

# Court of Claims of Ohio

The Ohio Judicial Center  
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FRANCES B. SIEGEL, Admr., etc., et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI COLLEGE OF MEDICINE

Defendant

Case No. 2009-09531

Judge Patrick M. McGrath  
Magistrate Holly True Shaver

## JUDGMENT ENTRY

{¶1} On November 5, 2013, the magistrate issued a decision recommending that the court find 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.

{¶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 November 18, 2013, plaintiffs filed their objections to the magistrate’s decision.<sup>1</sup> On November 27, 2013, defendant filed a response.

{¶3} This case arises out of treatment rendered to plaintiffs’ decedent, Jessica Siegel, in August 2006. Jessica had been diagnosed with arterial venous malformation, a condition of the brain where there is an abnormal connection between arteries and veins. Dr. Ringer, an endovascular surgeon, performed two procedures: an initial endovascular catheterization in July 2006 and a second embolization

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<sup>1</sup> A transcript of the proceedings was previously filed on July 26, 2013.

procedure in August 2006. Subsequent to the second procedure, Jessica developed a hematoma which necessitated treatment consisting of a craniotomy, medically induced coma, and tracheostomy. Following the tracheostomy, Jessica developed a fever of 108 degrees and went into cardiac arrest, resulting in her death. After Jessica's death, an autopsy was conducted to determine the cause of death. Dr. Ringer limited the autopsy to the thorax, abdomen, and a muscle biopsy for malignant hyperthermia. Plaintiffs brought this action alleging medical malpractice. Additionally, plaintiffs allege that Dr. Ringer acted outside the scope of his employment with the state by limiting the autopsy to areas other than the head.

{¶4} The magistrate conducted an immunity hearing to determine whether Dr. Ringer was entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Plaintiffs argued that Dr. Ringer was not entitled to immunity inasmuch as 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. According to plaintiffs, Dr. Ringer limited the autopsy to conceal evidence that may have been used to show that he committed medical malpractice during his treatment of Jessica.

{¶5} The magistrate determined that Dr. Ringer is a state employee and that he was acting within the course and scope of his state employment during his treatment and care of Jessica. Regarding plaintiffs' claim of malicious purpose, bad faith, or wanton or reckless conduct, the magistrate determined 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." Magistrate's decision, pg. 9.

{¶6} In reviewing a party's objections, the "court must conduct an independent analysis of the underlying issues, undertaking the equivalent of a de novo determination and independently assessing the facts and conclusions contained in the magistrate's decision." *Shihab & Assoc. Co. LPA v. Ohio Dept. of Transp.*, 168 Ohio App.3d 405,

2006-Ohio-4456, ¶ 13 (10th Dist.); *Dayton v. Whiting*, 110 Ohio App.3d 115, 118 (2nd Dist.1996).

{¶7} Plaintiffs have interposed more than 40 objections, many of which are interrelated and will be addressed together; however, not all of plaintiffs' objections concern the magistrate's decision.<sup>2</sup> Indeed, plaintiffs' objections numbered 22, 27, 29, 34-41, 44, and 45, are unrelated to the magistrate's November 5, 2013 decision recommending that the court find that Dr. Ringer is entitled to immunity. Plaintiffs' objections challenge matters previously decided by the court in entries and orders. As such, they are not "objections" to the magistrate's decision. To the extent that plaintiffs' "objections" may be construed as a motion to set aside the magistrate's orders dated May 29, 2013 and November 5, 2013, plaintiffs' motion is untimely. Pursuant to Civ.R. 53(D)(2)(b), a motion to set aside a magistrate's order "shall be filed not later than ten days after the magistrate's order is filed." Plaintiffs filed their "objections" on November 18, 2013. Regarding plaintiffs' challenge of the court's April 1, 2013 order, the court agrees with its previous order. Therefore, plaintiffs' objections numbered 22, 27, 29, 34-41, 44, and 45 are OVERRULED.

{¶8} Plaintiffs' 8th objection states: "To preserve any errors on appeal plaintiffs offers (sic) the following additional objections[.]" Civ.R. 53(D)(3)(b)(ii) provides that "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Inasmuch as plaintiffs' 8th objection does not specify the grounds for objection, it is OVERRULED.

{¶9} In their 1st objection, plaintiffs argue that the magistrate erred in finding that "Dr. Levine contacted the coroner's office and that the coroner declined to perform an autopsy." Magistrate's decision, pg. 9. Plaintiffs argue that "This never happened!" (Emphasis original.) However, the hospital discharge summary report states that the

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coroner was contacted and that the coroner declined an autopsy. Defendant's Exhibit D-18. Moreover, Dr. Ringer testified that a member of his medical team contacted the coroner's office regarding Jessica's death. Dr. Ringer explained that such a practice is customary after a patient dies. Transcript, pg. 39. Plaintiffs have not presented the court with any legitimate reason to question the hospital discharge summary or Dr. Ringer's testimony. The court agrees with the magistrate's conclusion. Plaintiffs' 1st objection is OVERRULED.

{¶10} In their 2nd objection, plaintiffs argue that the magistrate erred in finding that "if Dr. Ringer were trying to mislead or deceive plaintiffs, he would not have requested an autopsy at all." Magistrate's decision, pg. 9. Plaintiffs contend that the undisputed evidence establishes that Daniel Siegel requested an autopsy. The magistrate found that Dr. Ringer approached plaintiffs to obtain approval to perform an autopsy. Indeed, a review of the record establishes that such a fact is undisputed. Siegel admitted on cross-examination that Dr. Ringer proposed obtaining an autopsy. Transcript, pg. 125. It was not Siegel who requested an autopsy. The court agrees with the magistrate's conclusion. Plaintiffs' 2nd objection is OVERRULED.

{¶11} In their 11th objection, plaintiffs argue that the magistrate erred in finding that "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." Magistrate's decision, pg. 7. Plaintiffs argue that Dr. Beckman called Dr. Ringer because a restriction on an autopsy is unusual. However, Dr. Beckman's deposition provides:

{¶12} "Q. Okay. Before beginning the autopsy, which—who did you speak to about Jessica before performing the autopsy on the 24th?

{¶13} "A. I talked to Dr. Ringer.

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<sup>2</sup>Plaintiffs do not identify any objections numbered 3, 4, and 5.

{¶14} “Q. Okay. And why did you do that?

{¶15} “A. I—that’s my habit. I usually talk to the doctor before the autopsy to see if there’s anything unusual or if they want me to look for anything special.” Plaintiffs’ Exhibit 16, Beckman Depo., pgs. 35-36. Plaintiffs’ 11th objection is OVERRULED.

{¶16} In their 12th objection, plaintiffs argue that the magistrate erred by not finding that Dr. Ringer changed a medical record and that such an alteration is sufficient to demonstrate actual malice pursuant to *Moskovitz v. Mt. Sinai Medical Ctr.*, 69 Ohio St.3d 638, 635 N.E.2d 331 (1994). In their related objection number 14, plaintiffs challenge the magistrate’s finding that plaintiffs left the hospital shortly after signing the consent form. The evidence establishes that Siegel signed an incomplete consent form for an autopsy. The consent form consists of biographical information about the deceased, several different autopsy options, and an autopsy authorization section with a signature line. After signing the consent form, plaintiffs left the hospital. Amie Smith, R.N., Jessica’s primary care nurse, began completing the remainder of the consent form while in the presence of Dr. Ringer. Smith made a checkmark selecting the option for a complete autopsy, which would include the head. As Smith made the checkmark ordering a complete autopsy, she stated out loud that she was selecting the option for a complete autopsy. Dr. Ringer then instructed Smith that he did not want a complete autopsy. Smith placed a line through the checkmark and wrote error, the time, and her initials. Smith then continued to complete the form according to Dr. Ringer’s instructions by selecting the autopsy option for the thorax and abdomen in addition to a handwritten request for a muscle biopsy for malignant hyperthermia. Dr. Ringer’s requested correction of the autopsy consent form does not demonstrate actual malice, particularly when the document had not yet been completed. Dr. Ringer instructed Smith to correct the form while she was in the process of completing the form. In other words, Dr. Ringer was assisting Smith to complete the form in

accordance with his orders. The court agrees with the magistrate's findings and chronology of events. Plaintiffs' 12th and 14th objections are OVERRULED.

{¶17} In their 13th objection, plaintiffs challenge the magistrate's conclusion that Dr. Ringer ordered the autopsy to determine the cause of Jessica's death, specifically whether it involved malignant hyperthermia. Upon review, the court agrees with the magistrate's conclusion. Plaintiffs' 13th objection is OVERRULED.

{¶18} In their 7th, 16th, 19th, and 25th objections, plaintiffs challenge the magistrate's credibility determinations. The magistrate determined that Dr. Ringer credibly testified regarding Jessica's course of treatment and the reasons why he wished to conduct an autopsy. The magistrate found that "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." Magistrate's decision, pg. 9. The court agrees with the magistrate's credibility determinations for the reasons set forth in the magistrate's decision. Plaintiffs' 7th, 16th, 19th, and 25th objections are OVERRULED.

{¶19} In their 6th, 17th, 18th, 28th, 30th-33rd, 42nd, and 43rd objections, plaintiffs challenge various evidentiary rulings made by the magistrate. In particular, plaintiffs argue that the magistrate erred in excluding plaintiffs' exhibit 12, an affidavit from the office administrator of the Hamilton County Coroner's Office. Plaintiffs argue that such an affidavit is admissible pursuant to several hearsay exceptions. However, such an affidavit is hearsay not subject to any exception. The court agrees with the magistrate's rulings for the reasons set forth by the magistrate. Plaintiffs' 6th, 17th, 18th, 28th, 30th-33rd, 42nd, and 43rd objections are OVERRULED.

{¶20} In their 10th, 15th, 20th, 21st, 23rd, and 26th objections, plaintiffs argue that the magistrate erred in failing to consider or include various evidence in the magistrate's decision. However, the magistrate is under no obligation "to comment on each item of evidence." *Stanley v. Ohio State Univ. Med. Ctr.*, 10th Dist. Franklin No.

12AP-999, 2013-Ohio-5140, ¶ 50. Plaintiffs' 10th, 15th, 20th, 21st, 23rd, and 26th objections are OVERRULED.

{¶21} Finally, in their 9th and 24th objections, plaintiffs argue that the magistrate erred in finding that Dr. Ringer is entitled to immunity under these particular circumstances. The magistrate determined that Dr. Ringer is a state employee; that he was acting within the scope of his state employment at the time of the alleged negligence; and that he did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. The magistrate found, and there is no reasonable dispute, that Dr. Ringer is an Associate Professor in defendant's Department of Neurosurgery. Dr. Ringer's duties include clinical and research activities in addition to training and didactic teaching of medical students, residents, and post-graduate fellows. Furthermore, Dr. Ringer's duties expressly include and require direct patient care "according to the terms of the Department's Practice Plan, the Mayfield Clinic and Spine Institute." Defendant's Exhibit B. See *Ries v. Ohio State Univ. Med. Ctr.*, 137 Ohio St.3d 151, 2013-Ohio-4545, 998 N.E.2d 461. Both a resident physician and a physician doing a fellowship were present over the course of Dr. Ringer's treatment of Jessica. Finally, the evidence simply does not support plaintiffs' contention that Dr. Ringer acted with malicious purpose, in bad faith, or in a wanton or reckless manner. The court agrees with the magistrate's conclusions for the reasons set forth in the magistrate's decision. Plaintiffs' 9th and 24th objections are OVERRULED.

{¶22} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. The court determines that Andrew Ringer, 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. A status conference is set for *April 3, 2014, at 10:30 a.m.*, to discuss the status of the case. The court shall initiate the conference via telephone.

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PATRICK M. MCGRATH  
Judge

cc:

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