

[Cite as *Dehler v. Trumbull Correctional Inst.*, 2005-Ohio-4454.]

IN THE COURT OF CLAIMS OF OHIO  
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[illegible]

{¶ 1} Plaintiff brought this action against defendants alleging negligence, medical malpractice, and retaliation. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability. At all times relevant to this action, plaintiff was an inmate in the custody and control of defendants pursuant to R.C. 5120.16. At trial, the sole testimony presented was that of plaintiff.

{¶ 2} Plaintiff contends that Trumbull Correctional Institution (TCI) nurses committed nursing malpractice when refilling his prescriptions during sick call and reviewing his blood test results.

{¶ 3} To establish a claim of medical [nursing] 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 Mem. Hosp.* (1996), 116 Ohio App.3d 595; citing *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. "[E]xpert testimony is necessary to establish the prevailing standard of care where the professional skills and

judgement of a nurse are alleged to be deficient." *Ramage, et al. v. Central Ohio Emergency Services, Inc., et al.*, 64 Ohio St.3d 97, 1992-Ohio-109.

{¶ 4} Plaintiff has failed to provide any evidence other than his own testimony in support of his claim that TCI nurses were negligent in reviewing his laboratory results. Plaintiff did not present the testimony of a nursing expert. Furthermore, plaintiff acknowledged that TCI physicians, not the nurses, wrote his prescriptions. In short, upon review of the testimony and evidence presented at trial, plaintiff has failed to prove that TCI nurses engaged in any nursing malpractice.

{¶ 5} Plaintiff also asserts that he received negligent medical treatment when doctors at TCI did not remove his internal hemorrhoids. Plaintiff presented no expert testimony substantiating his claim. Neither can the court conclude that such a determination is within a lay person's common knowledge and experience. *Bruni, supra*, at 130.

{¶ 6} Plaintiff also maintains that defendants violated his rights by failing to provide meals that included fresh fruits, vegetables, and low-fat milk and by failing to provide new scales for inmates to weigh themselves. Additionally, plaintiff alleges that defendants' policy of requiring him to pay a \$3 co-pay to refill prescriptions, visit sick call, and review blood test results unfairly denies him access to medical care.

{¶ 7} Inmate complaints regarding the conditions of confinement are treated as claims arising under Section 1983, Title 42, U.S.Code. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 1994-Ohio-37. Clearly, claims against the state under Section 1983, Title 42, U.S.Code, may not be brought in the Court of Claims

because the state is not a "person" within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Tenth Dist. No. 92AP-1230.

{¶ 8} Plaintiff asserts that the Department of Rehabilitation and Correction's inspectors have retaliated against him by responding to his grievances in an untimely manner and that he has been retaliated against for filing the instant claim. As a consequence, he requests an order from this court requiring defendants to transfer him to Toledo Correctional Institution.

{¶ 9} To the extent that plaintiff alleges that he was retaliated against, the Tenth District Court of Appeals has held that claims for retaliation are to be treated as an action for alleged violations of constitutional rights under Section 1983, Title 42, U.S.Code. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. This court is without jurisdiction to determine such claims.

{¶ 10} Prison administrators are provided "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547. *Holbert v. Ohio Dept. of Rehab. & Corr.* (1995), 75 Ohio Misc.2d 44. Therefore, this court has no authority to order plaintiff's transfer to Toledo Correctional Institution.

{¶ 11} For the foregoing reasons, the court concludes that plaintiff has failed to prove any of his claims by a preponderance

of the evidence. Accordingly, judgment is recommended in favor of defendants.

{¶ 12} 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

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