

[Cite as *Martin v. Ohio State Univ. College of Dentistry*, 2004-Ohio-1466.]

IN THE COURT OF CLAIMS OF OHIO

THOMAS M. MARTIN :

Plaintiff :

CASE NO. 2003-01610

Judge J. Warren Bettis

v. :

DECISION

THE OHIO STATE UNIVERSITY :

COLLEGE OF DENTISTRY :

Defendant

: : : : : : : : : : : : : : : :

{¶1} On January 8, 2004, defendant filed a motion for summary judgment. Plaintiff has not filed a response. 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:

{¶3} "\*\*\* 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} In his complaint, plaintiff alleges that defendant failed to provide him proper dental treatment and that, as a result, he sustained personal injury. Thus, plaintiff's complaint sounds in medical or dental malpractice.

{¶5} In order to prevail on a claim of medical or dental 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 affidavits of several medical professionals in defendant's employ, including, R. Bruce Miller, D.D.S., William J. Meyers, D.M.D., M.E.d., and Dimitris Tatakis, D.D.S., Ph.D.

{¶7} Dr. Miller's affidavit provides in relevant part:

{¶8} "5. I have reviewed the OSU dental records relating to the prosthodontic treatment of Plaintiff in this case.

{¶9} "6. It is my opinion based upon a reasonable degree of dental certainty that the prosthodontic treatment to Plaintiff at OSU at all relevant times was appropriate and did not fall below the acceptable standard of care."

{¶10} Dr. Meyers' affidavit provides in relevant part:

{¶11} "5. I have reviewed the OSU dental records relating to the endodontic treatment of Plaintiff in this case.

{¶12} "6. It is my opinion based upon a reasonable degree of dental certainty that the endodontic treatment to Plaintiff at OSU at all relevant times was appropriate and did not fall below the acceptable standard of care."

{¶13} Dr. Tatakis' affidavit provides in relevant part:

{¶14} "4. I have reviewed the OSU dental records relating to the periodontic treatment of Plaintiff in this case.

{¶15} "5. It is my opinion based upon a reasonable degree of dental certainty that the periodontic treatment to plaintiff at OSU at all relevant times was appropriate and did not fall below the acceptable standard of care."

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

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

{¶18} "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*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. 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.

{¶19} 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.

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

{¶21} 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. 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.

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J. WARREN BETTIS  
Judge

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**LP/ML/cmd**

Filed March 3, 2004

To S.C. reporter March 25, 2004