

[Cite as *Bojdys v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-3219.]

IN THE COURT OF CLAIMS OF OHIO

WALT BOJDYS :  
Plaintiff : CASE NO. 2000-04685  
v. : MAGISTRATE DECISION  
DEPARTMENT OF REHABILITATION : Steven A. Larson, Magistrate  
AND CORRECTION :  
Defendant :  
: :

{¶1} Plaintiff brought this action against defendant alleging negligence. The case was tried to a magistrate of the court on the sole issue of defendant’s liability.

{¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff’s claim arises out of an assault that occurred on June 7, 1999.

{¶3} Plaintiff arrived at Warren Correctional Institution (WCI) in January 1999, and was assigned to a cell with inmate Donald Brooks, Jr. (Brooks) shortly thereafter. Brooks had had a history of mental health problems which included auditory hallucinations and depression. In mid-1998, Brooks had been incarcerated at the Correctional Reception Center (CRC). On July 17, 1998, he was placed on a suicide watch. On July 20, 1998, he was re-evaluated and returned to general population with psychiatric outpatient services. On July 27, 1998, Brooks received a mental health evaluation by psychiatrist William Shapiro, M.D., who diagnosed him as having depression without a schizophrenic

syndrome. Medical records from CRC indicate that he had prior inpatient and outpatient mental health treatment, past suicide attempts, and auditory hallucinations. He was prescribed several medications to control his mood and minimize the auditory hallucinations.

{¶4} In September 1998, Brooks was transferred to WCI and continued to receive outpatient mental health services. He continued to take his medication as prescribed. In the opinion of Dr. Kenneth Washington, the supervising psychologist at WCI, Brooks could be safely maintained in general population and receive proper treatment for his mental health condition.

{¶5} On June 1, 1999, Brooks presented to the Residential Treatment Unit (RTU) with multiple complaints. He stated that he was feeling overwhelmed and that possibly others were out to get him. He reported that his auditory hallucinations were commanding him to hurt himself or others. The treatment staff concluded that, “he does not have a plan to commit suicide or hurt anyone else.” (Plaintiff’s Exhibit 9.) He was instructed on coping skills and returned to general population. On June 4, 1999, Brooks was seen again for a follow-up session and, although he was still having auditory hallucinations, he was coping much better by following a normal routine. A re-evaluation by the psychiatrist was recommended.

{¶6} Plaintiff testified that he became increasingly concerned for his safety while living with Brooks. He complained that Brooks was urinating in the sink at night, pacing the

cell, and cussing out loud to himself. He became aware that Brooks was having auditory hallucinations that directed him to hurt himself or others.

{¶7} Plaintiff testified that five or six times before the assault, he complained to Corrections Officers (COs) about Brooks' behavior and threats. In a kite to Acting Institutional Inspector Garland Wallace dated May 28, 1999, plaintiff requested a cell change because of Brooks' behavior. In the kite, plaintiff stated in part, "[I] do feel threatened and that my life is in danger." (Plaintiff's Exhibit 5.) Wallace responded on June 8, 1999, with the notation: "Please send this kite to Mr. Dehart your Unit Manager. I do not make cell moves." Plaintiff also sent additional kites requesting a cell move because he was aware that Brooks was hearing voices telling him to hurt himself or others.

{¶8} On June 7, 1999, at 2:30 a.m., Brooks was removed from his cell to RTU and placed on a suicide watch. He appeared anxious and depressed. He was experiencing auditory hallucinations telling him to hurt himself. Dr. Washington testified that at 9:37 a.m. a suicide assessment was conducted and it was concluded that Brooks was not currently suicidal, and that his hallucinations were not serious enough to justify removal from general population. Brooks was returned to his cell with plaintiff.

{¶9} On June 8, 1999, at 4:00 a.m., CO Hines heard yelling coming from plaintiff's cell. He immediately investigated and discovered plaintiff at the cell door yelling for help and exclaiming that Brooks had lost his mind and stabbed him with a pencil. He was holding his left arm, which had blood running from it. Brooks was in the rear of the cell

yelling that plaintiff had had sex with his wife and that he was going to kill him. CO Hines triggered the “man down” alarm summoning help from other COs.

{¶10} Brooks complied with the COs order to go to the rear of the cell and face the wall. Plaintiff was removed from the cell and taken to the medical unit for treatment. Brooks was removed to RTU and placed in segregation on suicide watch.

{¶11} Plaintiff testified that he was asleep on the top bunk when he suddenly awoke to find Brooks attempting to stab him in the chest with a pencil. Plaintiff rolled to one side blocking Brooks’ thrust toward his chest with his left arm, causing him to be stabbed in the middle of his left forearm. Plaintiff further claimed that he jumped out of the top bunk in response to Brooks’ attack and severely injured his ankle.

{¶12} Plaintiff asserts that defendant was negligent in failing to acquire details of Brooks’ prior inpatient and outpatient treatment that would have allowed a better assessment of his risk of harming others, in failing to properly assess Brooks’ medical condition and the seriousness of his auditory hallucinations, and in failing to properly respond to plaintiff’s complaints that his life was in danger.

{¶13} The issue presented in this case is whether the psychiatric care Brooks received on an outpatient basis conformed to proper medical standards so as to reasonably protect others from harm. Ohio courts have ruled that holding a psychiatrist to the malpractice standard of ordinary care is too stringent. In *Littleton v. Good Samaritan Hosp. & Health Center* (1988), 39 Ohio St.3d 86, the court adopted the “professional judgment rule” as follows:

{¶14} “\*\*\* we hold that a psychiatrist will not be held liable for the violent acts of a voluntarily hospitalized mental patient subsequent to the patient’s discharge if (1) the patient did not manifest violent propensities while being hospitalized and there was no reason to suspect the patient would become violent after discharge, or (2) a thorough evaluation of the patient’s propensity for violence was conducted, taking into account all relevant factors, and a good faith decision was made by the psychiatrist that the patient had no violent propensity, or (3) the patient was diagnosed as having violent propensities and, after a thorough evaluation of the severity of the propensities and a balancing of the patient’s interests and the interests of potential victims, a treatment plan was formulated in good faith which included discharge of the patient.” *Id.* at 99.

{¶15} The same standard applies to practitioners who treat patients in an outpatient setting. Therapists are under a duty to exercise their best professional judgment to protect their patients or others from harm.

{¶16} Defendant presented the testimony of Stephen Noffsinger, M.D., by way of deposition. (Defendant’s Exhibit 1.) Dr. Noffsinger, a practicing forensic psychiatrist and teacher at the Case Western Reserve Medical School, testified that he reviewed Brooks’ complete mental health file. In Dr. Noffsinger’s opinion, it was reasonable to treat Brooks in general population and not to admit him to RTU. Furthermore, in Dr. Noffsinger’s opinion, the attack on plaintiff was not foreseeable.

{¶17} To prevail, plaintiff must prove by a preponderance of the evidence that defendant failed to exercise good faith judgment in treating Brooks and, as a result, plaintiff

was injured. Generally, the only way to demonstrate that the treatment provided did not meet the prevailing standard of care is through expert testimony. *Ramage v. Central Ohio Emergency Serv., Inc.* (1992), 64 Ohio St.3d 97. In this case, plaintiff failed to establish by a preponderance of the evidence that the treating professionals deviated from any medical standard or failed to exercise their judgment in good faith. Judgment is recommended in favor of defendant.

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STEVEN A. LARSON  
Magistrate

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