

# Court of Claims of Ohio

The Ohio Judicial Center  
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ENID BLACK

Plaintiff

v.

THE UNIVERSITY OF TOLEDO MEDICAL CENTER

Defendant

Case No. 2012-03379

Judge Patrick M. McGrath  
Magistrate Anderson M. Renick

## JUDGMENT ENTRY

{¶1} On June 9, 2014, the magistrate issued a decision recommending judgment for defendant.

{¶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).” Plaintiff filed objections to the magistrate’s decision on June 19, 2014. Defendant filed a response on June 24, 2014.

{¶3} Plaintiff brought this action for medical negligence. The issues of liability and damages were bifurcated for trial. Following a trial on the issue of liability, the magistrate recommended judgment in favor of defendant.

{¶4} This case arises out of treatment plaintiff received at the University of Toledo Medical Center (UTMC) on January 28, 2011. According to the magistrate’s decision, plaintiff presented to her primary care physician with symptoms consistent with a urinary tract infection (UTI). Plaintiff was referred to the emergency room at UTMC, where she subsequently received a fluoroquinolone antibiotic treatment. Following what appeared to be successful treatment, plaintiff was presented with the

option of returning home with a prescription of a different fluoroquinolone antibiotic or be admitted to the hospital for additional treatment. Plaintiff chose to be discharged. The prescribed fluoroquinolones contained a “black boxed warning” advising of an “associated \* \* \* increased risk of tendinitis and tendon rupture in all ages. The risk is further increased in older patients usually over 60 years of age, in patients taking corticosteroid drugs, and in patients with kidney, heart or lung transplants.” (Joint Exhibit L.) Plaintiff was over 60 years old at the time and had been taking corticosteroid drugs.

{¶5} After returning home, plaintiff experienced a dull pain in her ankle, and plaintiff’s prescription was changed two times over the course of a few days. Plaintiff took a total of three doses of fluoroquinolone antibiotics. On January 31, 2011, plaintiff received a phone call directing her to return to the hospital after test results from her January 28, 2011 emergency room visit detected *Escherichia coli* (E. coli) in her urine. Plaintiff was subsequently admitted to the hospital for further treatment.

{¶6} Following her discharge, on February 4, 2011, plaintiff sought treatment related to her ankle pain. Orthopedic surgeon, Nabil Ebraheim, M.D., diagnosed plaintiff’s condition as retrocalcaneal bursitis and noted that plaintiff’s pain was anterior to her Achilles tendon. In a subsequent visit on March 17, 2011, plaintiff reported improvement in her symptoms. Plaintiff sought a second opinion with orthopedic surgeon Roger Kruse, M.D., who confirmed the diagnosis of retrocalcaneal bursitis while noting no significant deficit to the tendon itself. On May 4, 2011, Dr. Ebraheim added tendinitis to his assessment following a visit wherein plaintiff reported pain on palpation to the Achilles tendon. On May 11, 2011, plaintiff reported to Dr. Kruse that she tripped on uneven gravel causing swelling, bruising, and discomfort in her ankle. Dr. Kruse recommended plaintiff wear a “Cam walker boot.” Plaintiff subsequently ruptured her tendon while “getting up off the toilet \* \* \* without wearing her Cam walker boot.” (Joint Exhibit H.)

{¶7} The magistrate determined that “plaintiff has failed to prove that [UTMC] deviated from the standard of care by prescribing fluoroquinolones, allowing plaintiff to return to her home, and not warning plaintiff of the risks associated with the fluoroquinolones.” Magistrate’s decision, pg. 7. Additionally, the magistrate determined that “plaintiff failed to prove that any alleged breach of the standard of care proximately caused plaintiff’s injury or that the risk that [UTMC] failed to disclose materialized and proximately caused plaintiff’s injury.” *Id.* at 8. Accordingly, the magistrate recommended judgment for defendant.

{¶8} Although plaintiff has not enumerated her objections, much of plaintiff’s argument challenges factual findings made by the magistrate. Plaintiff argues that the factual description provided by the magistrate is inconsistent with the trial testimony and evidence in this case. Additionally, plaintiff argues that the court incorrectly applied the law of lack of informed consent to the evidence in this case. Plaintiff asserts that the testimony of plaintiff, Dr. Saltzberg, and Dr. Blomklans proved her claim of lack of informed consent. Plaintiff, however, failed to support her objections with a transcript of the proceedings or an affidavit of that evidence. Civ.R. 53(D)(3)(b)(iii) states that “[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Without the benefit of the trial transcript, the court is unable to meaningfully review plaintiff’s objections to the magistrate’s factual findings. “If an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate’s factual findings and limit its review to the magistrate’s legal conclusions.” *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 13. Inasmuch as the factual findings contained in the magistrate’s decision support the magistrate’s conclusions, plaintiff’s objections to such findings are without merit.

{¶9} To the extent that plaintiff challenges the magistrate's conclusions of law, the court's review of the magistrate's decision reveals that the facts found by the magistrate are sufficient to sustain the magistrate's conclusions, and that the magistrate's conclusions are consistent with law.

{¶10} Upon review of the record, the magistrate's decision and plaintiff's 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. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

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