

[Cite as *Grier v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-3240.]

LARRY GRIER

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2020-00659JD

Judge Patrick E. Sheeran
Magistrate Scott Sheets

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} Defendant filed a motion for summary judgment on May 28, 2021, seeking summary judgment on plaintiff's medical malpractice claim. Plaintiff did not file a response. Previously, the court dismissed any constitutional claims plaintiff attempted to assert. The court finds that plaintiff's complaint asserts a medical malpractice claim. For the following reasons, the court GRANTS defendant's motion for summary judgment.

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

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).

{¶3} Further, as stated in *Reeves v. Healy*, 192 Ohio App.3d 769, 2011-Ohio-1487, ¶ 38 (10th Dist.):

To establish a cause of action for medical malpractice, the plaintiff “must show the existence of a standard of care within the medical community, breach of that standard of care by the defendant, and proximate cause between the medical negligence and the injury sustained.” *Deer v. River Valley Health Sys.*, 4th Dist. No. 00CA20, 2001-Ohio-2662, quoting *Taylor v. McCullough-Hyde Mem. Hosp.* (1996), 116 Ohio App.3d 595, 599, 688 N.E.2d 1078. Expert testimony is required to establish the standard of care and to demonstrate the defendant’s alleged failure to conform to that standard. *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 130-31, 346 N.E.2d 673. Failure to establish the standard of care is fatal to a prima facie case of medical malpractice. *Id.* at 130.

Likewise, competent expert testimony is required to establish that the medical negligence at issue was the direct and proximate cause of injury. *Corwin v. St. Anthony Med. Ctr.*, 80 Ohio App. 3d 836, 840 (10th Dist. 1992). Medical experts must express their “opinions in terms of a reasonable degree of medical probability.” *Reinhardt v. Univ. of Cincinnati Med. Ctr.*, 10th Dist. No. 94API04-603, 1994 Ohio App. LEXIS 5554, at *15 (Dec. 13, 1994).

{¶4} Finally, L.C.C.R. 8(E) provides “[a] party may not call an expert witness to testify unless a written report has been procured from said witness” and that [a]n expert will not be permitted to testify or provide opinions on issues not raised in the expert’s

report.” The rule also provides that where parties are unable to obtain written reports, “the party must demonstrate that a good faith effort was made to obtain the report” and must still identify the expert.

{¶5} On February 8, 2021, this court ordered plaintiff to provide defendant with the names of expert witnesses and a copy of their report on or before April 9, 2021. (See Magistrate Order docketed Feb. 8, 2021). In seeking summary judgment, defendant argues that plaintiff cannot prevail on his medical malpractice claim because he has not identified an expert witness who will testify regarding any alleged breach of the applicable standard of care or that the same proximately caused him injury. In support of its motion, defendant submitted the affidavit of its counsel and a copy of its requests for admissions.

{¶6} Defendant’s counsel’s affidavit establishes that plaintiff failed to provide the names or reports of any expert witnesses by the April 9, 2021 deadline. Moreover, it also establishes that defendant served its requests for admissions on April 12, 2021 but that plaintiff has failed to respond. Defendant correctly asserts that its requests are deemed admitted. Civ.R. 36(A)(1). The court finds that plaintiff has not identified and is unable to present an expert witness and that he, therefore, cannot establish a medical malpractice claim.

{¶7} The court finds there is no genuine issue of material fact regarding plaintiff’s failure to retain an expert and provide a report. Lacking expert testimony, reasonable minds could only conclude that plaintiff cannot sustain his burden regarding the standard of care, breach of that standard of care, and proximate cause. As plaintiff must present expert testimony to prevail on his medical malpractice claim and has admittedly failed to procure an expert, defendant is entitled to judgment as a matter of law. For these reasons, the court GRANTS defendant’s motion for summary judgment and judgment is hereby 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.

PATRICK E. SHEERAN
Judge

Filed July 30, 2021
Sent to S.C. Reporter 9/17/21