

[Cite as *Likes v. Richland Correctional Inst.*, 2005-Ohio-725.]

IN THE COURT OF CLAIMS OF OHIO

RONALD J. LIKES :
:
Plaintiff : CASE NO. 2004-03799
Judge Joseph T. Clark
v. : Magistrate Steven A. Larson

RICHLAND CORRECTIONAL : DECISION
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶ 1} On December 17, 2004, defendant filed a motion for summary judgment pursuant to Civ.R. 56(C). On December 28, 2004, plaintiff filed a response.

{¶ 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} It is not disputed that plaintiff was an inmate in the custody and control of defendant at defendant's Richland Correctional Institution at all times relevant to this action. R.C. 5120.16. Plaintiff alleges in his complaint that he was deprived of necessary medical care, including diagnostic testing and treatment, for chronic Hepatitis C, and that the lack of testing and treatment resulted in physical harm and emotional distress. The crux of plaintiff's complaint is that he sustained personal injuries as a result of medical malpractice by defendant.

{¶ 5} In order to prevail on a claim of medical malpractice, 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 the affidavit of Kenneth Williams, D.O., a medical professional in defendant's employ. Williams' affidavit provides in relevant part:

{¶ 7} "***

{¶ 8} "I am familiar with the ailments of Ronald Likes and I am his treating physician at the Richland Correctional Institution.

{¶ 9} "***

{¶ 10} "In response to his complaints of pain in conjunction with prior documentation of injury, an eletromyogram [sic] nerve

conduction study was conducted on February 18, 2004 to determine if any injuries or conditions remained present.

{¶ 11} ****

{¶ 12} "Ronald Likes' complaints of back pain are treated as they occur with non-addictive pain relievers.

{¶ 13} "Ronald Likes continues to be monitored for permanent hepatitis C infection.

{¶ 14} "He is tested regularly to monitor infection levels. Mr. Likes initial test yielded a count of 862,000.

{¶ 15} ****

{¶ 16} "Since admission to my care his hepatitis C infection levels have reduced 40 percent.

{¶ 17} "Liver tests conducted in October of 2004 and June of 2004 yielded predominately normal results with the exception of slightly elevated ammonia levels.

{¶ 18} "On October 30, 2003 Ronald Likes' ammonia level was 85. Liver Tests on August 9, 2004 found Ronald Likes' ammonia level to be 42 which is a 50 percent improvement.

{¶ 19} ****

{¶ 20} "To be referred to a gastroenterologist, one must have persistently elevated Alanine Aminotransferase Levels.

{¶ 21} "Mr. Likes has not been referred to a gastroenterologist because his Alanine Aminotransferase Levels are normal.

{¶ 22} "His Alanine Aminotransferase Levels on July 1st, 2004 were 30. The normal range is 10-35.

{¶ 23} ****

{¶ 24} "My care and treatment of Ronald Likes conformed to the applicable standard of care, and was in no way negligent."

{¶ 25} Here, defendant's own expert has established the standard of care for the treatment of plaintiff's Hepatitis C. Plaintiff

has not provided any conflicting expert testimony. However, in plaintiff's affidavit he claims that the practices and procedures described by Dr. Williams were not performed on him. In fact, plaintiff denies that he received any treatment, education or mental health intervention after diagnosis of his disease.

{¶ 26} Upon review of the evidence submitted, and construing the evidence most strongly in plaintiff's favor, the court finds that there is a genuine issue of material fact and defendant is not entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be denied.

IN THE COURT OF CLAIMS OF OHIO

RONALD J. LIKES	:	
Plaintiff	:	CASE NO. 2004-03799
	:	Judge Joseph T. Clark
v.	:	Magistrate Steven A. Larson
RICHLAND CORRECTIONAL	:	<u>JUDGMENT ENTRY</u>
INSTITUTION	:	
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 DENIED.

JOSEPH T. CLARK
Judge

Entry cc:

Ronald J. Likes, #444-911
Richland Correctional Inst.
P.O. Box 8107
Mansfield, Ohio 44901

Plaintiff, Pro se

Susan M. Sullivan
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LP/AS/cmd
Filed January 12, 2005
To S.C. reporter February 23, 2005