

[Cite as *O'Dell v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-1860.]
IN THE COURT OF CLAIMS OF OHIO

CHARLES W. O'DELL, Admr. :
Plaintiff : CASE NO. 99-13941
v. : DECISION
DEPARTMENT OF REHABILITATION : Judge J. Warren Bettis
AND CORRECTION :
Defendant :
: :

Plaintiff brings this action against defendant alleging medical negligence. The case was tried to the court on the sole issue of liability.

At all times relevant hereto, plaintiff's decedent, Charles O'Dell, was an inmate in the custody and control of defendant pursuant to R.C. 5120.16.¹ On November 8 and 10, 1998, O'Dell attended sick call at the Madison Correctional Institution (MCI) infirmary with complaints of a sore throat. On both occasions, the nurse who examined O'Dell observed that his throat was either pink or slightly red and administered Tylenol. On the morning of November 12, 1998, O'Dell returned to the infirmary complaining of facial pain. Defendant's employee, Dr. Bento Ribeiro, performed an examination and noted decayed teeth, inflammation, swelling and tenderness on the right side of O'Dell's face. Dr. Ribeiro prescribed an antibiotic and ordered that O'Dell be scheduled for a dental appointment as soon as possible. At 3:10

¹ For purposes of this decision, "plaintiff" hereinafter refers to Charles W. O'Dell, Administrator, and "O'Dell" refers to plaintiff's decedent, Charles E. O'Dell.

p.m. that same day, O'Dell was re-examined after he began to experience difficulty breathing. As a result of this examination, Dr. Ribeiro immediately transferred O'Dell to the Ohio State University Hospital's (OSU) emergency room.

According to hospital records, when O'Dell arrived at OSU at 4:56 p.m., he was alert and oriented, but in respiratory distress. A computed tomography (CT) scan revealed a deep neck and facial infection. O'Dell consented to an operation to drain his infections and was rushed to the operating room due to a developing airway compromise. After unsuccessful attempts to intubate O'Dell, the surgeons performed an emergency tracheostomy and continued to remove purulent material from the infected areas. Following surgery, O'Dell was taken to the intensive care unit and placed on respiratory support; however, his condition continued to worsen. On November 13, 1998, O'Dell died as a result of descending necrotizing mediastinitis which occurred as an extension of his head and neck infections.

Plaintiff claims that defendant's employees, including Dr. Ribeiro, deviated from the accepted standards of medical care and that the deviation caused O'Dell's death. Specifically, plaintiff alleges that Dr. Ribeiro failed to properly diagnose O'Dell's condition during the sick call examinations; that O'Dell developed mediastinitis as a result of inadequate medical treatment; and that Dr. Ribeiro failed to transfer O'Dell to a hospital in a timely manner once his condition became critical.

In order to prevail on a claim of medical malpractice or professional negligence, plaintiffs must first prove: 1) the

standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Id.* at 130. That 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.*

Plaintiff's expert, John Cheek, D.D.S., M.D., testified regarding the standard of care for primary care physicians in treating the symptoms of mediastinitis. Dr. Cheek explained that mediastinitis is an infection of the mediastinum, a space between the lungs that contains the heart, windpipe and esophagus. According to Dr. Cheek, mediastinitis usually develops over a period of several days. Dr. Cheek opined that O'Dell had the beginning symptoms of mediastinitis on November 8, 1998, when he complained of a sore throat and a slight redness of his tonsils.

Dr. Cheek's opinions were based in large part upon his review of the OSU medical records, including surgical and CT scan reports. In Dr. Cheek's opinion, O'Dell's infection produced purulence and gas that should have been detected either by a physical examination of his neck or by an x-ray. Dr. Cheek testified that Dr. Ribeiro should have recognized O'Dell's symptoms as evidence of a serious condition that required immediate medical attention. He further testified that O'Dell would have survived if he had been transferred to a hospital on

the morning of November 12, 1998. Dr. Cheek concluded that Dr. Ribeiro's failure to properly diagnose plaintiff's infection and, thereafter, to immediately transfer him to a hospital for surgical intervention, fell below the generally accepted standard of care.

Defendant's medical expert was Stephen Markovich, M.D., a board-certified family practice physician and a professor at the Ohio State University Medical School. With regard to O'Dell's examination on the morning of November 12, 1998, Dr. Markovich found that Dr. Ribeiro's diagnosis and treatment plan was reasonable and appropriate given O'Dell's symptoms. Dr. Markovich explained that the symptoms of mediastinitis include chest pain, shortness of breath and swallowing problems and that O'Dell did not display any of these symptoms prior to the afternoon of November 12, 1998. Dr. Markovich testified that Dr. Ribeiro's plan to give O'Dell antibiotics, pain relief and a quick dental follow-up was the appropriate course of treatment.

Dr. Markovich also testified that an immediate transfer to a hospital was not warranted before the afternoon of November 12, 1998, because O'Dell's symptoms were subacute and did not indicate infection beyond the oral cavity until that time. Dr. Markovich opined that O'Dell's vital signs were stable when he was examined on November 8 and 10, and the morning of November 12, 1998, and that stable vital signs are not consistent with a "galloping infection." Dr. Markovich testified that mediastinitis can build and then quickly "break through," causing the patient to take a drastic change for the worse. Although in retrospect, Dr. Markovich agreed with Dr. Cheek's belief that

O'Dell's infection was taking hold on November 8 and 10, he had no criticism of Dr. Ribeiro's diagnosis and treatment and concluded that defendant's staff acted expeditiously by transferring O'Dell to OSU hospital when he developed breathing problems. In Dr. Markovich's opinion, it was prudent to transfer O'Dell to OSU, rather than to Madison County Hospital (MCH), because MCH does not normally have an available chest surgeon. Dr. Markovich noted that even though OSU's medical staff began treatment within one and one-half hours after Dr. Ribeiro's transfer order, O'Dell's condition became critical after his arrival at the hospital.

The court finds Dr. Markovich's testimony to be both credible and persuasive. Dr. Markovich based his opinion upon O'Dell's symptoms and complaints as documented in his institution medical record. However, Dr. Cheek relied on surgical findings and a CT scan report from OSU in forming his opinions regarding O'Dell's condition during his final days at MCI. Although the OSU surgical records reveal the extent of O'Dell's infection, defendant cannot be found liable for a failure to treat a condition that was not apparent upon appropriate physical examination. The institution's medical records show that, prior to the afternoon of November 12, 1998, O'Dell did not display signs of distress such as shortness of breath, airway obstruction, or cardiac problems that would suggest a systemic infection requiring either an x-ray or a surgical intervention. The court concludes that Dr. Ribeiro's examination of O'Dell's mouth, head and neck did not fall below the appropriate standard of care.

Based upon a review of all of the medical testimony and evidence, the court finds that plaintiff has failed to prove that defendant's care of O'Dell was negligent. Judgment shall be entered in favor of defendant.

J. WARREN BETTIS
Judge

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This case was tried to the court on the sole 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 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.

J. WARREN BETTIS
Judge

Entry cc:

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