



Court of Claims of Ohio

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MICHAEL J. KEEGAN, Exec.

Plaintiff

v.

THE UNIVERSITY OF TOLEDO COLLEGE OF MEDICINE

Defendant

Case No. 2012-04413

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

JUDGMENT ENTRY

{¶ 1} On April 24, 2013, the magistrate issued a decision recommending that the court issue a determination that Daniel J. Kosinski, M.D., is entitled to civil 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.

{¶ 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)." On May 8, 2013, plaintiff filed his objections. Defendant filed a response on May 22, 2013.

{¶ 3} This case arises out of medical treatment that Dr. Kosinski rendered to plaintiff's decedent in June 2010. The case was set for an immunity hearing before a magistrate to determine whether Dr. Kosinski is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F). The magistrate noted that there was no dispute that Dr. Kosinski was an employee of defendant during the relevant time period; however,

plaintiff alleged that Dr. Kosinski's actions were performed manifestly outside the scope of his employment or official responsibilities as a state employee.

{¶ 4} The magistrate concluded that “the duties and responsibilities of Dr. Kosinski's employment with defendant included both the education of medical residents and fellows, and the rendering of patient care at cardiology clinics operated by defendant. The court finds that although the evidence does not show that Dr. Kosinski was educating a resident or fellow when the alleged negligence occurred, the evidence does show that he was engaged in his clinical care duties at the time. The court further finds that Dr. Kosinski received payment from and was employed or otherwise associated with [University of Toledo Physicians, L.L.C. (UTP)], but that such facts do not remove his responsibilities to defendant.” Magistrate's decision, page 5. Accordingly, the magistrate recommended that the court find that Dr. Kosinski is entitled to civil immunity based upon the allegations in this case.

{¶ 5} In *Ries v. Ohio State Univ. Med. Ctr.*, Slip Opinion, No. 2013-Ohio-4545, ¶ 1, the Ohio Supreme Court considered whether a “faculty member of a state medical school who is also employed by the school's nonprofit medical-practice corporation is immune from personal liability for providing clinical care to a patient with neither a medical student nor a resident present during the treatment or procedure.” The Ohio Supreme Court concluded that the physician's “duties as a state employee included providing clinical care to patients, whether or not he was actively engaged in teaching at that time. Thus, in treating [the patient, the physician] served the interests of the Ohio State University Medical Center and acted within the scope of employment.” *Id.*, at ¶ 3.

{¶ 6} Plaintiff's first two objections challenge the magistrate's findings regarding how Dr. Kosinski is compensated by UTP and UTP's relationship with the University of Toledo. Plaintiff objects to such statements by the magistrate to the extent they may be construed as findings of fact. However, even if the magistrate's statements were factual findings, such facts do not affect the court's analysis in this case. Indeed, “the fact that

a state employee is also employed by a private party is not determinative.” *Id.*, at ¶ 24. Plaintiff’s first two objections shall be overruled.

{¶ 7} Regarding plaintiff’s objections to the magistrate’s conclusions of law, plaintiff’s arguments are without merit. Indeed, the court is unable to distinguish this case from *Reis*. Accordingly, plaintiff’s objections to the magistrate’s conclusions of law shall be overruled.

{¶ 8} Upon review, the court determines that there is no error of law or other defect evident on the face of the magistrate’s decision. Plaintiff’s objections are OVERRULED. Therefore, the court adopts the magistrate’s decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. In addition, the court determines that Daniel J. Kosinski, M.D., is entitled to civil 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. Therefore, the court’s September 12, 2012 entry staying proceedings is hereby VACATED. The case shall be set for trial.

PATRICK M. MCGRATH
Judge

cc:

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