

increased heart rate, became "light headed," and perspired more than usual. Plaintiff was eventually examined by a nurse but he did not receive a refill of his prescription until September 20, 1999. On September 23, 1999, plaintiff was released from segregation following a Rules Infraction Board hearing. However, plaintiff maintains that he suffered permanent and potentially life-threatening injury as a result of defendant's failure to provide him with his prescribed medication.

{¶4} In response, defendant asserts that plaintiff had a 90-day prescription, that he had used his initial 30-day supply of medication without getting a refill before he was placed in segregation and that he was responsible for ensuring that his prescription was refilled. Defendant also maintains that there is no causal connection between plaintiff's failure to take his medication and the symptoms that he claims to have experienced.

{¶5} In order for plaintiff to prevail, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty and that the breach was the proximate cause of his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282. The duty of care owed to an inmate by his custodian is one of ordinary care in the furtherance of the custodial relationship. See *Jenkins v. Kreeger* (1981), 67 Ohio St.2d 314. The requisite standard of care is that which is reasonable and ordinary for the health, care, and well being of the prisoner. *Clemets v. Heston* (1985), 20 Ohio App.3d 132.

{¶6} Terry Hopkins, defendant's Health Care Administrator, testified regarding plaintiff's prescription record and defendant's procedure for issuing prescription medication. Hopkins reviewed plaintiff's medical record and noted that on August 10, 1999,

plaintiff had received a 30-day supply of Atenolol, a medication used to control high blood pressure (hypertension). Hopkins determined that if plaintiff had taken his medication as prescribed, he would have needed a refill before the date on which he was placed in the segregation unit. Hopkins also testified that the medical records show that plaintiff was seen by a nurse on September 2, 1999, in the "chronic care" section, and that he neither received nor requested a refill of his prescription. Hopkins explained that it is an inmate's responsibility to take prescription medication as directed and to request a refill when needed. Hopkins testified that defendant's nurses routinely visited inmates in the segregation unit at least four times each day.

{¶7} The only expert testimony presented at trial was that of James Coulter, D.O., an employee of defendant. Dr. Coulter reviewed plaintiff's medical history and concluded that plaintiff exhibited "mild" to "borderline" hypertension. According to Dr. Coulter, most of the symptoms that plaintiff claimed to have experienced while in segregation were unrelated to any deprivation of Atenolol. Specifically, Dr. Coulter testified that plaintiff was more likely to become "light-headed" as a result of taking Atenolol but that such symptom is not associated with a failure to take such medication. Dr. Coulter further testified that the sweating that plaintiff claims to have experienced was not related to the absence of Atenolol. He explained that a patient who has stopped taking Atenolol can experience an increased heart rate, but that such a symptom would not develop for at least two days. Dr. Coulter opined that after approximately four days without his medication, plaintiff's blood pressure should return to a "normal

baseline" reading that he had exhibited prior to taking the medication. Dr. Coulter concluded that plaintiff most likely would not experience any "ill effects" from not taking the medication for a six-day period.

{¶8} Plaintiff's medical records show that his blood pressure was frequently monitored after his arrival at RCI and that during the time medication was prescribed to him, there was some fluctuation in his blood pressure. The testimony and evidence establish that plaintiff's hypertension was successfully controlled while he was taking his medication. The prescription label attached to plaintiff's medication indicates that he received 30 tablets of Atenolol on August 10, 1999, and that he was directed to "take one tablet every day for 90 days." The label also included the following instruction: "REFILLS AVAILABLE SEND REQUEST SLIP TO PHARMACY." However, according to his medical records, plaintiff did not request a refill when he was evaluated by defendant's medical staff on September 2, 1999, or at any other time prior to his confinement in segregation on September 15, 1999.

{¶9} Plaintiff's medical records establish that he was not taking his medication as prescribed prior to his being placed in segregation. If plaintiff had taken one Atenolol tablet each day after his prescription was filled on August 10, 1999, he would have required a refill on or before September 9, 1999, approximately six days before he was placed in the segregation unit. Log books maintained by COs in the segregation block show that defendant's nursing staff dispensed medications to other inmates during the period of time that plaintiff was confined in the unit. COs from that unit testified that any inmate medical complaints would be recorded in the log; however, there were no entries to substantiate

plaintiff's claims that he requested medical services or medication. The court finds that the testimony and evidence presented at trial fails to support plaintiff's claim that defendant negligently deprived him of prescribed medication.

{¶10} Plaintiff has also failed to present any medical evidence to suggest that he was injured as a result of a lack of medication. Even assuming that defendant did deprive plaintiff of his medication while he was in isolation, the court is persuaded by Dr. Coulter's testimony, that an increase to a "normal baseline" heart rate is the only alleged symptom that is consistent with discontinued use of Atenolol. Dr. Coulter described plaintiff's hypertension as mild and opined that plaintiff would not be harmed by the lack of Atenolol for a six-day period. Accordingly, the court finds that plaintiff has failed to prove by a preponderance of the evidence that he was injured as a result of defendant's alleged negligence.

{¶11} In addition to the negligence claims, plaintiff has also alleged that defendant's failure to provide proper medication violated his constitutional rights. However, this court is without jurisdiction over constitutionally derived claims that are predicated upon state action. *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89 AP-114.

{¶12} For reasons set forth above, judgment is recommended in favor of defendant.

STEVEN A. LARSON
Magistrate

Entry cc:

Case No. 99-13959

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MAGISTRATE DECISION

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