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v. *Summit Behavioral Health Care, 2006-Ohio-5663.*]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
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JOANN COOPER

Plaintiff

v.

SUMMIT BEHAVIORAL HEALTH CARE

Defendant

Case No. 2005-10594

Judge Joseph T. Clark

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

{¶ 1} On June 6, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(C). On July 28, 2006, the court granted plaintiff leave to file a response on or before August 11, 2006. On August 3, 2006, plaintiff filed the affidavit of Helen Burns along with some miscellaneous documents. The case is now before the court for a non-oral hearing on the motion for summary judgment. Civ.R. 56(C) and L.C.C.R. 4.

{¶ 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing, *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff alleges that she was wrongfully institutionalized for a four and one-half month period beginning on January 13, 2005. Plaintiff was originally remanded to the custody of defendant, Summit Behavioral Health care (SBH), in 1997 after being found not guilty by reason of insanity on charges of felonious assault. According to the affidavit of John Kennedy, M.D., and the documents attached thereto, plaintiff was granted conditional release on April 3, 2002; her conditional release was revoked by Judge Kubicki of the Hamilton County Court of Common Pleas on January 13, 2005; and that she was returned to SBH where she received several months of treatment. On May 31, 2005, Judge Kubicki again granted plaintiff conditional release and plaintiff was released from custody without delay.

{¶ 5} Under the common law, the elements of false imprisonment are: (1) expiration of the lawful term of confinement; (2) intentional confinement after the expiration; and (3) knowledge that the privilege initially justifying the confinement no longer exists. *Corder v. Ohio Dept. of Rehab. & Corr.* (1994), 94 Ohio App.3d 315, 318; *Bennett v. Ohio Dept. of*

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Rehab. & Corr. (1991), 60 Ohio St.3d 107. In *Bennett* the Supreme Court of Ohio stated that “an action for false imprisonment cannot be maintained where the wrong complained of is imprisonment in accordance with the judgment or order of a court, unless it appear that such judgment or order is void.” *Id.* at 111, quoting *Diehl v. Friester* (1882), 37 Ohio St. 473, 475.

{¶ 6} The undisputed evidence submitted by defendant in support of the motion for summary judgment establishes that plaintiff was returned to the custody of defendant on January 13, 2005, and held by defendant until May 31, 2005, pursuant to valid court orders. In short, upon review of the affidavit of Dr. Kennedy and the journal entries attached thereto, the only reasonable conclusion to be drawn is that defendant did not falsely imprison plaintiff. Consequently, defendant is entitled to judgment as a matter of law. Defendant’s motion for summary judgment is hereby 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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JLH/LP/cmd
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