

[Cite as *Johnson v. Richland Correctional Inst.*, 2003-Ohio-4010.]

IN THE COURT OF CLAIMS OF OHIO

MAX JOHNSON :
Plaintiff : CASE NO. 2002-09081
v. : DECISION
RICHLAND CORRECTIONAL : Judge J. Warren Bettis
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} On June 4, 2003, defendant filed a motion for summary judgment. Plaintiff has not filed a response. On June 27, 2003, defendant filed a motion to substitute the original affidavit of Kenneth Williams, M.D. for the facsimile copy previously submitted. For good cause, the motion is GRANTED. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶2} Civ.R. 56(C) states, in part, as follows:

{13} "**** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion

and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant's Richland Correctional Institution at all times relevant to this action. R.C. 5120.16. In plaintiff's complaint, plaintiff alleges that: "I *** was taken to Ohio State University hospital they said I had cancer, but when I woke up my left lungs was taken out ***." Thus, the crux of plaintiff's complaint is that he sustained personal injuries as a result of medical malpractice by defendant.

{¶5} In order to prevail on a claim of medical malpractice or professional negligence, plaintiff 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.*

{¶6} In support of the motion for summary judgment, defendant submitted the affidavit of Kenneth Williams M.D., a medical professional in defendant's employ. Dr. Williams' affidavit provides in relevant part:

{¶7} "5. I have reviewed the medical records of inmate Max Johnson, #409-015 and I have treated Mr. Johnson as an inmate at the Richland Correctional Institution.

{¶8} "6. A CT Scan was performed on Mr. Johnson in October of 2001. The results of this test revealed a highly suspicious mass indicative of Cancer. ***

{¶9} "7. In November 2001, a broncoscopy [sic] and surgery were performed on Mr. Johnson and a portion of his lung was removed. ***

{¶10} "8. The broncoscopy [sic] and surgery were reasonable responses to the suspicious mass seen in the CT scan and met the acceptable standard of medical care.

{¶11} "9. These procedures were not experimental in nature.

{¶12} "10. Mr. Johnson has recovered from these procedures and is currently under treatment as an inmate at the Richland Correctional Institution."

{¶13} As stated above, plaintiff has not responded to defendant's motion for summary judgment.

{¶14} The Tenth District Court of Appeals has stated:

{¶15} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1,2. The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00AP-1110." *Nu-Trend Homes, Inc. et al.*

v. Law Offices of DeLibera, Lyons & Bibbo et al. (March 31, 2003),
Franklin App. No. 01AP-1137.

{¶16} In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that defendant was not negligent in the care and treatment of plaintiff. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.

{¶17} Defendant's motion for summary judgment is hereby GRANTED and judgment shall be rendered in favor of defendant.

{¶18} Based upon the evidence and for the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED. 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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LP/cmd
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