

[Cite as *Varner v. Grafton Correctional Inst.*, 2008-Ohio-2440.]

# 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](http://www.cco.state.oh.us)

ELMER VARNER

Plaintiff

v.

GRAFTON CORRECTIONAL  
INSTITUTION

Defendant

[Cite as *Varner v. Grafton Correctional Inst.*, 2008-Ohio-2440.]

Case No. 2007-02432	- 3 -	ENTRY
---------------------	-------	-------

Case No. 2007-02432

Judge Clark B. Weaver Sr.  
Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On February 13, 2008, defendant filed a motion for summary judgment. Plaintiff did not file a response. The motion is now before the court for a non-oral hearing pursuant to 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} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that he was denied proper dental care. Defendant argues that plaintiff’s medical care was adequate and that any complications plaintiff may have suffered were a result of decisions plaintiff made concerning his treatment.

{¶5} In support of its motion, defendant filed the affidavit of Peter Huling, D.D.S. and plaintiff’s dental records which were authenticated by the affidavit of defendant’s healthcare administrator, Michelle Viets.

{¶6} Dr. Huling states in his affidavit that:

{¶7} “1. I currently serve as the Ohio Department of Rehabilitation and Correction Dental Director. I have held this position since July of 2001.

{¶8} “2. I have personal knowledge and I am competent to testify to the facts contained in this Affidavit.

{¶9} “3. I have been a licensed dentist in Ohio since July 3, 1984.

{¶10} “4. I am familiar with accepted standards of dental care.

Case No. 2007-02432	- 5 -	ENTRY
---------------------	-------	-------

{¶11} “5. I have reviewed [plaintiff’s] complaint and his dental records, with the exception of the dental x-rays, and base the following statements on my review of those records.

{¶12} “\* \* \*

{¶13} “7. On July 10, 2006, [plaintiff] sent a kite indicating that he had an exposed nerve and that he was experiencing hot and cold sensitivity.

{¶14} “8. [Plaintiff] was seen on August 3, 2006 and was advised that the retained root tip of tooth #3 should be extracted.

{¶15} “9. On September 19, 2006, [plaintiff] was scheduled for an appointment to extract tooth #3, and his dental records show that he did not appear for his appointment.

{¶16} “10. [Plaintiff] was next seen for dental care on January 4, 2007. At this appointment [plaintiff] requested not to have tooth #3 extracted.

{¶17} “11. [Plaintiff] was also seen for dental treatment on January 16, 2007, February 5, 2007, and February 27, 2007.

{¶18} “12. On February 27, 2007, [plaintiff] was informed that he had a tooth with probable necrosis for which extraction was indicated. [Plaintiff] signed a release of responsibility indicating that against the advice of medical personnel he [chose] to receive a temporary medicated filling.

{¶19} “13. [Plaintiff] was also seen by dental services on March 19, 2007 and March 26, 2007.

{¶20} “14. Based upon my dental training, education, and experience it is my opinion, to a reasonable degree of medical certainty, that [plaintiff’s] dental care and treatment during the time period outlined in the Complaint met the acceptable standards of dental care and treatment. [Plaintiff] received timely and appropriate dental treatment.”

{¶21} Plaintiff did not file either a response to defendant’s motion or any affidavit to dispute the averments made by Dr. Huling.

Case No. 2007-02432	- 6 -	ENTRY
---------------------	-------	-------

**{¶22}** Civ.R. 56(E) provides, in part:

**{¶23}** “When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

**{¶24}** In order to establish liability, plaintiff must produce evidence to establish both the relevant standard of care and proximate cause. See *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony which must construe what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

**{¶25}** Based upon a review of both the undisputed testimony provided by Dr. Huling and plaintiff's dental records, and in consideration of plaintiff's failure to provide the court with any evidence showing that a genuine issue of fact exists for trial, the court finds that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is hereby GRANTED and judgment is rendered in favor of defendant.

Case No. 2007-02432	- 7 -	ENTRY
---------------------	-------	-------

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.

---

CLARK B. WEAVER SR.  
Judge

cc:

Jana M. Brown Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130	Elmer Varner, #330-987 2500 South Avon-Belden Road Grafton, Ohio 44044-9802
---	---

MR/cmd  
Filed May 1, 2008  
To S.C. reporter May 21, 2008