

Court of Claims of Ohio

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FRANCES B. SIEGEL, Admr., etc., et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI COLLEGE OF MEDICINE

Defendant

Case No. 2009-09531

Magistrate Holly True Shaver

DECISION OF THE MAGISTRATE

{¶1} This matter came before the court for an evidentiary hearing to determine whether Andrew Ringer, M.D., is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶2} R.C. 2743.02(F) states, in part:

{¶3} “A civil action against an officer or employee, as defined in section 109.36 of the

{¶4} 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.”

{¶5} R.C. 9.86 states, in part:

{¶6} “[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."

{¶7} "[I]n an action to determine whether a physician or other health-care practitioner is entitled to personal immunity from liability pursuant to R.C. 9.86 and 2743.02(A)(2), the Court of Claims must initially determine whether the practitioner is a state employee. * * * 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." *Theobald v. Univ. of Cincinnati*, 111 Ohio St. 3d 541, 2006-Ohio-6208, ¶ 30-31.

{¶8} "[T]he question of scope of employment must turn on what the practitioner's duties are as a state employee and whether the practitioner was engaged in those duties at the time of an injury." *Id.* at ¶ 23.

{¶9} In August 2006, plaintiffs' decedent, Jessica Siegel, who was 16 years old, had been diagnosed with arterial venous malformation (AVM), a condition of the brain where there is an abnormal connection between arteries and veins. In a patient with AVM, high pressure arterial blood is transmitted directly into low pressure veins, which presents the risk of a rupture or bleeding in the brain.

{¶10} Jessica had been treated initially at Children's Hospital in Cincinnati, Ohio, but she was later referred to Dr. Ringer, an endovascular surgeon. After a consultation with Dr. Ringer in March 2006, Jessica was scheduled to undergo a staged embolization, during which a liquid known as "onyx" is injected into a cerebral artery. Jessica underwent an initial endovascular catheterization in July 2006 which was

performed by Dr. Ringer without incident. Jessica then underwent a second procedure which was performed by Dr. Ringer on August 14, 2006, at Good Samaritan Hospital. As a result of complications from the second procedure, a hematoma developed, which resulted in an increase in cranial pressure. Jessica was placed in a medically induced coma to assist in her recovery. On August 19, 2006, Dr. Ringer performed a craniotomy, a procedure where a piece of Jessica's skull was removed to allow room for her brain to expand.

{¶11} The coma required that Jessica be placed on mechanical ventilation through the use of an endotracheal tube. After a consultation with other medical professionals, Jessica underwent a tracheostomy, a procedure which opens a hole in the trachea through which oxygen is provided, eliminating the need for an endotracheal tube. The tracheostomy was performed on August 23, 2006. Following the tracheostomy, Jessica developed a fever of 108 degrees. Although efforts were made to reduce her temperature, Jessica went into cardiac arrest resulting in her death.

{¶12} Plaintiffs assert that Dr. Ringer was negligent during his care and treatment of Jessica. Plaintiffs also assert claims of fraud and spoliation of evidence based upon the autopsy that was performed. Plaintiffs assert that Dr. Ringer acted with malicious purpose, in bad faith, or in a wanton or reckless manner when he limited the autopsy to the thorax, abdomen, and a muscle biopsy, instead of ordering a complete autopsy including the head and brain. Plaintiffs assert that Dr. Ringer limited the autopsy to destroy evidence that may have been used to show that he committed medical malpractice during his treatment of Jessica.

{¶13} With regard to his employment status, Dr. Ringer testified that in 2001, he began his employment as an Assistant Professor in defendant's Department of Neurosurgery and in 2005, he was promoted to Associate Professor. Dr. Ringer's letter of appointment, dated June 12, 2001, states, in part: "In return, you[r] obligation to the Department of Neurosurgery includes promoting the image, the clinical and

research activities of the University of Cincinnati through the Department of Neurosurgery. As you are aware, direct patient care must be undertaken according to the terms of the Department's Practice Plan, the Mayfield Clinic and Spine Institute." (Defendant's Exhibit B.) Dr. Ringer described his teaching duties as including on-the-job training and some didactic teaching of medical students, residents, and post-graduate fellows. Dr. Ringer explained that residents and fellows in defendant's college of medicine practice at area hospitals including University of Cincinnati Medical Center, Good Samaritan Hospital, Christ Hospital, and Children's Hospital. Dr. Ringer's 2006 W-2 income tax return lists his employer as University of Cincinnati. (Defendant's Exhibit C.) Dr. Ringer testified that he is an employee of both Mayfield Clinic and University of Cincinnati. Dr. Ringer's office is located in the Medical Arts Building on the University of Cincinnati Medical Center campus. Upon review of the evidence, the court finds that Dr. Ringer was a state employee.

{¶14} The court must next determine whether Dr. Ringer was acting on behalf of the state during his treatment and care of Jessica in August 2006. The medical records from the August 14 embolization procedure show that Dr. Ringer performed the surgery as the attending physician with Dr. Sha-Naz Khan, a first-year fellow assisting him. (Defendant's Exhibit D.) Dr. Ringer testified that he performed the surgery and that due to the nature of the surgery, he would not have allowed a first-year fellow to perform this surgery by herself. Dr. Ringer testified that after the surgery, he discussed with Jessica's parents that there had been two complications: extravasation of the contrast dye, and a filling defect, which meant that there was either a blood clot or an embolus of the onyx material.

{¶15} Dr. Ringer remained Jessica's attending physician throughout her hospital stay but Dr. Nicholas Levine, the chief neurosurgical resident was also assigned to Jessica's care. The medical records show that Dr. Levine checked on Jessica on the morning of August 15; that Dr. Ringer discussed Jessica's status with Dr. Levine on

August 16; that Dr. Hertzler, another resident, was present when Dr. Ringer performed a craniotomy; and that Dr. Ringer and Dr. Levine both treated Jessica on the date of her death.

{¶16} Upon review of the evidence, the court finds that Dr. Ringer was engaged in his duties as a state employee during his care and treatment of Jessica from August 14-23, 2006. The medical records show that Dr. Ringer was accompanied by either residents or fellows during his treatment and care of Jessica. Therefore, the court finds that Dr. Ringer was acting on behalf of the state during his treatment and care of Jessica.

{¶17} Turning to the details of the autopsy, Dr. Ringer testified that due to Jessica's high temperature prior to her death, he was concerned that Jessica had suffered from malignant hyperthermia, a condition that can occur after a patient has been under general anesthesia. Since Jessica had undergone a tracheostomy on the day that she died, Dr. Ringer wanted to have her body tested for the presence of enzymes that could indicate that condition.

{¶18} After Jessica died, Dr. Ringer asked to speak to her father, Daniel Siegel. According to Dr. Ringer, he sought Daniel's permission to conduct an autopsy because Dr. Ringer had specific concerns about Jessica's sudden and dramatic death. Dr. Ringer suspected that Jessica's death was caused by a pulmonary embolism, a cardiac event, or malignant hyperthermia. Dr. Ringer testified that if Jessica's death was caused by malignant hyperthermia, which is a genetic disorder, it would be important for her family to know that, in case they would ever undergo anesthesia themselves.

{¶19} Dr. Ringer testified that after he spoke to Daniel, Daniel consented to an autopsy and signed the consent form. (Defendant's Exhibit E.) Dr. Levine dictated the discharge summary report which states: "The appropriate parties including the patient's family and the coroner were notified. The coroner declined an autopsy; however, at the physician's request and the patient's family's approval an autopsy will

be obtained.” (Defendant’s Exhibit D-18). Dr. Ringer could not remember whether Dr. Levine was present for the discussion of an autopsy with Daniel, but testified that Dr. Levine was “around” during the events on the night of Jessica’s death. Dr. Ringer testified that Dr. Levine was present when the Siegels were notified of Jessica’s death.

{¶20} Dr. Ringer testified that the nurse had Daniel sign the consent form for the autopsy and that he and the nurse filled out the rest of the form after Daniel had left the hospital. The form is signed by Dr. Ringer and Daniel Siegel. Dr. Ringer testified that as the nurse was filling out the form, she checked the box for “Complete (including head and brain).” When the nurse orally informed Dr. Ringer that she had checked that box, Dr. Ringer corrected her and told her to change it to “Limited to thorax and abdomen (no head)” and had the nurse add “and muscle biopsy for malignant hyperthermia.” The form also states “see order sheet, verbal order, Dr. Andrew Ringer requested” signed by Amie Smith, R.N. (Defendant’s Exhibit E.) The order sheet, dated and timed August 23, 2006, 20:30, states: “Autopsy with muscle biopsy – PE vs. malignant hyperthermia” and is signed by Dr. Ringer. (Defendant’s Exhibit F.) Dr. Ringer testified that he did not feel the need to contact the family to inform them that he requested a limited autopsy because his intent was to order an autopsy for those specific reasons, and he had already discussed those reasons with Daniel Siegel when he obtained his consent.

{¶21} Dr. Ringer testified that he did not limit the autopsy to hide anything about Jessica’s care in the hospital. Dr. Ringer testified that by ordering the autopsy, he was hoping to help the family, not hurt them. Dr. Ringer testified that he did not feel the need to have an autopsy of Jessica’s brain because of the extensive testing that had already been done on Jessica’s brain prior to and during her stay at the hospital, including multiple CT scans and angiograms. In Dr. Ringer’s opinion, ordering an autopsy of Jessica’s brain ran the risk of further disfigurement and would not add anything to the diagnosis.

{¶22} On January 17, 2008, Daniel Siegel and his sister-in-law met with Dr. Ringer to discuss Jessica. Dr. Ringer remembered two things from that meeting. First, that Jessica's family was upset that Jessica's eyes had been harvested without their consent. Second, that they were still concerned about the manner of her death. Dr. Ringer testified that after the meeting he contacted the eye harvesting company on their behalf.

{¶23} Daniel Siegel testified that on the night of Jessica's death, he and his wife were taken to a small room in the hospital, and that Drs. Ringer and Levine told them that Jessica had died. After Daniel and his wife were permitted to visit Jessica's body for approximately an hour, Daniel was asked to step out and talk to Drs. Ringer and Levine. According to Daniel, he consented to an autopsy because he wanted to know what happened to Jessica. Daniel remembered Dr. Ringer talking about muscle tissue. In contrast to Dr. Ringer's testimony, Daniel testified that when Dr. Ringer mentioned obtaining an autopsy, Daniel specifically requested that an autopsy of her brain be performed and that Dr. Ringer said "ok."

{¶24} Daniel stated that when he signed the consent form for the autopsy, Dr. Ringer and Dr. Levine were both present. However, the notation about malignant hyperthermia was not on the form when he signed it, and shortly after signing the consent form, he left the hospital. Daniel testified that he was never told that the autopsy request excluded an examination of Jessica's brain. Approximately 3.5 months after Jessica's death, Daniel received a copy of the autopsy report. At the meeting on January 17, 2008, he asked Dr. Ringer why Jessica's eyes were taken when she was not an organ donor. He also asked why Jessica's brain was not included in the autopsy. According to Daniel, Dr. Ringer said he did not know why either of those two events occurred, and he never got any explanation from Dr. Ringer. Daniel stated that he first became aware that a full autopsy was not ordered during the deposition of Amie Smith, R.N., which occurred on December 17, 2008, in the related

litigation against the eye harvesting company. (Plaintiffs' Exhibit 15.) On cross-examination, Daniel acknowledged that he did not initiate any request for an autopsy. However, he was adamant that once Dr. Ringer mentioned ordering an autopsy, Daniel made a specific request that Jessica's brain be included.

{¶25} Plaintiffs submitted the deposition testimony of Amie Smith, R.N., who was Jessica's primary care nurse on the day that she died. Smith testified that the Siegels wanted to leave the hospital before she had completed the autopsy form, and that Daniel Siegel signed the form before it was completely filled out. Smith testified that when she filled out the form in Dr. Ringer's presence and checked the box "complete including head and brain" Dr. Ringer stated, "No, I do not want a complete head and brain. That is not why she died." Then she placed a line through that portion of the form and wrote "error," and included the date, time, and her initials, which is her usual practice.

{¶26} Plaintiffs also submitted the deposition of Daniel Beckman, M.D., the hospital pathologist who performed the autopsy on Jessica. Dr. Beckman stated that he typically performs 3 to 5 autopsies per year, and that requests for autopsies have decreased over time. With regard to Jessica's autopsy, Dr. Beckman stated that he called Dr. Ringer before he performed the autopsy, which is his usual practice, to inquire whether Dr. Ringer was looking for anything specific from the autopsy. Dr. Beckman stated that he wanted to discuss Dr. Ringer's concern about malignant hyperthermia. After speaking to Dr. Ringer, Dr. Beckman performed the autopsy with the requested restrictions, stating that it was Dr. Ringer's "call" to ask for a limited autopsy. Dr. Beckman testified that he took a muscle biopsy and sent it to be analyzed to determine whether a genetic defect was present as a sign of malignant hyperthermia. He stated that the results of the testing were complete on November 12, 2006. Dr. Beckman's report states that the genetic testing did not rule out the possibility of

malignant hyperthermia, but notes that the “RYR1 gene” was not detected in the tissue sample that was taken.

{¶27} In the context of immunity, an employee’s wrongful conduct, even if it is unnecessary, unjustified, excessive or improper, does not automatically subject the employee to personal liability unless the conduct is so divergent that it severs the employer-employee relationship. *Elliott v. Ohio Dept. of Rehab. & Corr.*, 92 Ohio App.3d 772, 775 (1994), citing *Thomas v. Ohio Dept. of Rehab. & Corr.*, 48 Ohio App.3d 86, 89 (1988).

{¶28} Recently, the Tenth District Court of Appeals has stated:

{¶29} “Malicious purpose encompasses exercising ‘malice,’ which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified.

{¶30} “* * *

{¶31} “‘Bad faith’ has been defined as the opposite of good faith, generally implying or involving actual or constructive fraud or a design to mislead or deceive another. * * * Bad faith is not prompted by an honest mistake as to one’s rights or duties, but by some interested or sinister motive. * * *

{¶32} “Finally, ‘reckless conduct’ refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent. * * * The term ‘reckless’ is often used interchangeably with the word ‘wanton’ and has also been held to be a perverse disregard of a known risk. * * * As to all of the above terms, their definitions connote a mental state of greater culpability than simple carelessness or negligence. * * *” (Internal citations omitted.) *Wrinn v. Ohio State Highway Patrol*, 10th Dist. No. 11AP-1006, 2013-Ohio-1141, ¶ 12, quoting *Caruso v. State*, 136 Ohio App.3d 616, 620-22 (10th Dist.2000).

{¶33} The evidence shows that Dr. Ringer ordered the autopsy to determine the cause of Jessica's sudden death, specifically whether it was a pulmonary embolism or malignant hyperthermia. The evidence also shows that Dr. Levine contacted the coroner's office and that the coroner declined to perform an autopsy.

{¶34} The court finds that Nurse Smith was credible when she testified that plaintiffs were devastated by the news of Jessica's death, and that Daniel Siegel signed an authorization form for an autopsy that was blank except for Jessica's name. Although Daniel testified that he specifically asked for an autopsy of Jessica's brain when Dr. Ringer mentioned his desire for an autopsy, the court finds that it is more likely that Daniel signed an authorization form, assumed that it would be a complete autopsy, and then was surprised when he later discovered that the autopsy did not include the brain.

{¶35} The court further finds that if Dr. Ringer were trying to mislead or deceive plaintiffs, he would not have requested an autopsy at all. Indeed, the fact that Dr. Ringer requested an autopsy after the coroner had declined interest supports the inference that Dr. Ringer genuinely wanted to determine the cause of Jessica's death. In addition, the court finds credible Dr. Ringer's testimony regarding the fact that Jessica underwent multiple imaging studies of her brain during her course of treatment by Dr. Ringer, which documented the condition of her brain at the time. In the final analysis, the court finds that plaintiffs have failed to prove that Dr. Ringer acted with malicious purpose, in bad faith, or in a wanton or reckless manner with regard to his treatment and care of Jessica Siegel.

{¶36} For the reasons stated above, the magistrate finds that Dr. Ringer was a state employee, that he was acting on behalf of the state, and that he did not act with malicious purpose, in bad faith, or in a wanton or reckless manner during his treatment and care of Jessica Siegel. Therefore, the magistrate recommends that Andrew Ringer, 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.

{¶37} 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).

HOLLY TRUE SHAVER
Magistrate

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Filed November 5, 2013
Sent To S.C. Reporter 10/15/15