

[Cite as *Horsley v. Richland Corr. Inst.*, 2005-Ohio-2123.]

IN THE COURT OF CLAIMS OF OHIO

TODD JAMES HORSLEY :  
:  
Plaintiff : CASE NO. 2004-03454  
Judge Fred J. Shoemaker  
v. : Magistrate Steven A. Larson  
  
RICHLAND CORRECTIONAL : MAGISTRATE DECISION  
INSTITUTION :  
:  
Defendant  
: : : : : : : : : : : : : : : :

{¶1} Plaintiff brought this action against defendant, Richland Correctional Institution, alleging medical negligence. The issues of liability and damages were bifurcated and the case proceeded to trial before a magistrate of the court on March 29, 2005, on the issues of liability and civil immunity.

{¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that he has received inadequate medical treatment for his chronic condition, Hepatitis C infection. According to plaintiff, his treating physician, Dr. Kenneth Williams, refuses to approve his request for a gastroenterology (GE) consultation which would afford plaintiff the possibility of receiving a liver biopsy and, if indicated, treatment with Interferon therapy.

{¶3} Defendant asserts that it has established protocols for managing inmates with chronic Hepatitis and that plaintiff has been treated pursuant to such guidelines.

{¶4} In order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached such duty, and that the breach proximately caused plaintiff's injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoner's health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136.

{¶5} Upon review of the testimony and evidence presented on this issue, the court finds that plaintiff failed to meet his burden of proof. To the extent that plaintiff claims that Dr. Williams was negligent because he did not recommend that plaintiff receive a consult with a gastroenterologist, plaintiff has failed to satisfy his burden of proof. To establish a claim of medical 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 Memorial Hospital* (1996), 116 Ohio App.3d 595, 599, citing *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 131-132. 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.

{¶6} Plaintiff did not produce expert testimony on the issue of medical malpractice; he was the only witness to testify at trial. According to plaintiff, defendant's medical personnel informed him that his condition was stable and slowly improving. He acknowledged that laboratory tests showed his viral load was undetectable, that his liver enzymes were in the normal range, and that medical personnel had advised that no further treatment was indicated at this time other than periodic observations and blood tests. He stated that, according to defendant's protocols for inmates with chronic Hepatitis C

infection, a GE consult would be ordered if the viral load began to rise and the liver enzymes became elevated.

{¶7} Although plaintiff implied that his medical condition is such that only common knowledge and experience are needed to understand it, the court disagrees. The testimony and evidence presented referenced such complex medical issues as liver biopsies, viral load, and liver enzymes. Based upon the totality of the evidence, the court concludes that plaintiff failed to prove the medical treatment provided to him fell below the standard of care in the medical profession. The court further finds that defendant established a protocol for the treatment of chronic Hepatitis C and that plaintiff admitted that the protocol was followed with regard to his care. Consequently, the court finds that plaintiff has failed to prove his claims by a preponderance of the evidence and, accordingly, judgment is recommended in favor of defendant.

{¶8} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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STEVEN A. LARSON  
Magistrate

Entry cc:

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Plaintiff, Pro se

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Case No. 2004-03454

- 4 -

MAGISTRATE DECISION

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**SJM/cmd**

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