[Cite as *Bronston v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-728.]

IN THE COURT OF CLAIMS OF OHIO

KEITH BRONSTON	:	
Plaintiff	:	CASE NO. 2003-01938 Judge J. Craig Wright
v.	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	MAGISTRATE DECISION
Defendant	:	

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{¶ 1} Plaintiff brought this action against defendant alleging that it negligently delayed medical treatment for his ruptured patellar tendon. On November 10, 2003, defendant filed a stipulation of liability which was approved by this court on February 2, 2004. On October 5, 2004, the case proceeded to trial at Ross Correctional Institution on the issue of damages.

{¶ 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. On Saturday, January 26, 2002, plaintiff ruptured his patellar tendon while playing basketball in the gym at defendant's Correctional Reception Center (CRC). He was immediately taken to the infirmary where he stayed until Monday, when he was examined by a CRC physician, Dr. Ringle. Upon reviewing the x-rays of plaintiff's left knee, Dr. Ringle diagnosed plaintiff with a patellar tendon rupture and ordered that he be taken to the Correctional Medical Center (CMC) for an orthopedic consultation.

{¶ 3} Plaintiff returned to his cell after receiving Naprosyn for the pain, ice for the swelling, an ace wrap, and crutches to allow him to ambulate without placing weight on his injured leg.

He was re-evaluated in the CRC infirmary on February 7, February 20, and March 7, 2002. Plaintiff testified that each time he was seen in the infirmary he complained of chronic pain and expressed concern that he had not yet received the orthopedic consultation as previously ordered.

{¶ 4} On March 28, 2002, plaintiff was evaluated by an orthopedic surgeon at CMC where he was diagnosed as having a "chronic patella [sic] tendon rupture." On April 17, 2002, plaintiff was admitted to The Ohio State University Medical Center (OSU) where he underwent two surgical procedures. On April 17, 2002, plaintiff had his first surgical procedure that applied skeletal traction to the left patellar tendon. A period of traction was then necessary to stretch out the contracted quadriceps extension mechanism. Plaintiff remained in traction until the second surgery on April 24, 2002, which consisted of "left patellar tendon repair with semitendinosis [sic] autograft with Zimmer cable ready cable fixation." (Plaintiff's Exhibit 3.)

{¶ 5} On April 25, 2002, plaintiff was discharged to CMC to convalesce before being returned to CRC with instructions to wear an immobilizing knee brace. Plaintiff testified that the brace held his leg in a straight position and that he wore the brace for six to eight weeks. He explained that he ambulated using crutches until he was provided with a less-restrictive knee brace on August 15, 2002. Plaintiff testified that he attended physical therapy on two occasions where he was taught exercises designed to strengthen his left knee.

{¶ 6} Defendant conceded liability based upon the opinion of its expert witness, J. Richard Briggs, M.D., a board-certified orthopedic surgeon, who stated in his report that, "patellar tendon

ruptures of this nature should be repaired within two weeks of the injury because of the contracture of the quadriceps musculature." (Plaintiff's Exhibit 2, Page 2.) Dr. Briggs further concluded that the failure to take plaintiff to the orthopedic clinic in a timely manner was the proximate cause of plaintiff's "less than desirable result [sic] of his original patellar tendon rupture." (Plaintiff's Exhibit 2, Page 3.)

{¶ 7} Edwin H. Season, M.D., also a board-certified orthopedic surgeon, testified as an expert witness on behalf of plaintiff. He concurred with Dr. Briggs regarding defendant's liability: "There was an inappropriate delay before proper orthopedic consultation was implemented. As a result *** there was retraction of the ends of the patellar tendon at the site of rupture." (Plaintiff's Exhibit 3, Page 3.)

{¶ 8} The issue before the court is what portion of plaintiff's medical procedures and resulting medical and physical effects were proximately caused by such "inappropriate delay" in treatment. Proximate cause is established where the negligent act "in a natural and continuous sequence produces a result which would not have taken place without the act ***." *Strother* v. *Hutchinson* (1981), 67 Ohio St.2d 282, 287.

{¶ 9} Both doctors agreed that repairing a ruptured patellar tendon is a relatively simple surgical procedure if done shortly after, or within two weeks of the initial injury. They further agreed that a person with a ruptured patellar tendon who receives prompt surgical intervention, completes a regime of physical therapy, and continues to exercise the affected leg, will have a nearly complete recovery with minimal residual effects.

{¶ 10} In this case, plaintiff's treatment was delayed for two months. During the period of delay, plaintiff was confined to his cell except to walk on crutches to the shower and to the dining hall two to three times a day. He described his leg as "swollen and painful" with his knee cap rising "six inches up my leg." Plaintiff's observation regarding his knee cap was corroborated by a preoperative report that noted that plaintiff had "extreme patella alta," a condition where the kneecap rides too high up on the thigh. (Plaintiff's Exhibit 5, Page 1.)

{¶ 11} Drs. Briggs and Season both agree that as result of the delay in treatment, plaintiff had to endure an additional surgical procedure to insert a pin for traction and a period of traction to stretch the patellar tendon that had retracted after the delayed treatment. Plaintiff's first surgery, on April 17, 2002, required drilling a hole through his patellar tendon, inserting a 5/32 inch pin through the hole, and fastening traction hooks to the pin that extended out of each side of the tendon. During the operation, a piece of "K-wire," used to thread the pin through the hole, broke off and lodged within the leg bone. Both doctors agree, however, that the embedded wire is not likely to cause plaintiff future problems.

{¶ 12} After the first surgery, plaintiff laid on his back in a hospital bed for one week with weights attached to traction hooks. Fifteen pounds of traction were initially used; each day the weight was increased until there were 20 pounds of traction. Plaintiff described his week in traction as very painful despite the administration of morphine for pain control.

{¶ 13} On April 24, 2002, plaintiff underwent a second surgery to stretch the patellar tendon over the knee cap and reattach it to

the lower leg. During the surgical procedure, surgeons discovered that the end of plaintiff's patellar tendon had atrophied. Doctors trimmed the dead tissue, harvested a portion of another tendon, and grafted that to plaintiff's patellar tendon in order to facilitate the reattachment. Additionally, a 1.8 mm diameter stainless-steel cable was threaded through the tendon to permanently help support the reattached tendon.

{¶ 14} Dr. Season testified that he examined plaintiff on October 15, 2003, at Chillicothe Correctional Institution (CCI) and reviewed the medical records and x-rays. He concluded that, although plaintiff's left knee had a full range of motion and plaintiff had a normal gait when walking, plaintiff had significant weakness in his left quadricep due to decreased muscle mass from muscle atrophy. The weakness, Dr. Season opined, permanently reduced plaintiff's functional capacity which is manifested in both poor tolerance for standing and walking and an inability to run or perform sports activities. According to Dr. Season, plaintiff also lost his capacity to perform work that would require lifting.

{¶ 15} Dr. Briggs reviewed plaintiff's medical records and conducted an independent medical examination of plaintiff on December 19, 2003. Upon examination, Dr. Briggs found that plaintiff was able to walk without "limp or lurch" and that "his heel/toe gait was normal." He determined that plaintiff's range of motion of his left knee was "a bit restricted," specifically, plaintiff was able to move his knee from full extension to only 105 degrees as opposed to the normal range of extension to 135 degrees. Dr. Briggs also measured the circumference of plaintiff's thigh and found that it was about 2½ inches smaller than his right leg.

Dr. Briggs acknowledged that 2½ inches of atrophy was significant and resulted in weakness in the affected leg.

{¶ 16} Drs. Briggs and Season disagreed as to the permanency of plaintiff's condition resulting from the delayed patellar tendon repair. Dr. Briggs testified that, with an intense regime of physical therapy, plaintiff could restore his left leg to "very near where he was before" the injury. He opined that with a five-times-per-week exercise program to include the use of ankle weights, plaintiff could restore his range of motion and muscle strength within a period of several months. However, it was Dr. Briggs' impression that plaintiff did not have the "incentive to really rehabilitate himself very well." (Defendant's Exhibit C, Page 41.)

{¶ 17} Dr. Season testified that additional physical therapy would be futile. Dr. Season explained that plaintiff cannot reverse the effect of the injury because there is too much scar tissue around the knee for rehabilitation to be successful. He opined that if plaintiff did leg exercises, he "may strengthen his knee to a minor degree." In Dr. Season's opinion, plaintiff's condition was permanent and he could not regain function or increase stability through exercise or physical therapy.

{¶ 18} Plaintiff testified that he continues to wear the leg brace that was issued to him at CMC. The brace is hinged at the knee and is secured to his leg by two straps above the knee and two straps below the knee. Plaintiff said that he does not wear his brace when he is on his bed watching television or sleeping. Plaintiff claimed that he must continue to wear the leg brace to prevent his knee from "giving out," which he described as a failure to lock at the knee causing him to be unstable on his feet. He

explained that after the operation to repair his patellar tendon, his leg would "give out" one or two times a week. This instability has decreased over time as plaintiff has learned to better keep his balance on his weakened leg.

{¶ 19} Plaintiff further testified that he fell on August 22, 2002, as a result of weakness in his knee. However, plaintiff's medical records indicate he reported that he slipped in water on the floor.

{¶ 20} Plaintiff testified that he is 41 years old and was incarcerated in 2001 after convictions for robbery and escape. His expected release date is March 28, 2005. He asserts that he has an associate degree in tool engineering and took additional courses at Indiana University at Bloomington in 1981 and 1982 where he also played on the basketball team. He is divorced and is the father of three children. Plaintiff related that he did carpentry work with his father and as an engineer designing tool dyes from 1997 to 1998. During his intake interview at CRC on November 9, 2001, plaintiff reported that he had broken both ankles in 1980 and that he suffered from lingering ankle pain. He also reported that he had a history of alcohol and drug problems for which he took treatment in 1999. (Defendant's Exhibit D.)

{¶ 21} Plaintiff further testified that he continues to perform daily leg lifts to strengthen his left leg. He explained that, despite daily exercises, he can no longer run or jump and that his knee remains swollen below the knee cap. He asserted that he can only walk about one-half mile before he feels pain in his knee, for which he takes ibuprofen.

{¶ 22} In considering damages, the court finds that as a result of the two-month delay in treatment, plaintiff has proven by

a preponderance of the evidence that: he endured a great deal of pain during the period of the delay; had to undergo additional surgery for the insertion of a pin through his patellar tendon; he experienced a week of painful traction to stretch his quadricep and patellar tendon; he incurred further injury when an additional tendon had to be harvested and grafted to the patellar tendon; and a supplemental cable inserted to permanently support the tendon repair.

{¶ 23} The court finds that plaintiff's weakness in his left knee will be permanent and that it is not likely that plaintiff will be able to substantially restore function and strength by additional physical therapy or exercise. However, the court finds that plaintiff has failed to prove that he will sustain any future loss of income or require future surgery or other treatment as a result of his injury. Plaintiff has not incurred any cost for the two surgeries or for other treatment.

{¶ 24} Therefore, judgment is recommended in favor of plaintiff in the amount of $75,025 which includes, but is not limited to, pain and suffering, physical impairment, loss of enjoyment of life and inability to perform everyday activities, plus the $25 filing fee paid to commence this action.

{¶ 25} *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).*

STEVEN A. LARSON
Magistrate

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