

Court of Claims of Ohio

The Ohio Judicial Center
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RONALD WALLACE

Case No. 2006-07571

Plaintiff

Judge J. Craig Wright
Magistrate Lewis F. Pettigrew

v.

JUDGMENT ENTRY

GRAFTON CORRECTIONAL
INSTITUTION, et al.

Defendants

{¶1} On April 12, 2007, the magistrate issued a decision recommending that defendants' motion to dismiss be granted, in part. Specifically, the magistrate determined that plaintiff's medical claims that arose prior to December 5, 2005, were barred by the applicable statute of limitations. The magistrate also recommended that the court issue an order granting plaintiff an extension of time to file an affidavit of merit pursuant to Civ.R. 10(D)(2) with respect to the remaining medical claims.

{¶2} Civ.R. 53(D)(3)(b)(i) states in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." Plaintiff timely filed objections.

{¶3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16. Plaintiff's first and second objections relate to the magistrate's characterization of his claims as medical claims and the subsequent application of the one-year statute of limitations for medical claims as set out in R.C. 2305.113(A).

{¶4} Plaintiff filed his complaint on December 5, 2006. He alleges that he underwent a right-hip arthroplasty on April 29, 2003, at The Ohio State University Medical Center (OSUMC), and that medical staff at OSUMC prescribed a walker for him and transferred him to the Corrections Medical Center (CMC) for physical therapy. Further,

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plaintiff alleges that he was held at CMC for eight days before being transferred back to GCI, where he did not receive any physical therapy and was not provided with a walker until sometime between August 13, 2003, and May 30, 2004.

{¶5} To the extent that plaintiff asserts that GCI and CMC denied him a specifically prescribed course of therapy, the court finds that such claim is not a medical claim as defined in R.C. 2305.113(E) and is therefore subject to the two-year statute of limitations as provided by R.C. 2743.16(A). Accordingly, the magistrate's decision is modified such that only those claims concerning the denial of prescribed physical therapy that arose prior to December 5, 2004, are time-barred. The magistrate properly determined that the one-year statute of limitations applies to plaintiff's medical claims that arose prior to December 5, 2005. Accordingly, the remainder of the magistrate's decision is adopted such that plaintiff's claim against OSUMC and any medical claims against GCI or CMC that arose prior to December 5, 2005, are time-barred and are hereby DISMISSED. Defendants' motion to dismiss is DENIED as it relates to medical claims against GCI and CMC that arose on or after December 5, 2005.

{¶6} Additionally, defendants are hereby ORDERED to afford plaintiff a reasonable opportunity to copy all of the medical records currently in defendants' possession concerning the treatment of plaintiff's right hip. Defendants may charge a reasonable fee for such copies. Finally, plaintiff is ORDERED to file an affidavit of merit in support of his medical claims pursuant to Civ.R. 10(D) within *90 days* of the date of this entry. Failure to file such an affidavit will result in dismissal of the remainder of plaintiff's medical claims. The case is ready to be set for trial in the normal course.

J. CRAIG WRIGHT
Judge

[Cite as *Wallace v. Grafton Correctional Inst.*, 2007-Ohio-4157.]

cc:

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MR/cmd	

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To S.C. reporter August 15, 2007