

[Cite as *Brown v. Dept. of Rehab. & Corr.*, 2015-Ohio-5645.]

JAMES L. BROWN
Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION
Defendant

AND

JAMES L. BROWN
Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION
Defendant

Case Nos. 2014-00303 and 2014-00861

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, who is an inmate in the custody and control of defendant, brought these actions for negligence. Briefly stated, the amended complaint in Case No 2014-00303 arises from allegations that defendant failed to provide plaintiff with both medication, i.e. gabapentin and tramadol, and a special diet that were prescribed by a physician at the Ohio State University Medical Center (OSUMC). Similarly, the amended complaint in Case No. 2014-00861 provides that defendant failed to provide plaintiff with the same special diet allegedly prescribed by one or more physicians at OSUMC. Because it was determined that the actions involve a common question of law or fact, the actions were consolidated for purposes of trial pursuant to Civ.R. 42(A). The consolidated actions proceeded to trial before the undersigned magistrate.

{¶2} At trial, plaintiff testified that he suffers from a number of health issues including congestive heart failure, hypertension, multiple sclerosis, kidney disease, chronic obstructive pulmonary disorder, diabetes, and asthma, and he stated that at the time of trial he was taking approximately 28 different medications. Plaintiff testified that in addition to the medical care and treatment he has received from the medical staff at the institutions where he has been incarcerated, defendant has also transported him to OSUMC for specialized treatment on multiple occasions. Of particular relevance to this case, plaintiff stated that he underwent triple bypass heart surgery at OSUMC on March 5, 2012, and that he underwent another operation there on June 5, 2013, in which stents were placed in his heart valves.

{¶3} Plaintiff testified that physicians who cared for him at OSUMC, namely Dr. John Sirak and Dr. Charles Hardebeck, prescribed or recommended, among other things, that he take the medications gabapentin and tramadol and that he eat a heart healthy diet, such as foods low in fat and sodium, and avoiding red meat and cured meat. According to plaintiff, defendant failed to provide him both the medications and the heart healthy diet.

{¶4} Regarding medications, plaintiff testified that in general he has experienced delays in getting his various prescription medications refilled, particularly while he was incarcerated at the Toledo Correctional Institution following the stent placement in 2013. Plaintiff offered an Informal Complaint Resolution form dated June 20, 2013, which he filed to complain about delays in getting his prescriptions for aspirin and Plavix filled. (Plaintiff's Exhibit 6.) Plaintiff also offered an Informal Complaint Resolution form dated August 30, 2013, in which he complained about delays in getting unnamed blood pressure medication or "heart medication" from the prison pharmacy. (Plaintiff's Exhibit 1.) In other Informal Complaint Resolution forms dated September 5 and 9, 2013, plaintiff again complained about delays in regard to the drug Plavix and apparently other unnamed blood pressure medications. (Plaintiff's Exhibits 2, 5.)

Plaintiff testified that he pursued one of the complaints further, filing a formal grievance and ultimately appealing it to defendant's chief inspector. Plaintiff offered the decision of the chief inspector on the grievance appeal wherein issues with the timeliness of pharmacy refills were addressed, but there was no mention of gabapentin or tramadol. (Plaintiff's Exhibit 4.) In a general sense, plaintiff testified that he felt there were sustained delays or deficiencies in nearly all aspects of his medical care after he underwent the triple bypass and returned to the Toledo Correctional Institution, and to that end he filed complaints with both the State Medical Board of Ohio and the Correctional Institution Inspection Committee. Plaintiff acknowledged on cross-examination, however, that he has no evidence to substantiate any specific date when he was ever without gabapentin or tramadol at a time when it was prescribed for him.

{¶5} With respect to his dietary issues, plaintiff testified that in addition to oral instructions from the specialists at OSUMC, they also gave him an instruction sheet for a "Heart Healthy Diet," recommending a diet low in fat, cholesterol, and sodium, and setting forth guidelines on the use or avoidance of certain categories of food. (Plaintiff's Exhibit 11.) According to plaintiff, the food that is served in the chow halls at the Toledo Correctional Institution and the Marion Correctional Institution, where he was incarcerated at the time of trial, tends to be high in sodium and often includes foods that he was instructed to avoid, such as bologna, hot dogs, sausage, and beef. Plaintiff stated that he complained to Aramark, the food service contractor which operates the chow halls, and was told that its offerings reflect a heart healthy diet and are consistent with defendant's standards, and that it does not offer a separate menu for inmates with cardiac issues. Plaintiff offered a sample one-day menu that Aramark gave him in response to his concerns, as well as a sample menu which, according to plaintiff, was prepared by defendant. (Plaintiff's Exhibits 11, 12.) Noting the inclusion of ground beef entrees on these menus, plaintiff stated that this is one example of how the chow hall food does not afford him an opportunity to eat the kind of food he needs. As plaintiff

acknowledged, the Aramark menu includes fruits and vegetables, vegetarian selections, and also “diet” hamburger and other “diet” options, but, according to plaintiff, some of the options on this menu, such as diet cranberry juice, are not actually served in the chow hall and can only be purchased in the commissary.

{¶6} Plaintiff testified that he eats in the chow hall so long as the food being served is consistent with his dietary needs, and that if it is not, he stays in his cell and eats rice and canned fish from the commissary. On cross-examination, however, plaintiff admitted that the receipts from his commissary purchases include many other kinds of food that are not consistent with a heart healthy diet, including candy, soda pop, jars of mayonnaise, pork rinds, “squeeze cheese,” potato chips, cookies, pastries, snack cakes, sugar cubes, beef sticks, and beef summer sausage. (Defendant’s Exhibit B.) While plaintiff’s food and drink purchases were overwhelmingly comprised of these kinds of items, plaintiff insisted that the only commissary items he actually consumes are fish and rice, as he explained that he trades all the other items.

{¶7} Plaintiff also admitted on cross-examination that on several occasions in late 2013, he refused to take some or all of his medications, as documented in his medical records, even though he was advised by defendant’s medical professionals at the time that it could severely compromise his well-being. (Defendant’s Exhibit C.) Plaintiff explained that his reasons for skipping his medications included the fact that he was tired of being held in the infirmary at one point, and that at another point he was protesting the fact that he had been wrongly accused of threatening a doctor.

{¶8} Hannah Godsey, who is employed with defendant as the Healthcare Administrator at the Toledo Correctional Institution, testified that she is responsible for supervising the medical and dental departments at the prison and that she reviewed plaintiff’s medical file in preparation for trial. Godsey explained that the drug gabapentin is used primarily to treat nerve pain, whereas tramadol, which is also known by the brand name Ultram, is primarily used for treatment of acute pain. Godsey related that

plaintiff had been prescribed both medications in the past, but she testified that these medications are generally only prescribed on a temporary basis because prolonged use can result in addiction, and that when they are discontinued the dosage is sometimes tapered off. Godsey stated, for example, that in one instance documented in a physician's order dated September 30, 2013, when a physician prescribed Ultram for plaintiff for two weeks, the dosage was lowered for the second week and the prescription was then discontinued. (Defendant's Exhibit D.)

{¶9} Godsey also authenticated an Interdisciplinary Progress Note dated September 3, 2014, where it was noted that a physician met with plaintiff and discussed the "denial for gabapentin" and also discussed with plaintiff the fact that Ultram was "not indicated for long term use." (Defendant's Exhibit E.) The note also reflected that plaintiff expressed his disagreement with the physician and used profanity during this discussion, asserting that the physician's treatment plan went against the recommendations of Dr. Hardebeck.

{¶10} Godsey testified that her understanding is that Dr. Hardebeck is a cardiologist who works at OSUMC and is not an employee of defendant. Godsey explained that inmates are sometimes referred to specialists like Dr. Hardebeck and sent to OSUMC or other outside facilities for treatment, and she stated that while physicians at those outside facilities may make recommendations as to a plan of care for the inmate, the ultimate authority for an inmate's care and treatment rests with the chief medical officer at the inmate's assigned institution. As Godsey related, defendant has a specific policy concerning the delivery of specialty health care services to inmates, and the policy makes clear that the final decision about any treatment protocol or management rests entirely with the chief medical officer of the institution. (Defendant's Exhibit F.) Godsey also stated that another of defendant's policies, this one addressing more general matters relative to medical services, similarly provides that the chief medical officer is the "ultimate medical authority at the institution."

(Defendant's Exhibit G.) Godsey testified that, in practice, what happens when an inmate returns to the Toledo Correctional Institution after being seen by an outside specialist is that the inmate is seen by a nurse, who may then follow up with the primary physician at the institution, who serves as the chief medical officer, so that the physician may review any recommendations and develop a treatment plan.

{¶11} Godsey also testified that she is familiar with the cardiac, or heart healthy, diet that plaintiff described, and she stated that it entails low sodium and low fat foods, but that it does not require total avoidance of sodium or fat. Godsey stated that there are many inmates whose medical status require that they eat a heart healthy diet, and indeed that all of the meals offered in the chow halls enable inmates to maintain that kind of diet.

{¶12} "To prevail in a negligence action, the plaintiff must show (1) the existence of a duty, (2) a breach of that duty, and (3) an injury proximately resulting from the breach." *Price v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9, quoting *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶ 21. "In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks." *Woods v. Ohio Dept. of Rehab. & Corr.*, 130 Ohio App.3d 742, 744-745 (10th Dist.1998). "'Reasonable care' is the degree of caution and foresight that an ordinary prudent person would employ in similar circumstances." *Taylor v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15. "Further, although the state is not an insurer of the safety of inmates, once it becomes aware of a dangerous condition, it must take reasonable care to prevent injury to the inmate." *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 02AP-1109, 2003-Ohio-3533, ¶ 15.

{¶13} Upon review of the evidence presented at trial, the magistrate finds that plaintiff suffers from several health problems, including heart problems for which he was treated by specialists at OSUMC. While those specialists at OSUMC may have

recommended a course of treatment that included the pain relief medications gabapentin and tramadol, it is clear that under defendant's health care policies, the physician serving as the chief medical officer of plaintiff's assigned correctional institution had the ultimate authority over plaintiff's care and treatment once plaintiff returned from OSUMC. The evidence demonstrates that defendant's medical professionals did prescribe gabapentin and tramadol for plaintiff on a temporary basis at one or more times after his operations at OSUMC, but that the medications were tapered off and discontinued. The evidence does not establish that defendant ever failed to provide plaintiff with either of those medications at any time when he had an active prescription. Although plaintiff testified about general delays in getting his prescriptions filled, he takes a great many medications and there is no evidence specific to tramadol or gabapentin sufficient to substantiate any delay in his receiving those medications during the limited durations for which they were prescribed.

{¶14} Similarly, the magistrate finds that the specialists at OSUMC recommended a heart healthy diet for plaintiff, but, as previously stated, ultimate authority over his medical care and treatment rested with the chief medical officer of his assigned institution once he returned from OSUMC. It was not shown that the chief medical officer or other medical professionals at the institution specifically prescribed a certain diet for plaintiff, but, regardless, the evidence demonstrates that there is food available to plaintiff in the institutional chow hall which comports with a heart healthy diet. As Godsey explained, many of the inmates in defendant's custody and care have heart problems, and it is defendant's policy to include among the chow hall offerings the type of low fat, low sodium foods that comprise a heart healthy diet. While plaintiff testified that the food tastes salty to him and that at times he feels compelled to eat food from the commissary because he does not feel that the chow hall food is good for his heart, there was no specific evidence presented to quantify sodium content or other nutrition data, and the magistrate finds Godsey's testimony about the food to be more

persuasive and authoritative than plaintiff's. In short, it was not shown that defendant has failed to provide plaintiff with a heart healthy diet. Moreover, even if plaintiff had established such a failure, it was not shown that he was proximately caused to suffer any injury as a result.

{¶15} Based on the foregoing, the magistrate finds that plaintiff failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶16} 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).

ROBERT VAN SCHOYCK
Magistrate

cc:

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