

Court of Claims of Ohio

The Ohio Judicial Center
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BRIAN KENNEY

Plaintiff

v.

UNIVERSITY OF TOLEDO MEDICAL CENTER

Defendant

Case No. 2013-00575

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

JUDGMENT ENTRY

{¶1} On February 21, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(C) regarding a determination whether Steven Farrell, M.D., and Amish Patel, D.O., are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86. On March 19, 2014, Drs. Farrell and Patel filed a brief in support of the motion. Plaintiff has not filed a response. The motion is now before the court for a non-oral hearing.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to

have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff alleges medical malpractice arising out of treatment he received at defendant the University of Toledo Medical Center (UTMC) by two faculty members, Amish Patel, D.O., and Steven Farrell, M.D. Plaintiff alleges that, beginning in October 2008, Drs. Patel and Farrell treated him for chronic back pain, which they allegedly diagnosed as being caused by a herniated disc. Plaintiff acknowledged in the complaint that Drs. Patel and Farrell were both employed by UTMC, and that UTMC should be liable for their actions. (Complaint, ¶ 10 & 11.)

{¶5} Jeffrey P. Gold, M.D., who was the Chancellor and Executive Vice President for Biosciences and Health Affairs and Dean of the College of Medicine at UTMC, avers that, at all times relevant to this case, both Dr. Patel and Dr. Farrell were full-time, paid faculty members of UTMC; Dr. Patel was an Assistant Professor in the Department of Orthopedic Surgery, and Dr. Farrell was an Associate Professor in the Department of Orthopedic Surgery and Chief of the Division of Physical Medicine & Rehabilitation. According to Dr. Gold, the three primary responsibilities of the faculty members of UTMC are teaching, research, and clinical care. Dr. Gold explained that faculty members are expected to teach medical students and residents both in the classroom and through their clinical practice. Dr. Gold avers that providing patient care is an essential and integral part of the responsibilities of full-time College of Medicine faculty and is of direct benefit to defendant. R.C. 2743.02(F) states, in part:

{¶6} "A civil action against an officer or employee, as defined in section 109.36 of the 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.”

{¶7} R.C. 9.86 states, in part:

{¶8} “[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.”

{¶9} “[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. *Theobald v. Univ. of Cincinnati*, 111 Ohio St.3d 541, 2006-Ohio-6208, ¶ 30-31; see also *Engel v. Univ. of Toledo College of Med.*, 130 Ohio St.3d 263, 2011-Ohio-3375, ¶ 6.

{¶10} It is undisputed that Drs. Farrell and Patel were full-time employees of defendant. Inasmuch as Drs. Farrell and Patel were employees of the state of Ohio at the time they treated plaintiff, the court must determine whether Drs. Farrell and Patel were acting on behalf of the state when the alleged malpractice occurred. See *Theobald, supra*, ¶ 31. “[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.

{¶11} Based upon the totality of the evidence presented, the court finds that Drs. Farrell and Patel provided teaching, research and clinical care services at UTMC at all

times relevant. Accordingly, Drs. Farrell and Patel were within the course and scope of their employment when they treated plaintiff. Therefore, the court finds that Drs. Farrell and Patel are entitled to immunity pursuant to R.C. 9.96 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

{¶12} Accordingly, defendant's motion for summary judgment is GRANTED. This case is ready to be set for trial.

PATRICK M. MCGRATH
Judge

cc:

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