[Cite as *Ali Gill v. Grafton Corr. Inst.*, 2009-Ohio-6483.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ali Gill,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-482 (C.C. No. 2008-05818)
Grafton Correctional Institution,	:	(ACCELERATED CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 10, 2009

Ali Gill, pro se.

Richard Cordray, Attorney General, and *Emily M. Simmons*, for appellee.

APPEAL from the Court of Claims of Ohio.

SADLER, J.

{¶1} Appellant, Ali Gill ("appellant"), filed this appeal seeking reversal of a judgment by the Court of Claims of Ohio granting summary judgment in favor of appellee, Grafton Correctional Institution ("appellee" or "GCI"). For the reasons that follow, we affirm.

{¶2} Appellant is an inmate in the custody and control of GCI. On or around August 27, 2007, GCI conducted a search of appellant's cell. In his complaint, appellant alleged that a GCI officer scattered his legal papers, medications, vitamins, and soap powder on the floor. Appellant's complaint further alleged that the officer discarded an egg crate mattress and a six-inch wide leather belt, which appellant asserted were medically prescribed items. The complaint also asserted that appellant's medications were replaced 16 days later. Appellant asserted claims for pain and suffering resulting from the temporary loss of his medications, and the permanent removal of the mattress and belt.

{¶3} After appellant filed this action in the Court of Claims, appellee filed a motion for summary judgment. The trial court granted the motion, and this appeal followed. Appellant asserts a single assignment of error:

> THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT WHEN IT GRANTED DEFENDANT'S MOTION FOR SUMMARY JUDGMENT WHEN PLAINTIFF'S MEMORANDUM CONTRA TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT CONTAINED AFFIDAVITS THAT SHOW THAT MATERIAL FACTS, AND A GENUINE ISSUE OF FACT EXISTED PRECLUDING SUMMARY JUDGMENT.

{¶4} We review the trial court's grant of summary judgment de novo. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38. Summary judgment is proper only when the party moving for summary judgment demonstrates: (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, when the evidence is construed

in a light most favorable to the non-moving party. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183, 1997-Ohio-221. We construe the facts in the record in a light most favorable to appellant, as is appropriate on review of a summary judgment. We review questions of law de novo. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214, citing *Ohio Bell Tel. Co. v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 145, 147.

{¶5} Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion, and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the non-moving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107. Once the moving party has met its initial burden, the non-moving party must produce competent evidence establishing the existence of a genuine issue for trial. Id.

{¶6} In its motion for summary judgment, appellee argued that appellant did not suffer any harm as a result of not having his medications for a period of time, and that appellant was not authorized to have the mattress and belt. In support of these arguments, appellee attached affidavits executed by David Hannah, a nurse at GCI, and Dr. Norberto L. Juan, a physician at GCI.

{¶7} Hannah's affidavit provided, in relevant part:

> 1. I have personal knowledge of and I am competent to testify to the facts contained in this Affidavit.
>
> 2. I am employed by the Ohio Department of Rehabilitation and Correction (DRC) as a Nurse at Grafton Correctional Institution (GCI) in Grafton, Ohio. I have occupied this position since July 15, 1996. I have been a Registered Nurse in the state of Ohio since June 28, 1995.

3. Through my employment at GCI I have personal knowledge of GCI policies and procedures regarding inmate medical care.

4. As a policy and procedure at GCI, a doctor's order authorizing an inmate to possess a medical device is only valid for one year. If an inmate has a doctor's order to possess a medical device, the order must be reviewed and re-approved each year in order for the order to be valid.

5. Inmates are not permitted to possess a medical device without a valid doctor's order. If an inmate is in possession of a medical device that lacks a valid doctor's order, the medical device constitutes contraband.

6. As a policy and procedure at GCI, a medical device that has deteriorated and is determined to be unusable should be removed from an inmate's possession and constitutes contraband. The inmate is no longer permitted to possess such items.

7. [Appellant] is an inmate in the custody and control of DRC and is incarcerated at GCI.

8. I have reviewed the medical records of [appellant]. Further, I have personal knowledge of the medical care he received and the doctor's orders written during his incarceration.

9. [Appellant's] medical records contain no valid order authorizing/issuing [appellant] to have a six inch leather belt.

10. [Appellant's] medical records contain no valid order authorizing [appellant] to have an egg-crate mattress.

11. Accordingly, based on the above-outlined GCI policies and procedures, the egg-crate mattress cover and six-inch wide leather belt were properly removed from [appellant's] cell on or about August 27, 2007.

12. The medical records of [appellant] indicate that on August 27, 2007, [appellant] was prescribed Piroxleam, Acetaminophen, and Glucosamine.

> 13. The prescriptions for Piroxleam, Glucosamine and Acetaminophen were filled on August 30, 2007.
>
> 14. The Piroxleam and Acetaminophen were available to be picked up by [appellant] on August 31, 2007.
>
> 15. The Glucosamine medication was available to be picked up by [appellant] on September 5, 2007.
>
> 16. When a prescription is filled at GCI, the inmate is informed when the medication will be available to be picked up. Thus, [appellant] was advised on August 31, 2007 when his medication would be available to him.
>
> 17. [Appellant] did not pick up his medication until September 11, 2007.

Exhibit A, appellee's Motion for Summary Judgment.

{¶8} Dr. Juan's affidavit provided, in relevant part:

> 1. I have personal knowledge of and I am competent to testify to the facts contained in this Affidavit.
>
> 2. I am employed by the Ohio Department of Rehabilitation and Correction (DRC) as a physician at Grafton Correctional Institution (GCI) in Grafton, Ohio. I have occupied this position since 2004.
>
> 4. [sic] I have been a licensed Doctor of Medicine in the state of Ohio since 1976.
>
> 5. I am familiar with accepted standards of medical care.
>
> * * *
>
> 7. I have reviewed the medical records of [appellant]. Further, I have personal knowledge of the medical care he received and the doctor's orders written during his incarceration. I have personally treated [appellant] during his incarceration.
>
> 8. I have reviewed the Complaint filed in the above-captioned case and am aware [appellant] is alleging that he was without his prescribed medication (Piroxleam, Acetaminophen, and

> Glucosamine) from August 27, 2007 until September 11, 2007.
>
> * * *
>
> 14. Based on my training, education, experience and treatment of [appellant], it is my opinion to a reasonable degree of medical certainty that this alleged delay of medication has not resulted in any harm to [appellant].
>
> 15. Based on my training, education, experience and treatment of [appellant] it is my opinion to a reasonably [sic] degree of medical certainty, that his medical care and treatment at GCI during all times relevant to the Complaint met the acceptable standards of medical care and treatment.

Exhibit B, appellee's Motion for Summary Judgment.

{¶9} These affidavits were sufficient to carry appellee's burden of showing that there were no genuine issues of material fact regarding appellant's claims that the mattress and belt had been improperly taken from him, and that he incurred pain and suffering as a result of being without his medications for a period of time. Thus, the burden properly shifted to appellant to demonstrate that there were genuine issues of material fact remaining to be tried.

{¶10} Appellant filed a memorandum contra, in which he mostly questioned the credibility of the affidavits attached to appellee's motion, particularly that of Nurse Hannah. Attached to the memorandum contra was an affidavit executed by appellant, which provided, in relevant part:

> 1) I am a ward of the Ohio Department of Rehabilitation & Corrections (hereinafter O.D.R.C.) by it's [sic] prison Grafton Correctional Institution (hereinafter called G.C.I.).
>
> 2) I was transferred from Richland Correctional Institution on November 9th, 2000; and have been at G.C.I. for 9½ years. When I arrived, as my paperwork (all of which is a copy of

papers THEY CREATED AND POSSESS, (and thus have knowledge of), record: I had a 6" wide leather belt which I wore for back pain, having been issued it by "Medical" at my first Institution (Mansfield Correctional) which had issued it to me as a medical device. Thus all three prisons, Institutional Divisions of the O.D.R.C. have recognized my 6" wide leather belt as a medical device for relief of my back pain.

3) I always represented the 6" leather belt, as a back brace for my back pain.

4) Then SEVEN YEARS later, G.C.I. staff arbitrarily decided to seize my back brace and throw it in the trash.

5) In or about 2002, G.C.I.'s Medical Department Ordered me an Egg Crate Mattress as a treatment for my poor blood circulation which caused numbness in my left hip and leg.

6) Every year thereafter, the G.C.I. Medical Dept. renewed the mattress which, being just foam, wore out quickly and was replaced without question by G.C.I. Medical Because they knew I had a Medical Order FOR THE MATTRESS, to treat my poor circulation.

7) I have chronic degenerative disc disease; osteoporosis and osteoarthritis affecting my spine. It is these conditions that create the poor blood circulation problem for which the foam mattress is Ordered. There can be NO DOUBT that it is a Medical (and medically authorized) device.

8) G.C.I. employees took my Egg Crate Mattress, and threw it in the trash, leaving me to suffer the unnecessary pain and discomfort caused by the poor blood circulation for which the Medical Department had Prescribed the Egg Crate Mattress in the first place. This suffering is exacerbated by the knowledge that it is the abject incompetence and negligence of G.C.I. 'Medical' that causes the pain.

9) At subsequent meetings with Defendant's Dr. Juan, when Dr. Juan went to re-order my Egg Crate Mattress, G.C.I. Medical's Nurse John Davis told Dr. Juan not to Order the Egg Crate Mattress, because the State had a Budget Problem, and Dr. Juan, in his incompetence, didn't know any better.

> 10) I exhausted my Administrative Remedies trying to get G.C.I. to alleviate my suffering by honoring THEIR OWN Medical Order, but I could not get them to pay enough attention to the matter to cut their losses because their negligence is systemic.
>
> 11) I did not seek compensation for my destroyed vitamins or soap powder, as I do not sue frivolously.

[Sic passim] Appellant's Memorandum Contra.

{¶11} Attached to appellant's affidavit as Exhibit A was what appears to be a copy of a portion of appellant's medical records, although there is nothing in the record authenticating the document. The document shows an entry dated December 23, 2002 ordering an egg crate mattress for a period of six months.

{¶12} At most, appellant's affidavit might establish the existence of a disputed fact regarding whether appellant's medical condition requires that he have the use of an egg crate mattress.[1] However, this dispute would not be material to the issue in this case. According to Nurse Hannah's affidavit, medical orders are only valid for one year, and must be reviewed and re-approved in order to remain in effect. Nurse Hannah's affidavit further provides that medical devices not covered by a valid medical order are considered contraband. Appellant's affidavit only established that appellant had the leather belt under a medical order issued prior to his transfer to GCI in 2000, and that a medical order for the egg crate mattress had been issued in 2002. The affidavit does not establish that the orders had been reviewed and re-approved within one year prior to August 27, 2007, and thus it does not establish the existence of any genuine issue of material fact

[1] In actuality, such a claim on appellant's part would need to be supported by expert medical testimony, rather than by appellant's own assertion.

regarding the validity of his possession of the belt and mattress. If appellant did not validly possess the belt and mattress, then he cannot recover for their loss. See *Triplett v. S. Ohio Corr. Facility*, 10th Dist. No. 06AP-1296, 2007-Ohio-2526.

{¶13} Appellant's complaint arguably includes a claim that he has a right to be re-evaluated regarding the medical need for the belt and mattress. However, such a claim would be one asserting a civil rights violation which would be outside the jurisdiction of the court of claims. *Hanna v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-374, 2009-Ohio-5094.

{¶14} As to appellant's claim for damages resulting from the alleged delay in replacing his medications, the affidavits attached to appellee's motion for summary judgment established that most of the delay was caused by appellant's failure to timely pick up the prescriptions once they had been filled, which appellant's affidavit does not dispute. Further, Dr. Juan's affidavit states that, to a reasonable degree of medical certainty, appellant could not have suffered any harm as a result of the delay, which appellant's affidavit also does not dispute.

{¶15} Appellant's affidavit contains a number of references to negligence on the part of GCI and its employees. Appellant's complaint did not include a claim seeking recovery for medical malpractice. Therefore, to the extent that the references in appellant's affidavit related to medical malpractice, those statements are irrelevant to the question of whether any issues of material fact remain in this case.

{¶16} Consequently, the trial court did not err when it granted appellee's motion for summary judgment, and appellant's assignment of error is overruled. Having

overruled appellant's assignment of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

TYACK and KLINE, JJ., concur.

KLINE, J., of the Fourth Appellate District, sitting by assignment in the Tenth Appellate District.

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