

before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

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

{¶4} "*** 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.

{¶5} It is not disputed that plaintiff was receiving from defendant in-patient treatment for a mental disorder; that during the course of her treatment she became involved in a physical altercation with another patient; and that plaintiff was injured as a result of the altercation. In her complaint, plaintiff alleges that her injuries were a direct and proximate result of defendant's failure both to properly monitor patients at the facility and to exercise reasonable care in protecting plaintiff from an assault by another mental patient. Plaintiff alleges causes of action sounding in medical malpractice and ordinary negligence.

{¶6} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that

defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Under Ohio law the existence of a duty depends on the foreseeability of the injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶7} Generally, there is no duty to control the conduct of a third person in order to prevent that person from causing physical harm to another. *Littleton v. Good Samaritan Hospital & Health Ctr.* (1988), 39 Ohio St.3d 86, 92. However, an exception to this general rule arises when a special relationship exists between the owner/occupier and the third person that imposes a duty upon the actor to control the third person's conduct, or when a special relationship exists between the actor and the other that gives to the other a right to protection. *Id.* "Such a 'special relation' exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled." *Littleton, supra*, at 92; 2 Restatement of the Law 2d, Torts (1965) at 129, Section 319; see 2 Restatement of the Law 2d, Torts (1965) at 123, Section 315, Comment c.

{¶8} 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.*

{¶9} Although there is no doubt that a special relationship exists in this case, a determination of the liability of a mental

health organization to one of its patients for an assault by another patient is determined in accordance with R.C. 2305.51, which provides in relevant part:

{¶10} "(B) A mental health professional or mental health organization may be held liable in damages in a civil action, or may be made subject to disciplinary action by an entity with licensing or other regulatory authority over the professional or organization, for serious physical harm or death resulting from failing to predict, warn of, or take precautions to provide protection from the violent behavior of a mental health client or patient, *only if the client or patient or a knowledgeable person has communicated to the professional or organization an explicit threat of inflicting imminent and serious physical harm to or causing the death of one or more clearly identifiable potential victims, ***.*" (Emphasis added.)

{¶11} In support of the motion for summary judgment, defendant has submitted the affidavit of Stephen Noffsinger, M.D., a forensic psychiatrist. Dr. Noffsinger's affidavit provides in relevant part:

{¶12} "1. That he is a licensed physician in the State of Ohio;

{¶13} "2. That his medical specialty is psychiatry;

{¶14} "3. That since 1996 he has been employed as the Chief Clinical Officer of the Forensic Psychiatry Service at Northcoast Behavioral Healthcare in Northfield, Ohio, where he is responsible for clinical care given to approximately 220 mentally ill patients;

{¶15} "4. That since 1996 he has been an assistant Professor of Psychiatry at the Case Western Reserve University, College of Medicine, Cleveland, Ohio, where he is responsible for teaching medical students, psychiatry residents and fellows, and conducting research;

{¶16} "5. That since 1999 he has been the Associate Director of the Forensic Psychiatry Fellowship at University Hospitals of Cleveland, Ohio, where he is responsible for supervising and coordinating activities of forensic psychiatry fellows and teaching;

{¶17} "6. That he holds a medical degree from Northeastern Ohio Universities College of Medicine, completed a four-year residency in psychiatry at MetroHealth Medical Center in Cleveland, Ohio, and completed a fellowship in Forensic Psychiatry at University Hospitals in Cleveland, Ohio;

{¶18} "7. That he spends at least fifty percent of his time in the clinical practice of psychiatry or its instruction at an accredited school;

{¶19} "8. That by virtue of his education, training, and experience, he has knowledge of the standards of care exercised by psychiatrists, psychiatric nurses and psychiatric hospital aids of ordinary care, skill, and diligence in the care and treatment of mentally ill patients;

{¶20} "9. That in 2002 he was retained by the Office of the Attorney General of the State of Ohio to review the case of Marlene Campbell;

{¶21} "10. That as part of his review of that case he reviewed the complaint filed in the Court of Claims of Ohio, the Harding Hospital medical records of 'Patient A' for her psychiatric hospitalization from October 26, 1999 to November 26, 1999; the Harding Hospital medical records of Marlene Campbell for her psychiatric hospitalization from November 9-16, 1999; the deposition of Richard Freeland, M.D., the deposition of Sarah Maki; the deposition of Diane Cordial, R.N.; and the expert report of James Beck, M.D., Ph.D. (plaintiff's expert witness);

{¶22} "11. That following his review of the aforementioned materials he prepared a 17 page expert opinion report, a true copy of which is attached hereto as Exhibit A.

{¶23} "12. That the opinions that he set forth in his expert opinion report are true and accurate to a reasonable degree of medical probability, and his affidavit is incorporated in this affidavit as if fully rewritten herein;

{¶24} "13. That it is his opinion, to a reasonable medical certainty, that the evaluation and treatment provided by the physicians and staff of Harding Hospital to Marlene Campbell and Patient A in November 1999, was within accepted standards of care;

{¶25} "14. That it is his opinion, to a reasonable medical certainty, that the assault between Patient A and Marlene Campbell on November 16, 1999, was unforeseeable;

{¶26} "15. That in the records reviewed, there was no indication that prior to the assault between Patient A and Marlene Campbell on November 16, 1999, that either Patient A or any other person communicated to the staff of Harding Hospital an explicit threat of inflicting imminent and serious physical harm, or death, by Patient A against Marlene Campbell; ***"

{¶27} Although plaintiff has responded to defendant's motion for summary judgment, she has not submitted any admissible evidence upon which reasonable minds could find that defendant breached the standard of care recognized in the medical profession.

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

{¶29} "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.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶30} Plaintiff's reference to a letter from a medical doctor who opines that defendant was negligent in the care of plaintiff, is not sufficient to satisfy plaintiff's burden of production of evidence. Indeed, plaintiff admits that this expert will not testify at the trial of this matter. In short, plaintiff has not presented evidence to support the existence of a triable issue with regard to her claims of medical negligence.

{¶31} Similarly, to the extent that plaintiff has asserted claims premised upon a general negligence theory, plaintiff has failed to produce any evidence to support those claims. Defendant has submitted with its motion the affidavit of Diane Cordial, a registered nurse who was on duty when plaintiff was injured and who witnessed the assault. Therein, Cordial states:

{¶32} "1. That She is a licensed registered nurse in the State of Ohio;

{¶33} "2. That her nursing specialty is psychiatric nursing;

{¶34} "3. That in November 1999 she was employed by Ohio State University as a nurse providing mental health services to patients at Harding Hospital, Worthington, Ohio;

{¶35} "4. That as of November 16, 1999, she was the nurse assigned to care for the plaintiff, Marlene Campbell. She was aware that the patient who has been designated in this litigation as 'Patient A' was assigned to the same unit on that day;

{¶36} "***

{¶37} "8. On the afternoon of November 16, 1999, she witnessed a physical altercation between Marlene Campbell and Patient A during which Marlene Campbell was injured. At no time prior to becoming aware of the altercation had Patient A communicated to her or, to the best of her knowledge, to any other employee of Ohio State University, an explicit threat to inflict serious physical harm upon Marlene Campbell, nor did any person communicate to her or, to the best of his knowledge, to any other employee of Ohio State University, that Patient A had made such an explicit threat to anyone at anytime prior to the altercation with Marlene Campbell on November 16, 1999;

{¶38} "9. That the altercation between Patient A and Marlene Campbell occurred suddenly and without any warning. During the altercation Patient A struck at and kicked Marlene Campbell and pulled out her hair. Following the altercation Marlene Campbell was visibly injured, and was taken to St. Anne's Hospital by squad;
***"

{¶39} As stated above, plaintiff has failed to provide any evidence to rebut defendant's properly supported motion for summary judgment. 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. Accordingly, defendant's motion for summary judgment shall be granted.

{¶40} All other pending motions are DENIED as moot.

{¶41} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Accordingly, all other pending motions are hereby DENIED as moot. 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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