

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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SHARON YURKOWSKI, Admr., etc.,
et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI

Defendant
Case No. 2007-04311

Judge J. Craig Wright

DECISION

{¶ 1} The court held an evidentiary hearing in this case to determine whether James S. Curell, M.D., is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86. At the close of proceedings, the court left the record open for a period of 45 days for the parties to present additional evidence. On February 4, 2008, defendant filed a motion seeking the admission into evidence of Dr. Curell's University of Cincinnati Hospital (UCH) faculty appointment letters and for admission, under seal, of certain UCH medical records pertaining to plaintiffs' decedent, Peter Yurkowski (Yurkowski).¹ The motion is unopposed. For good cause show, the motion is GRANTED such that the faculty appointment letters September 1, 2004-August 31, 2007, and September 1, 2001-August 31, 2004, shall be admitted as Defendant's Exhibits A and B, respectively; Yurkowski's medical records shall be admitted under seal as Defendant's Exhibit C.²

¹For purposes of this decision, "Yurkowski" refers to decedent Peter Yurkowski.

²By agreement of the parties and with the consent of the court, post-trial briefs were submitted on

{¶ 2} R.C. 2743.02(F) provides, in part:

{¶ 3} “A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer’s or employee’s conduct was manifestly outside the scope of the officer’s or employee’s employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action.”

{¶ 4} R.C. 9.86 provides, in part:

{¶ 5} “[n]o officer or employee [of the state] shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer’s or employee’s actions were *manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.*” (Emphasis added.)

{¶ 6} Dr. Curell is an Associate Professor of Clinical Psychiatry at the University of Cincinnati (UC), defendant herein. He is also employed by a private medical provider known as Professional Psychological Services Incorporated (PPSI). Dr. Curell testified that he has an ownership interest in PPSI, but that he was unable to quantify his interest.³

{¶ 7} Dr. Curell began treating Yurkowski when Yurkowski was transferred from Christ Hospital to UCH in 2000. Dr. Curell knew Yurkowski professionally through Yurkowski’s employment on the pharmacy staff at UCH. Yurkowski was admitted to Christ Hospital with a diagnosis of “major depression.” Over the next several years, Yurkowski was admitted to UCH on three occasions for mental health treatment. He continued to be employed by UCH as a pharmacist. Yurkowski’s last hospitalization ended March 22, 2005, when he was discharged by Dr. Curell. Dr. Curell continued to see Yurkowski on an outpatient basis when he was not hospitalized.

{¶ 8} Yurkowski took his own life on April 18, 2005, with an overdose of drugs.

March 19, 2008.

³Dr. Curell’s ownership interest is confined to University Psychiatric Services, which is the branch of PPSI that delivers outpatient services.

In the complaint, plaintiff alleges that Dr. Curell failed to properly diagnose Yurkowski's condition; failed to exercise his independent medical judgment in treating Yurkowski because of their working relationship; improperly discharged Yurkowski from UCH on March 22, 2005; and failed to act upon Yurkowski's suicidal ideation.

{¶ 9} It is well-settled that “[i]f the Court of Claims determines that the employee's acts did not *further the interests of the state*, i.e., the employee was acting outside the scope of his employment, maliciously, in bad faith, or in a wanton or reckless manner, the state has not agreed to accept responsibility for the employee's acts and the employee is personally answerable for his acts in a court of common pleas.” (Emphasis added.) *Conley v. Shearer* (1992), 64 Ohio St.3d 284, 287, 1992-Ohio-133. See also *Theobald v Univ. of Cincinnati*, 111 Ohio St.3d 541, 2006-Ohio-6208. “The Revised Code does not define ‘scope of employment.’ The concept generally denotes an agency relationship in which the agent or employee is engaged in an activity that is logically related to the business of the principal or employer.” *Theobald*, at 544. “[A] state employee does not have personal immunity if his ‘actions were manifestly outside the scope of his employment or official responsibilities,’ even if he does not act ‘with malicious purpose, in bad faith, or in a wanton or reckless manner.’” *Oye v. The Ohio State Univ.*, Franklin App. No. 02AP-1362, 2003-Ohio-5944 at ¶10. The question whether a state official or employee is entitled to immunity is a matter of law; however, the determination whether that person was acting within the scope of official responsibilities is one of fact. *Chitwood v. University Med. Center* (May 5, 1998), Franklin App. No. 97API09-1235.

{¶ 10} There is no dispute that Dr. Curell was an employee of UC. The question is whether Dr. Curell was acting manifestly outside the scope of his employment with UC when he treated Yurkowski in an allegedly negligent manner.

{¶ 11} In determining the scope of employment in cases involving healthcare practitioners, the *Theobald* court provided the follow guidance:

{¶ 12} “If the court determines that the practitioner is a state employee, the court must next determine whether the practitioner was acting on behalf of the state when the patient was alleged to have been injured. If not, then the practitioner was acting ‘manifestly outside the scope of employment’ for purposes of R.C. 9.86. If there is

evidence that the practitioner's duties include the education of students and residents, the court must determine whether the practitioner was in fact educating a student or resident when the alleged negligence occurred." Id. at 548.

{¶ 13} As an associate professor of clinical psychology, Dr. Curell's primary duty was the instruction and supervision of medical students and residents both in a classroom and a clinical setting. He also had administrative duties, including membership on the hiring committee. Dr. Curell estimated that approximately one-third of his time was spent performing his duties as a professor of clinical psychiatry and two-thirds were spent in the private practice of psychiatry at PPSI.

{¶ 14} Dr. Curell provided psychiatric services to his patients both on an inpatient and an outpatient basis. Inpatient services are provided on a daily basis to patients who have been admitted to UCH. According to Dr. Curell, residents or students are present whenever patients are seen at UCH inasmuch as such services provide an educational opportunity. Dr. Curell provided clinical instruction to groups of residents and students on daily rounds, during which approximately eight patients per hour were seen. Other clinical instruction occurred when Dr. Curell conducted patient interviews with small groups of students.

{¶ 15} Outpatient services were provided by Dr. Curell at his faculty office on either a weekly or a bi-weekly basis. Residents and students typically were not present when such services were rendered and Dr. Curell acknowledged that no residents or students attended outpatient sessions with Yurkowski. Dr. Curell did state that outpatient services can become the subject of subsequent lectures. In fact, on more than one occasion, Dr. Curell used the Yurkowski case, anonymously, as the subject of a lecture and class discussion.

{¶ 16} In the last six months of his life, Yurkowski was hospitalized a total of 85 days, receiving treatment on a daily basis. Given the fact that a significant portion of Dr. Curell's treatment of Yurkowski was provided during the inpatient setting, where residents and students received clinical instruction, and given the fact that Dr. Curell's outpatient sessions with Yurkowski became a topic of discussion in the educational setting, it is difficult for the court to identify any particular aspect of Yurkowski's treatment that was not rendered by Dr. Curell in his capacity as an employee of UC.

{¶ 17} Under *Theobald*, supra, the Court of Claims must first identify the aspect(s) of the patient's medical care that plaintiff alleges gave rise to the medical claim. *Id.* at 546. See also *Theobald v. U.C.*, 160 Ohio App.3d 342, 358, 2005-Ohio-1510. Here, plaintiff has not produced evidence sufficient to support a finding that the negligent aspect(s) of Dr. Curell's treatment of Yurkowski, if any, occurred manifestly outside the scope of his state employment.

{¶ 18} Although Yurkowski was not admitted to UCH at the time of his death, that fact alone does not convince the court that Dr. Curell was acting manifestly outside the scope of his employment with UC when he provided psychiatric services to plaintiff. Dr. Curell had treated Yurkowski's condition of major depression for approximately four years, including three hospitalizations. The discharge summaries contained in the medical records reveal that Yurkowski had suffered from major depression with suicidal ideation for much of his adult life, and that he had first attempted suicide when he was 18 years old. Dr. Curell had three outpatient sessions with Yurkowski after his discharge, the last one being April 13, 2005, five days before Yurkowski committed suicide. In his notes from the April 4, 2005 session, Dr. Curell noted that Yurkowski was "still a suicide risk."

{¶ 19} Plaintiff argues that Dr. Curell was negligent when he discharged Yurkowski on March 22, 2005, and when he subsequently failed to act upon Yurkowski's suicidal ideation in the weeks prior to his suicide. According to plaintiff, these instances of malpractice were the proximate cause of Yurkowski's death.

{¶ 20} Whether Yurkowski's medical care was inconsistent with the recognized standard of care is an issue that will be decided at such time when the merits of plaintiff's medical claim are at issue. It must be pointed out that the medical records show that the mental health issues for which Dr. Curell provided treatment to Yurkowski while he was admitted at UCH were the same issues that were addressed during Yurkowski's outpatient care. Additionally, the nature of the treatment rendered was relatively consistent. The diagnosis never changed.

{¶ 21} Plaintiff did not present the testimony of a medical expert to provide the court with further guidance on the immunity issue. Indeed, in plaintiff's closing argument to this court, it was alleged that Yurkowski's "treatment went on for a long

time and many mistakes in treatment were made.” (Plaintiff’s Brief on Immunity, Page 8.) Under such circumstances, plaintiff has failed to establish that the negligent aspect(s) of Yurkowski’s treatment, if any, occurred manifestly outside the scope of Dr. Curell’s employment with UC.

{¶ 22} In short, based upon the totality of the evidence presented, the court finds that Dr. Curell acted within the scope of his employment with UC at all times relevant hereto. There is no allegation that Dr. Curell acted with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff’s decedent. Consequently, Dr. Curell is entitled to civil immunity pursuant to R.C. 9.86 and R.C. 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.



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JUDGMENT ENTRY

The court held an evidentiary hearing to determine civil immunity pursuant to R.C. 9.86 and 2743.02(F). Upon hearing all the evidence and for the reasons set forth in the decision filed concurrently herewith, the court finds that James S. Curell, M.D. is entitled to immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case. Pursuant to Civ.R. 54(B), this court makes the express determination that there is no just reason for delay. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

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