

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. Plaintiff did not file a response.

{¶ 4} It is not disputed that plaintiff's decedent, Shaland K. Pender, was an inmate in the custody and control of defendant at defendant's Orient Correctional Institution at all times relevant to this action. R.C. 5120.16. In plaintiff's complaint, plaintiff alleges that: "[d]uring the first week of his incarceration, Shaland placed a call from Orient to Plaintiff, Linda K. Williams and informed her that he was not receiving the correct medication prescribed for him; that medication being administered to him was causing him to suffer adverse reactions such as uncontrolled jitters, difficulty breathing, and constant coughing. *** Defendant Department of Rehabilitations and Corrections owed a duty to provide Shaland with competent medical treatment within acceptable standards of care. Defendant's conduct fell below the acceptable standard of care. *** Despite decedent Shaland Pender's frequent and persistent cries for help, Defendants were deliberately indifferent to the critical medical needs of decedent Pender." Thus, the crux of plaintiff's complaint is that her decedent, Pender, sustained personal injuries as a result of medical malpractice by defendant.

{¶ 5} In order to prevail on a claim of medical 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.*

{¶ 6} In support of the motion for summary judgment, defendant submitted the affidavit of Stephen Markovich, M.D., wherein Markovich authenticated and incorporated a report expressing his opinions regarding the medical care provided to plaintiff's decedent.

{¶ 7} Mr. Markovich's letter provides in relevant part:

{¶ 8} "***

{¶ 9} "I am a residency trained, board certified family practitioner involved in active patient care greater than fifty percent of my clinical time. *** I have given expert reports, depositions and testimony in the past and I am knowledgeable on the concepts of standard of care and reasonable degree of medical probability.

{¶ 10} "I have reviewed the DRC and OSU records as well as depositions of Dr's Linzy Southhall and Bernard Oppong, provided by your office referencing Shaland K. Pender. It is my opinion that the Department of Corrections met the standard of care for treatment received during the period covered by the above records.

{¶ 11} "The patient was a 21-year-old male diagnosed at a small community hospital with a cardiomyopathy. ***

{¶ 12} "During his incarceration the medical staff saw him frequently despite episodes of non-compliance with visits,

medications and treatments. His progress was monitored and his medication regimen adjusted at regular intervals. He received appropriate consultations, follow-up and blood evaluations.

{¶ 13} "***

{¶ 14} "The patient's medical regimen was well within the standard of care for severe heart failure including ACE inhibitors, Angiotensin II receptor blockers, digoxin, diuretics, beta-blockers and spironolactone.

{¶ 15} "***

{¶ 16} "The DRC met the standard of care in this case and in no way contributed to the patient's death. To a reasonable degree of medical certainty the patient's death could not have been predicted nor prevented given the severity of his disease."

{¶ 17} As stated above, plaintiff has not responded to defendant's motion for summary judgment. Thus, the medical opinions expressed by defendant's expert are un rebutted.

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

{¶ 19} "[t]he 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

Subsequent to the conference, a non-oral hearing was conducted 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.

JOSEPH T. CLARK
Judge

Entry cc:

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