THE COURT OF CLAIMS OF OHIO

RONALD LIKES :

Plaintiff : CASE NO. 2004-06135
Judge Joseph T. Clark
v. : Magistrate Steven A. Larson

RICHLAND CORRECTIONAL : DECISION
INSTITUTION :

Defendant :

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{¶ 1} On December 29, 2004, defendant filed a motion for summary judgment. On January 12, 2005, plaintiff filed a response. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 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, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant's Richland Correctional Institution at all times relevant to this action. R.C. 5120.16. In plaintiff's complaint, plaintiff alleges that defendant failed to provide him adequate medical care for his lower back injury and chronic hepatitis C.

{¶ 5} In order to prevail on a claim of medical malpractice or professional negligence, pursuant to *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, plaintiff must first prove:

{¶ 6} 1) The standard of care recognized by the medical community;

{¶ 7} 2) The failure of defendant to meet the requisite standard of care;

{¶ 8} 3) A direct causal connection between the medically negligent act and the injury sustained.

{¶ 9} The appropriate standard of care must be proven by expert testimony. *Id.* at 130. The expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶ 10} In support of the motion for summary judgment, defendant submitted the affidavit of Kenneth Williams M.D., a medical professional employed by defendant. Dr. Williams' affidavit provides in relevant part:

{¶ 11} "****. I am familiar with the ailments of Ronald Likes and I am his treating physician at the Richland Correctional Institution. Ronald Likes was admitted to my care after complaints of back pain during his tenure as an inmate at Richland Correctional Institution. In response to his complaints of pain in

conjunction with prior documentation of injury, an electromyogram nerve conduction study was conducted on February 18, 2004 to determine if any injuries or conditions remained present. Major nerves in both of Ronald Likes' legs were tested and all results were normal. Additionally, a lumbar spine x-ray obtained on July 24, 2003 was normal. *** Because all test results were normal, no further testing was required. Ronald Likes' complaints of back pain are treated as they occur with non-addictive pain relievers. Ronald Likes continues to be monitored for permanent hepatitis C infection. *** Liver tests conducted in October of 2004 and June of 2004 yielded predominantly normal results with the exception of slightly elevated ammonia levels. *** Ronald Likes' present condition is normal for an individual infected with hepatitis C, and his disease has an overall improvement of 40 percent under my care. My care and treatment of Ronald Likes conformed to the applicable standard of care, and was in no way negligent."

{¶ 12} Although plaintiff filed a memorandum in opposition to the motion for summary judgment, plaintiff did not submit an affidavit or other evidence. Thus, Dr. Williams' assertion that the medical care and treatment provided to plaintiff met the applicable standard of care is un rebutted.

{¶ 13} The Tenth District Court of Appeals has stated that:

{¶ 14} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a

genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc. v. Law Offices of DeLibera, Lyons & Bibbo*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶ 15} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant was not negligent in the medical care and treatment of plaintiff. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.

{¶ 16} Defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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RICHLAND CORRECTIONAL INSTITUTION	:	<u>JUDGMENT ENTRY</u>
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Defendant

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A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of

defendant. 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

Entry cc:

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LP/cmd
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