

[Cite as *Belcher v. Dept. of Rehab. & Corr.*, 2019-Ohio-3457.]

TIMOTHY BELCHER

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-00267JD

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant at the Warren Correctional Institution (WCI), brought this action alleging that defendant failed to render appropriate diagnosis, care or treatment for a medical issue with his wrist. The case proceeded to trial before the undersigned magistrate.

{¶2} At trial, plaintiff testified that for four years, medical personnel at multiple prisons failed to properly diagnose and treat a nonunion fracture in his wrist, as well as carpal tunnel syndrome. Plaintiff recounted enduring extreme pain during that time, as well as his frustrations in trying to get medical care and treatment to relieve his symptoms, which finally occurred when he underwent surgery. Plaintiff stated that up until he had the surgery, prison authorities repeatedly placed him in segregation and transferred him between institutions because he kept arguing with medical personnel about what he viewed as deficiencies in his care.

{¶3} Tonie Taft, a nurse practitioner at WCI, answered several questions on cross-examination about her interactions with plaintiff beginning in 2017 after his transfer from a privately-operated prison. Taft explained how she ordered an orthopedic consultation for him, but administrators did not allow the request at first and instead required that plaintiff undergo EMG nerve testing. Taft also explained how she prescribed certain medications for plaintiff. Taft stated that after plaintiff underwent

surgery on his wrist in November 2018, she has no knowledge of him requesting any further medical attention.

{¶4} Upon review of the evidence presented, the magistrate finds that plaintiff's claim is one for medical malpractice. "In order to establish medical malpractice, plaintiff must demonstrate by the preponderance of the evidence that the injury complained of was caused by a practice that a physician of ordinary skill, care or diligence, would not have employed, and that plaintiff's injury was the direct and proximate result of such practice." *Schmidt v. Univ. of Cincinnati Med. Ctr.*, 117 Ohio App.3d 427, 430, 690 N.E.2d 946 (10th Dist.1997), citing *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 346 N.E.2d 673 (1976), paragraph one of the syllabus; see also *Carter v. Vivyan*, 10th Dist. Franklin No. 11AP-1037, 2012-Ohio-3652, ¶ 16. "The *Bruni* standard applies to an inmate's claim for medical malpractice." *Gordon v. Ohio State Univ.*, 10th Dist. Franklin No. 10AP-1058, 2011-Ohio-5057, ¶ 67.

{¶5} "Expert testimony is required to establish the standard of care and to demonstrate the defendant's alleged failure to conform to that standard." *Reeves v. Healy*, 192 Ohio App.3d 769, 950 N.E.2d 605, 2011-Ohio-1487, ¶ 38 (10th Dist.), citing *Bruni* at 130-131. Given the absence of expert testimony in this medical malpractice action, plaintiff has shown no right to relief.

{¶6} Based on the foregoing, the magistrate finds that plaintiff failed to prove his claim of medical malpractice by a preponderance of the evidence. Additionally, insofar as plaintiff alleged in the complaint and argued at trial that defendant acted with "deliberate indifference" to serious medical needs in violation of his constitutional rights, this court lacks jurisdiction over such claims. *White v. Unknown*, 10th Dist. Franklin No. 09AP-1120, 2010-Ohio-3031, ¶ 7; *Jackson v. Northeast Pre-Release Ctr.*, 10th Dist. Franklin No. 09AP-457, 2010-Ohio-1022, ¶ 19. Accordingly, judgment is recommended in favor of defendant on the medical malpractice claim and it is recommended that the

constitutional “deliberate indifference” claim be dismissed without prejudice for lack of subject matter jurisdiction.

{¶7} A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

ROBERT VAN SCHOYCK
Magistrate