

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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PHILLIP VICTOR

Plaintiff

v.

TRUMBULL CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-07701

Judge Clark B. Weaver Sr.
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging 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, plaintiff was an inmate in the custody and control of defendant Trumbull Correctional Institution (TCI) pursuant to R.C. 5120.16. Plaintiff testified that from late 2005 through March 2009, he received medical care for an immobilizing and painful condition in his left hand known as de Quervain's syndrome. Under the care of physicians at TCI, the Corrections Medical Center, and The Ohio State University Medical Center, plaintiff received numerous examinations and several forms of treatment that included a wrist wrap, a cast on his thumb, multiple cortisone injections, and, ultimately, surgery on March 18, 2009.

{¶ 3} According to plaintiff, defendant was negligent in failing to provide him the surgery earlier in the course of his treatment and, that as a result, his hand has not healed properly. Defendant contends that plaintiff's claim is one for medical malpractice and that he cannot prevail without expert testimony.

{¶ 4} In order to prevail on a claim of medical malpractice, 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. 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 * * *.” *Id.* at 130.

{¶ 5} Plaintiff’s allegations of negligence concern whether defendant’s medical professionals selected an appropriate course of treatment for his condition. The court finds that these allegations pertain to matters that are not within the common knowledge and experience of laymen. Rather, plaintiff’s allegations concern the professional skill and judgment used by the physicians who treated him. Therefore, expert testimony is required both to establish the requisite standard of care and to show that defendant’s employees deviated from that standard of care.

{¶ 6} Plaintiff did not introduce expert testimony and the only witnesses at trial were plaintiff and Patricia Champney, R.N., the healthcare administrator at TCI. Champney testified that all of defendant’s procedures for inmate medical care were complied with in regard to plaintiff.

{¶ 7} Based upon the totality of the evidence, as well as plaintiff’s failure to introduce expert testimony, the court finds that plaintiff has failed to prove his claim of negligence by a preponderance of the evidence. Accordingly, it is recommended that judgment be rendered 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).

MATTHEW C. RAMBO
Magistrate

cc:

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RCV/cmd
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