[Cite as *Rembert v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-5067.]

IN THE COURT OF CLAIMS OF OHIO
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ALBERT L. REMBERT	:	
Plaintiff	:	CASE NO. 2003-01148 Judge J. Craig Wright
v.	:	Magistrate Steven A. Larson
DEPARTMENT OF REHABILITATION AND CORRECTION	:	MAGISTRATE DECISION
Defendant	:	

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{¶ 1} Plaintiff brought this action against defendant, Department of Rehabilitation and Correction (DRC), alleging medical malpractice and retaliation. The issues of liability and damages were bifurcated and the case proceeded to trial on the issues of liability and whether Dr. Albert Loescher is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. In his complaint, plaintiff alleges that the medical treatment he received while at Richland Correctional Institution (RiCI), was below the applicable standard of care. Plaintiff claims he suffered personal injury as a result of Dr. Loescher's practice of over-prescribing the drug Cardizem, as treatment for his high blood pressure. Plaintiff also alleges that the medication was intentionally over-prescribed by Dr. Loescher in retaliation for plaintiff's filing of grievances against defendant's employees.

{¶ 3} Plaintiff was transferred from Chillicothe Correctional Institution (CCI) to RiCI in December 2000. Plaintiff testified that while he was at CCI, he filed a grievance in June 2000, against several corrections officers. Soon after the grievance was filed, he was diagnosed with hypertension and prescribed medication to control his blood pressure. Plaintiff testified that he was initially prescribed 100mg of Prinivil; however, the medication was changed to Cardizem and the dosage increased to 240mg. According to plaintiff, the change in the prescription occurred soon after he had filed another grievance against defendant's employees regarding an unprovoked attack upon him in October 2000.

{¶ 4} Plaintiff testified that after he was transferred to RiCI, Dr. Loescher increased the dosage of Cardizem to 300mg without performing an examination. Plaintiff alleges that Dr. Loescher increased his medication to an unhealthy level in retaliation for plaintiff's prior acts of filing grievances. Plaintiff testified that when he took the Cardizem "it was like my life leaving my body." Plaintiff claimed that on March 11, 2001, after taking his medication he slipped into a coma that lasted five hours.

{¶ 5} To the extent that plaintiff alleges that defendant over-prescribed medication in retaliation for plaintiff's filing grievances against the state, his claims are without merit. Indeed, claims of retaliation by prison officials are to be treated as actions for alleged violations of constitutional rights under Section 1983, Title 42, U.S.Code. *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. 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.

{¶ 6} To the extent that plaintiff alleges medical negligence, the burden of proof in such a case was established by the Supreme Court of Ohio in *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, at paragraph one of the syllabus, which states that "*** in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct and proximate result of such doing or failing to do some or more of such particular things."

{¶ 7} 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.

{¶ 8} Nurse Brian Cain, RiCI's health care administrator, testified about plaintiff's medical history. According to Cain, plaintiff's medical records document that on February 10, 2000, plaintiff was diagnosed with high blood pressure; that he was placed on the chronic care list for hypertension; that he was prescribed Prinivil; and that a series of follow-up examinations were ordered. (Defendant's Exhibit A.) The records further note

that on July 17, 2000, during doctor's sick call, plaintiff informed the physician that he had stopped taking the Prinivil. Due in part to plaintiff's noncompliance, Dr. Gonzalez-Lockhart changed plaintiff's prescription to Cardizem. (Defendant's Exhibit A.)

{¶ 9} Cain explained that on October 5, 2000, and December 26, 2000, plaintiff's blood pressure readings remained high and therefore his Cardizem was increased to 240mg and 300mg respectively. Cain noted that Dr. Gonzalez-Lockhart ordered the Cardizem increased to 300mg while plaintiff was still housed at CCI. (Defendant's Exhibit A.) Plaintiff was then transferred to RiCI on December 27, 2000, where he came under the care of Dr. Loescher. Cain also testified that plaintiff's "Intrasystem Transfer & Receiving Health Screening Form" included a notation that he was receiving 300mg of Cardizem while at CCI. (Defendant's Exhibit A.) Upon cross-examination, plaintiff testified that he believed defendant falsified his medical records as part of the conspiracy against him.

{¶ 10} Cain was unable to find any reference in plaintiff's medical file corroborating his claim that he either fell into a coma or became unconscious at any time in March 2001. The only relevant incident recorded in plaintiff's medical file was a notation that on March 18, 2001, plaintiff had complained of dizziness and that his blood pressure reading was 80/46. The entry also stated that plaintiff rested for a few minutes and his blood pressure returned to normal. (Defendant's Exhibit A.)

{¶ 11} Kenneth Williams, a treating physician at RiCI, testified about the medical care plaintiff received while in the custody of defendant. Dr. Williams testified that plaintiff was

diagnosed with high blood pressure and that the treatment he received was appropriate for hypertension. Specifically, Dr. Williams attested to the fact that plaintiff's blood pressure readings demonstrated that he was not responding to the lower doses of medication and therefore, the increased dosages were warranted. Dr. Williams also testified that 300mg of Cardizem is a reasonable dosage for treatment of high blood pressure and that the Physician's Desk Reference advises that 360mg of Cardizem is the highest dosage that can be safely prescribed. According to Dr. Williams, defendant met the standard of care in the diagnosis and treatment of plaintiff's medical condition.

{¶ 12} The only medical testimony in this case was that of Dr. Williams and nurse Cain. Plaintiff failed to present any expert testimony to support his claim that the medical treatment he received fell below the acceptable standard of medical care.

{¶ 13} Based upon the totality of the evidence, the court concludes that plaintiff's medical treatment met the standard of care in the profession. The court further finds that defendant properly monitored plaintiff's hypertension based upon ongoing blood pressure checks. Additionally, the court finds that plaintiff failed to prove that he lost consciousness in March 2001, or that he suffered any injury as a result of medical care administered to him by defendant.

{¶ 14} For the foregoing reasons, the court concludes that plaintiff has failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 15} In light of the above findings, the court concludes that Dr. Loescher did not act manifestly outside the scope of his

employment in his care and treatment of plaintiff and that he did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Thus, it is recommended that the court find that Dr. Loescher is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.

{¶ 16} *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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