

# Court of Claims of Ohio

The Ohio Judicial Center  
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ROSA ESTRADA, Admx.

Plaintiff

v.

UNIVERSITY OF TOLEDO MEDICAL CENTER

Defendant

Case No. 2012-07218

Magistrate Robert Van Schoyck

## DECISION OF THE MAGISTRATE

{¶1} On August 4, 2014, defendant filed a motion for partial summary judgment on the issue of whether John P. Geisler, M.D., Kelly Manahan, M.D., and Megan Lutz Bosio, M.D. are entitled to personal immunity under R.C. 9.86 and 2743.02(F). Plaintiff did not file a response. On August 18, 2014, by and through counsel, and in accordance with their right to participate in the immunity determination pursuant to R.C. 2743.02(F), Drs. Geisler, Manahan, and Bosio filed a notice stating that they agree with and join defendant's motion for summary judgment.

{¶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 brings this action for wrongful death. According to the complaint, plaintiff's decedent underwent a surgical operation performed by Drs. Geisler, Manahan, and Bosio at the University of Toledo Medical Center on September 20, 2010. Plaintiff alleges that the post-operative care and treatment rendered by Drs. Geisler, Manahan, and Bosio fell below the applicable standard of care and resulted in the death of the decedent on September 27, 2010.

{¶5} In addition to bringing this action in the court of claims, plaintiffs initiated a connected action in the Lucas County Common Pleas Court against several defendants, including Drs. Geisler, Manahan, and Bosio. As set forth in the court's order of August 4, 2014, it was agreed at a status conference held on July 25, 2014, that immunity determinations are necessary as to these individuals.

{¶6} R.C. 9.86 states, in part:

{¶7} "Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee 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."

{¶8} "R.C. 2743.02(F) vests the Court of Claims with exclusive jurisdiction to determine whether a state employee is immune from personal liability in a civil action

allowed by R.C. 9.86.” *Ries v. Ohio State Univ. Med. Ctr.*, 137 Ohio St.3d 151, 2013-Ohio-4545, ¶ 20. “[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. “[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.” *Theobald* at ¶ 23. “[T]he scope of employment is a fact-based inquiry that turns on proof of the employee’s specific job description with the state and focuses on whether the employee’s conduct is related to and promotes the state’s interests.” *Ries* at ¶ 23.

{¶9} In support of its motion, defendant submitted an affidavit from Ronald A. McGinnis, M.D., Interim Dean of the College of Medicine and Life Sciences for the University of Toledo, who avers that he has supervisory responsibility over the college faculty. According to Dr. McGinnis, “[t]hrough its college and faculty members at the Health Science Campus, specifically the College of Medicine & Life Sciences, the University of Toledo is engaged in the education of students, residents, fellows, nurses, pharmacists, and other health care personnel in the provision of patient care, including specialized services not widely available; and in research leading to new knowledge and new methods for the improvement of health and health care delivery.” Dr.

McGinnis avers that, in his view, the “provision of patient care by full-time College of Medicine & Life Sciences faculty in the University programs is an essential and integral part of faculty responsibilities and is of direct benefit to The University of Toledo.”

{¶10} Dr. McGinnis avers that in September 2010, Drs. Geisler and Manahan were employed as Associate Professors in the College of Medicine and Life Sciences in the Department of Obstetrics and Gynecology at the University of Toledo Medical Center; attached to his affidavit are authenticated copies of Drs. Geisler and Manahan’s faculty appointment letters for the period of July 1, 2010, through June 30, 2011. According to Dr. McGinnis, Drs. Geisler and Manahan’s duties as faculty members included providing clinical care to patients of the University of Toledo Medical Center, conducting research, and teaching medical students and residents both in the classroom and through their clinical practice.

{¶11} With respect to Dr. Bosio, Dr. McGinnis avers that in September 2010 she was employed as a resident physician in the Department of Obstetrics and Gynecology at the University of Toledo Medical Center; attached to his affidavit is an authenticated copy of Dr. Bosio’s “Graduate Medical Education Agreement” for the period of July 1, 2010, through June 30, 2011. Dr. McGinnis avers that Dr. Bosio’s employment duties as a resident physician included providing medical care to patients of the University of Toledo Medical Center under the supervision of its faculty members, including Drs. Geisler and Manahan.

{¶12} Thus, according to Dr. McGinnis, while rendering care and treatment to the decedent at the University of Toledo Medical Center in September 2010, Drs. Geisler, Manahan, and Bosio acted in furtherance of their duties toward the University of Toledo.

{¶13} Upon review of the pleadings and the uncontroverted affidavit of Dr. McGinnis, reasonable minds can only conclude that, at all times relevant, Drs. Geisler, Manahan, and Bosio were state employees and acted within the scope of their state employment. Therefore, it is recommended that the court issue a determination that Drs. Geisler, Manahan, and Bosio are 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 them based upon the allegations of this case.

{¶14} *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).*

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ROBERT VAN SCHOYCK  
Magistrate

cc:

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Filed September 12, 2014  
Sent to S.C. Reporter 12/1/15

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