



responded to plaintiff's kite, stating that he was on the list for a filling and cleaning and to "please be patient." (Plaintiff's Exhibit A.)

{¶5} After receiving the response, plaintiff sent a second kite complaining that he had begun to experience pain as a result of the lost filling and asking that he be given a dental appointment as soon as possible. On August 13, 1999, the dental office again responded that he was on the list for a filling and to be patient. (Plaintiff's Exhibit Q.)

{¶6} Plaintiff continued to kite the dental office through November 1999, complaining of increasing pain and discomfort from his tooth. The dental office continued to respond to plaintiff's kites stating that he was on the list to see the dentist and to please be patient.

{¶7} On September 1, 1999, Hospital Administrator Christy Barkimer responded to one of plaintiff's kites that he was on the list to see the dentist and that there was aspirin, Tylenol or Advil available in the commissary for pain. He was also informed that he could go to "nurses screening" if immediate medical attention was necessary.

{¶8} On December 15, 1999, plaintiff received a written inquiry from the dental staff in response to a kite asking: "Do you have an abscess? (Swelling of the gum.) Please re-kite." (Plaintiff's Exhibit F.)

{¶9} Plaintiff filed complaints with the hospital administrator and the institutional inspector on December 28 and December 30, respectively, requesting their assistance in getting a dental appointment. On December 29, 1999, a registered nurse responded on behalf of the hospital administrator that plaintiff

first needed to respond to the December 15, inquiry from the dental office as to whether he had an abscess.

{¶10} On January 18, 2000, plaintiff filed a Notification of Grievance in which he demanded dental treatment and financial compensation for the pain that he had endured during those months without treatment. On January 21, 2000, the inspector of institutional services sent plaintiff a Disposition of Grievance explaining that plaintiff had returned a kite on January 3, 2000, to the dental office stating, "No abscess, some gum discomfort." The response further explained that the dentist provides dental services on a priority basis and that plaintiff would receive treatment according to priority. The inspector concluded that plaintiff's grievance was unfounded and suggested that if his condition worsened he should register for nurses screening so that he could receive immediate medical attention. (Plaintiff's Exhibit J.)

{¶11} Plaintiff testified that he was seen at the Corrections Medical Center (CMC) in February 2000 for an unrelated matter and that during his physical examination, medical personnel discovered that the root and the nerve of his tooth were exposed and the gum surrounding the tooth had become infected. Dr. Amos, a dentist at CMC, extracted the infected tooth. No antibiotics were prescribed following the extraction. When plaintiff returned to ACI, he began to experience pain in the area of the extraction.

{¶12} Dr. Kenneth Wiggins and Dr. Deanthia Childs-Wiggins, husband- and-wife dentists who treated plaintiff at ACI, were called as witnesses by plaintiff. Dr. Deanthia Wiggins explained that she examined plaintiff subsequent to the tooth extraction at CMC and found the affected area to be red with no pus, which

indicated a mild infection. She stated that she treated plaintiff with a regime of antibiotics. She further explained that, although gum tissue will usually heal within a week, the underlying bone could take from six months to one year. Dr. Deanthia Wiggins further testified that, according to plaintiff's dental records, an examination on a follow-up visit showed that the tissue area was healing and that plaintiff was feeling much better.

{¶13} Plaintiff asked Dr. Deanthia Wiggins if the extraction caused his other teeth to shift. She testified that plaintiff had periodontal disease which caused bone loss over time and, as a result of that bone loss, there had been a greater shift in the tooth next to the extracted tooth, but that the adjacent tooth was still within normal limits.

{¶14} When questioned about the policy and procedure for inmates at ACI for seeing the dentist, Dr. Deanthia Wiggins explained that patients were seen on a priority basis. Patients with trauma or infection are seen first; those needing fillings, next; and patients being fit for dentures, last. She explained that nurses screening is available for those with emergencies, which would include someone in immediate pain.

{¶15} On cross-examination, Dr. Deanthia Wiggins testified that all of the dental care received by plaintiff met acceptable community standards.

{¶16} Plaintiff also called Dr. Kenneth Wiggins to testify. He examined plaintiff on May 8, 2000, and found that a small area of gum was infected. Dr. Kenneth Wiggins treated the infection with an antibiotic. He saw plaintiff again on September 8, 2000, at which time the infected area had healed within normal limits. On

November 11, 2000, Dr. Kenneth Wiggins took a wax impression to be used as a mold for a replacement tooth.

{¶17} On cross-examination, Dr. Kenneth Wiggins also testified that all of the dental care received by plaintiff met acceptable community standards.

{¶18} Plaintiff's complaint alleges dental malpractice and delay and indifference. To establish a claim of medical [dental] malpractice, plaintiff "must show the existence of a standard of care within the medical community, breach of that standard of care by the defendant, and proximate cause between the medical negligence and the injury sustained." *Taylor v. McCullough-Hyde Mem. Hosp.* (1996), 116 Ohio App.3d 595; citing *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. These elements must be established by expert testimony unless the negligent conduct "is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it \*\*\*." *Bruni*, supra, at 130.

{¶19} The only medical testimony in this case was that of Drs. Deanthia and Kenneth Wiggins, who treated plaintiff and whom were called by him to testify. The doctors explained the dental treatment plaintiff received at ACI and confirmed that he had suffered an infection of the gum which resulted in a tooth being extracted at CMC. They also testified that when plaintiff returned from CMC, his gum was still infected, and that they treated him with antibiotics and that the infection subsided. However, neither dentist testified that any of plaintiff's dental treatment fell below community standards. In fact, on cross-examination, both dentists testified that plaintiff's treatment met the existing standard of care within the medical community.

{¶20} Plaintiff also asserts a claim of general negligence based on defendant's alleged failure to timely respond to his requests for treatment. As stated above, plaintiff began kiting defendant with a claim of a dental problem in June 1999. He sent several kites, an informal complaint, and a grievance stating that his tooth was getting worse and was causing him pain. His tooth was finally extracted at CMC in February 2000, while he was being seen for unrelated medical treatment. His gum around his tooth had become infected. In addition, defendant responded to each of plaintiff's kites, the informal complaint, and the grievance. Plaintiff was informed in each instance that he was on the list for dental treatment. He was asked if his tooth was abscessed and, if so, he was instructed to notify the dental office by re-kiting it. Plaintiff was also instructed that if he had an immediate medical problem, including an infection, he should report to nurses screening. There is no evidence that plaintiff availed himself of any of the options provided by defendant for immediate medical attention.

{¶21} Plaintiff is entitled to adequate medical care, but defendant is not required to respond to plaintiff's every request. "The Constitution does not require that prisoners, as individuals or as a group, be provided with any and every amenity which some person may think is needed to avoid mental, physical, and emotional deterioration." *Newman v. Alabama* [C.A. 5, 1977], 559 F.2d 283, 291.

{¶22} Based upon the totality of the evidence, the court concludes that the treatment which plaintiff received for his dental problems met or exceeded the appropriate standard of care in the medical community. The court further finds that any delay in

the delivery of treatment was caused in large part by plaintiff's own failure to respond to specific questions posed in returned kites and his failure to avail himself of immediate help through nurses screening. Conversely, any delay in treatment attributable to defendant was reasonable under the circumstances.

{¶23} In conclusion, plaintiff has failed to prove his claim for negligence by a preponderance of the evidence. Judgment is recommended in favor of defendant. Furthermore, in light of the foregoing, plaintiff's demand for judgment, filed June 28, 2002, is DENIED.

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STEVEN A. LARSON  
Magistrate

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