

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
www.cco.state.oh.us

DANIEL GLEASON

Plaintiff

v.

DEPARTMENT OF CORRECTIONS

Defendant

Case No. 2006-03435-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On May 16, 2003, plaintiff, Daniel Gleason, an inmate incarcerated at defendant's Ross Correctional Institution ("RCI"), went to the dental clinic seeking treatment from the institution dentist. After an examination, the RCI dentist recommended extracting plaintiff's tooth #8. Plaintiff refused this course of recommended treatment and voluntarily signed a document identified as "a waiver against medical advise (AMA)," wherein plaintiff admitted he had been fully informed of his dental condition and agreed to release all dental staff involved of any responsibility arising from his choice to refuse the recommended course of treatment. The AMA charted plaintiff had an abscess on tooth #8 which was also in gross decay and required immediate extraction. The signed AMA contained the following acknowledgment: "I also understand that additional Dental Treatment cannot continue until I agree to follow the treatment plan recommended by the Dentist. Should I decide to abide by the recommended treatment plan at any future date, I will contact the Dentist and treatment can begin at the soonest possible date." It appears plaintiff did not receive any treatment for this condition of his tooth #8 after he signed the AMA on May 16, 2003.

{¶ 2} On February 17, 2005, plaintiff sought dental treatment for a problem unrelated to the dental condition addressed in the May 16, 2003, AMA. Plaintiff stated

he went to the RCI dentist this time, "because I had a painfull [sic] cavity on the bottom right side of my mouth." Plaintiff pointed out he was then put on a waiting list to have his cavity filled. On March 10, 2005, three weeks after seeking dental treatment for his cavity, plaintiff returned to the RCI dentist, informing the dentist that he was in pain from the cavity. Plaintiff asserted he was again denied treatment. Therefore, plaintiff responded to this denial by submitting a written request to have his dental cavity filled.

{¶ 3} Subsequently, plaintiff received a written response from RCI dental clinic to his request to have his cavity filled. This response, dated May 2, 2005, informed plaintiff the dental clinic was refusing to fill the cavity in his tooth. The response noted: "You signed an AMA stating that no other treatment would be rendered until you agreed to have two teeth extracted. You will not be scheduled for fillings until that is completed." This May 2, 2005, response to plaintiff's request to have his cavity filled, constituted complete notice to him that dental care was being denied.

{¶ 4} After receiving this notice from defendant refusing to give him dental treatment, plaintiff persisted in his attempts to receive dental treatment. Plaintiff filed grievances seeking a ruling he was eligible to obtain dental care and have his cavity filled. On August 29, 2005, defendant's Assistant Chief Inspector ruled on an appeal of one of plaintiff's grievances. The Assistant Chief Inspector ruled plaintiff, pursuant to policy, was indeed eligible to have his dental cavity treated despite the fact he had signed an AMA refusing treatment consisting of extracting another tooth. Consequently, plaintiff was scheduled for treatment of his dental cavity. Apparently, plaintiff did receive the dental care he was refused on May 2, 2003. Plaintiff has alleged he was improperly refused treatment for his dental cavity on February 17, March 10, and again on May 2,

2003. Plaintiff has asserted this refusal to treat him was the direct result of a misinterpretation of dental policy in regard to signing AMAs. Plaintiff claimed that due to the refusal of defendant's dental staff to treat him, he, "suffered in pain from this cavity." Therefore, plaintiff filed this complaint on May 8, 2006, seeking to recover \$1,500.00. Plaintiff stated he is entitled to the damages claimed since defendant should bear, "[a]ccountability of purposely [sic] making me suffer in pain do [sic] to their incompetence.[sic]."

{¶ 5} This court in regard to the timely filing of claims is governed by R.C. 2743.16 the pertinent statute of limitations. R.C. 2743.16(A) states in relevant part: ". . . civil actions against the state permitted in sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." (Emphasis added.)

{¶ 6} The applicable statute of limitations for a dental claim, is found in R.C. 2305.11.3. [R.C. 2305.11.3] R.C. 2305.113(A) states: ". . . an action upon a . . . dental . . . claim shall be commenced within one year after the cause of action accrued." The allegations presented in the instant action constitute a dental claim, specifically refusal by dental professionals to provide dental treatment to plaintiff.

{¶ 7} [R.C. 2305.11.3] R.C. 2305.113(E)(6) states:

{¶ 8} "'Dental claim' means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. 'Dental claim' includes derivative claims for relief that arise from a dental operation or the dental

diagnosis, care, or treatment of a person.”

{¶ 9} Defendant, in the instant claim, is subject to suit for a dental claim. Plaintiff’s cause of action accrued when he initially was refused treatment for his dental cavity on March 10, 2005. Perhaps an argument can be presented that plaintiff’s action accrued on May 2, 2005, when he received word his request for treatment was refused. Using either of these dates as accrual dates, the court concludes plaintiff’s claim falls outside the specific statute of limitations for filing dental claims (one year) since the present action was not commenced until May 8, 2006. The determination is plaintiff’s claim was not timely filed.

{¶ 10} Assuming plaintiff did file a timely action, the court concludes plaintiff has failed to produce sufficient evidence to support his allegations of either dental malpractice or negligence. Evidence has shown plaintiff did ultimately receive dental care for a small cavity in his tooth. Plaintiff did not produce evidence his dental condition required immediate treatment or was particular painful under the circumstances. Plaintiff has not provided proof to establish his claims on the merits.

{¶ 11} To establish a claim of medical [dental] malpractice, plaintiff “must show the existence of a standard of care within the medical community, breach of that standard of care by the defendant, and proximate cause between the medical negligence and the injury sustained.” *Taylor v. McCullough-Hyde Mem. Hosp.* (1996), 116 Ohio App. 3d 595, 599; citing *Bruni v. Tatsumi* (1976), 46 Ohio St. 2d 127. These elements must be established by expert testimony unless the negligent conduct “is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it.” *Bruni*, supra at 130. Plaintiff did

not supply any expert medical testimony.

{¶ 12} Plaintiff also asserts a claim of general negligence based upon defendant's alleged failure to timely deliver the dental care. In this regard, the court notes that "[p]risoners are entitled to adequate medical [dental] care, but they are not entitled to 'every amenity which some person may think is needed to avoid mental, physical and emotional deterioration.'" *Gumpl v. Wilkinson, et al.* (Aug. 31, 1994), Lorain App. No. 94CA005858, unreported, 1994 Ohio App. LEXIS 3920; citing *Newman v. Alabama* (C.A. 5, 1977), 559 F. 2d 283, 291. Under the facts of the instant claim, considering the nature of plaintiff's dental problem and the fact he did receive treatment for this condition, the court concludes plaintiff has failed to prove he suffered personal injury as a result of negligent acts or omission on the part of defendant's personnel.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, 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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

Filed 10/27/06
Sent to S.C. reporter 7/18/07