

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
TN CLAIMS COMMISSION
CLERK'S OFFICE

2015 OCT 15 P 2:49

MICHAEL W. PINION #301339,)
) Claim No. T20140581
Plaintiff,)
)
Vs.)
)
STATE OF TENNESSEE)
) Regular Docket
Defendant)

ORDER GRANTING SUMMARY JUDGMENT AND DISMISSING CLAIM

This matter came on before Robert N. Hibbett, Commissioner and judge of the facts and the law, upon the State's Motion for Summary Judgment. The State alleges that the Claimant failed to comply with the mandatory provisions of the Health Care Liability Act, that the health care providers were not state employees and to the extent that the allegations for malpractice were against state employees, it was undisputed that the named state employees were not employed in a medical capacity. Lastly, as to the claim for negligent care, custody and control of persons in State's custody, the State alleges that there are

no alleged facts which tend to show that the State breached any duty of care owed to the Claimant.

The Claimant filed a response to the Motion for Summary Judgment received by the Clerk's office on September 22, 2015. In it, the Claimant states:

The defendant states some interesting undisputed material facts. But first, I Michael W. Pinion, never said or claimed Nurse Francis, Doctor Piradarchi (sic), Dialysis Charge Nurse Brenda Rule, Doctor Nwozo, Dialysis Nurse Karen Shankster or Dialysis Technician Mia were state employees. Second, I never claimed state officers or any other persons of malpractice.....

It is apparent that the Claimant has failed to comply with the mandatory provisions of the Health Care Liability Act. It is undisputed Claimant failed to comply with the mandatory provisions of Tenn. Code Ann. 29-26-101, *et seq*, because Claimant did not provide the sixty (60) day pre-suit notice required by Tenn. Code Ann. 29-26-121 or the certificate of good faith required by Tenn. Code Ann. 29-26-122. Furthermore, the Claimant has stated he has not made a claim against state officers concerning malpractice. The Claimant's malpractice and health care liability claims against the State must be dismissed.

The Tribunal shall focus on the facts alleged by the Claimant regarding his claim for negligent care, custody and control of persons in State's custody. In his original claim, the Claimant made the following statement:

On 11-09-12 my hand went numb and cold so I told Officer Smith when he came by that this had been occurring for 3 hours. He notified duty nurse who refused to come see me. A couple of more hours passed and C/O Smith informed me again the nurse refused to come out of the nurses (sic) station.

The State has filed a Statement of Undisputed Material Facts and supporting Affidavits stating that several medical providers named by the Claimant were not state employees and that the officers named in the claim cannot be held liable for medical malpractice because they were not medical practitioners. The Claimant has not refuted these material facts by affidavit, deposition or citation to same.

Litigants are given specific instructions on how to respond to alleged material facts that are not in dispute:

In order to assist the Court in ascertaining whether there are any material facts in dispute, any motion for summary judgment made pursuant to Rule 56 of the Tennessee Rules of Civil Procedure shall be accompanied by a separate concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by a specific citation to the record.

Any party opposing the motion for summary judgment must, not later than five days before the hearing, serve and file a response to each fact set forth by the movant either (i) agreeing that the fact is undisputed, (ii) agreeing that the fact is undisputed for purposes of ruling on the motion for summary judgment only, or (iii) demonstrating that the fact is disputed. Each disputed fact must be supported by specific citation to the record. Such response shall be filed with the papers in opposition to the motion for summary judgment.

In addition, the non-movant's response may contain a concise statement of any additional facts that the non-movant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. Each such disputed fact shall be set forth in a separate, numbered paragraph with specific citations to the record supporting the contention that such fact is in dispute.

If the non-moving party has asserted additional facts, the moving party shall be allowed to respond to these additional facts by filing a reply statement in the same manner and form as specified above.

TN R RCP Rule 56.03

The Claimant has not followed this directive and the Tribunal must accept the State's Statement of Material Facts.

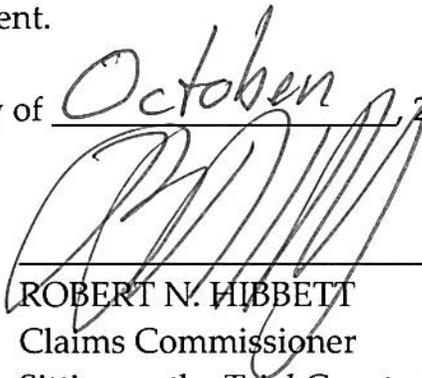
The question becomes whether State officers or employees have been negligent in any way in providing the Claimant *access* to medical care. Based on the undisputed material facts and the Claimant's own statements, it is clear that the TDOC correctional officer notified the duty nurse on the same day the Claimant started suffering symptoms. Although the non-state employee nurse may have been negligent, this is not the fault

of the State. Therefore, his claim for negligent care, custody and control has been negated by the undisputed material facts and the Claimant's alleged facts and must be dismissed.

IT IS, THEREFORE, ORDERED:

1. That the State's Motion for Summary Judgment is granted.
2. That the entire claim is dismissed.
3. That the Claimant's response received by the Clerk's office and dated September 22, 2015 shall be filed as a pleading.
4. This is a final judgment.

ENTERED this 9 day of October, 2015.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 15th day of Oct., 2015.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission