

[Cite as *Bailey v. Dept. of Rehab. & Corr.*, 2008-Ohio-4215.]

Court of Claims of Ohio

The Ohio Judicial Center
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CALVIN L. BAILEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-06244

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action against defendant alleging property loss, negligence, and medical negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 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.

{¶ 3} Plaintiff alleges that on several occasions defendant's employees either lost or damaged personal property that defendant had confiscated from him, including a fan, clothing, jewelry, a radio, and a television. Plaintiff provided detailed testimony describing both the property and the incidents during which the property was confiscated. However, during cross-examination, plaintiff conceded that he had previously filed another action in this court alleging property loss based upon the same set of facts alleged in this case. See Case No. 2005-06597-AD. (Defendant's Exhibit A.)

{¶ 4} The doctrine of res judicata holds that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 1995-Ohio-331.

{¶ 5} The court finds that plaintiff's claims for property loss as alleged in the present case arise from the same transactions or occurrences that were raised in plaintiff's previously filed case and that were validly and finally determined by this court. Accordingly, plaintiff's claims for property loss are barred by the doctrine of res judicata.

{¶ 6} Plaintiff further alleges that on some unknown date between 1993 to 1995, he was injured as a result of defendant's negligence while he was incarcerated at the Lima Correctional Institution. According to plaintiff, he was complying with an order by a corrections officer to pick up a fan when three fingers on his right hand contacted the blade of the fan. Plaintiff asserts that the fan was not equipped with a proper blade guard.

{¶ 7} Defendant argues that plaintiff did not file his complaint within the applicable statute of limitations.

{¶ 8} R.C. 2743.16(A) states in pertinent part:

{¶ 9} "[C]ivil actions against the state permitted by 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."

{¶ 10} In this case, plaintiff's negligence claim accrued on the date of his accident, which was no later than December 31, 1995. Plaintiff's complaint was not filed until May 2, 2005, more than nine years after the accident. Consequently, plaintiff's negligence claim was not timely commenced.

{¶ 11} Finally, plaintiff alleges that he was diagnosed with Hepatitis C in either 2003 or 2004 and that defendant has not provided him with adequate medical care for his condition.

{¶ 12} In order to prevail on a claim of medical malpractice or professional negligence, plaintiff must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and, 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony. *Id.* at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.*

{¶ 13} Plaintiff testified that he was transported to a medical facility where a liver biopsy was performed. Plaintiff argued that defendant provided him with a vaccine for Hepatitis A and B but that he has not been treated for Hepatitis C. However, plaintiff presented no expert testimony to establish an appropriate standard of care for treatment of his condition.

{¶ 14} Accordingly, the court finds that plaintiff has failed to prove any of his claims for relief. Judgment is recommended in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson