

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 an inmate in the custody and control of defendant at defendant's Southern Ohio Correctional Facility (SOCF) at all times relevant to this action. R.C. 5120.16. Plaintiff alleges in his complaint that in December 2003, he was taken to Corrections Medical Center (CMC) and given a wrist brace for torn ligaments in his wrist. Plaintiff also alleges that after he returned to SOCF, the brace was taken from him for approximately three weeks in order for the warden to remove two plastic support pieces from the brace. Plaintiff asserts that the removal of the plastic support pieces constitutes medical negligence.

{¶ 6} 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.*

{¶ 7} In support of the motion for summary judgment, defendant submitted the affidavit of Dr. James McWeeney. Dr. McWeeney's affidavit provides in relevant part:

{¶ 8} "***

{¶ 9} "2. I currently serve as the Medical Director at the Southern Ohio Correctional Institution.

{¶ 10} "***

{¶ 11} "6. I have reviewed the medical records of inmate Rayshan Watley, #A347-921, and I have treated Mr. Watley as an inmate at the Southern Ohio Correctional Institution.

{¶ 12} "7. Mr. Watley was diagnosed with carpal tunnel syndrome.

{¶ 13} "8. As part of his treatment, Mr. Watley was prescribed a wrist brace.

{¶ 14} "9. The metal and plastic splints in the support brace were determined to be a security risk.

{¶ 15} "10. The splints were removed from Mr. Watley's wrist brace and the brace was given back to him.

{¶ 16} "11. Based upon my training, education, experience and treatment of Mr. Watley it is my opinion, to a reasonable degree of medical certainty, that giving Mr. Watley a brace without the splints meets the acceptable standards of medical care for the treatment of carpal tunnel."

{¶ 17} Plaintiff has not provided defendant with an expert report pursuant to L.C.C.R. 7(E). Plaintiff has also failed to identify any medical expert who might give testimony in support of his assertion that the removal of the plastic support pieces from his wrist brace violated acceptable standards of care.

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

{¶ 19} "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.

{¶ 20} 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. Consequently, there are no genuine issues of material fact and defendant is entitled to judgment as a matter of law.

{¶ 21} Defendant's motion for summary judgment shall be GRANTED.

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

RAYSHAN WATLEY

:

Plaintiff

:

CASE NO. 2004-01761

v. Judge J. Craig Wright
: Magistrate Steven A. Larson

DEPARTMENT OF REHABILITATION : JUDGMENT ENTRY
AND CORRECTION :

Defendant

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

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.

STEVEN A. LARSON
Magistrate

Entry cc:

Rayshan Watley, #A347-921
P.O. Box 45699
Lucasville, Ohio 45699

Plaintiff, Pro se

Tracy M. Greuel
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130
AS/LP/dmh
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Attorney for Defendant