

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Sonya R. Jackson,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-457 (C.C. No. 2008-09694)
Northeast Pre-Release Center et al.,	:	
Defendants-Appellees.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on March 16, 2010

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*Sonya R. Jackson*, pro se.

*Richard Cordray*, Attorney General, and *Christopher P. Conomy*, for appellee.

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APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶1} Plaintiff-appellant, Sonya R. Jackson ("appellant"), appeals from a judgment issued by the Court of Claims of Ohio dismissing her complaint pursuant to Civ.R. 12(B)(6). For the following reasons, we affirm that judgment.

{¶2} On September 15, 2008, appellant, who is an inmate with the Ohio Department of Rehabilitation and Corrections ("ODRC") at the Northeast Pre-Release

Center ("the Center"),<sup>1</sup> filed a complaint in the Court of Claims. Appellant alleged that on October 4, 2007, she fell while descending a set of stairs at the Center and injured her ankle. Upon seeking medical treatment, appellant was advised her ankle was sprained. However, a few weeks later, it was determined that appellant had fractured her ankle.

{¶3} Appellant's complaint asserted a claim for medical negligence in connection with the Center's treatment of her broken ankle, but the claim was filed against "Wexford Health Solution," rather than the Center or ODRC. Therefore, on September 18, 2008, the Court of Claims issued an entry informing appellant that only state agencies and instrumentalities could be sued in original actions in the Court of Claims. The court dismissed Wexford Health Solution as a party to the action and informed appellant she had until October 18, 2008 to file an amended complaint naming a proper defendant.

{¶4} On October 20, 2008, appellant filed an amended complaint which named the Center as the defendant in the action. The amended complaint was nearly identical to the original complaint. Then, on October 28, 2008, appellant filed another amended complaint which added ODRC as a defendant, but which did not change the substance of the complaint.

{¶5} On October 29, 2008, the Center filed a motion to dismiss pursuant to Civ.R. 12(B)(6), arguing appellant had failed to file the affidavit of merit required under Civ.R. 10(D)(2) in all medical malpractice cases. On November 19, 2008, appellant requested an extension of time to submit her affidavit of merit and to retain counsel. On January 29, 2009, the Court of Claims granted appellant's request, giving her until March 16, 2009 to file her affidavit of merit.

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<sup>1</sup> Northeast Pre-Release Center is one of more than 30 institutional facilities within the ODRC system.

{¶6} Appellant did not file her affidavit of merit as instructed, and on April 13, 2009, the Court of Claims dismissed appellant's amended complaint. The Court of Claims determined that the amended complaint asserted a "medical claim" for purposes of Civ.R. 10(D)(2) and that because appellant did not submit the required affidavit of merit, the amended complaint failed to state a claim for relief.

{¶7} Appellant timely filed the instant appeal, asserting the following assignment of error for our review:

The Plaintiff has a constitutional right to basic medical and dental care, and deliberate indifference to serious medical needs of an inmate constitutes cruel and unusual punishment under the Eighth Amendment.

{¶8} Appellant's purported assignment of error does not specifically assign error to the judgment issued by the Court of Claims. Instead, appellant's stated assignment of error is merely a statement claiming that she has a constitutional right to basic medical care, and that deliberate indifference to an inmate's medical needs constitutes cruel and unusual punishment.

{¶9} Although her argument is difficult to decipher, appellant is presumably arguing that her ankle injury was misdiagnosed by the prison's medical staff, due to the staff's refusal to allow appellant to seek an x-ray, and therefore inadequate treatment was provided. Because she has a constitutional right, as a prison inmate, to medical care, she contends the Center's actions constituted deliberate indifference, which violates the Eighth Amendment.

{¶10} Throughout her brief, appellant also argues the Center's staff committed medical malpractice or medical negligence by failing to seek an x-ray, misdiagnosing her

ankle injury as a sprain, and failing to provide adequate treatment. Although not specifically stated, appellant is apparently contesting the court's dismissal of her complaint due to the lack of an affidavit of merit on the grounds that the Center provided negligent care when she has a due process right to basic care, thereby establishing "deliberate indifference."

{¶11} The Center argues the Court of Claims properly dismissed appellant's amended complaint pursuant to Civ.R. 12(B)(6), due to appellant's failure to provide an affidavit of merit, which is required for all medical claims under Civ.R. 10(D)(2).

{¶12} The dismissal of a medical claim that lacks an affidavit of merit falls under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted. *Nicely v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-187, 2009-Ohio-4386, ¶6, citing *Fletcher v. Univ. Hosps. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379, ¶14, 21. Our review of this type of dismissal is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶13} Civ.R. 10(D)(2) requires that every complaint which contains a medical claim, as defined in R.C. 2305.113, must be accompanied by an affidavit of merit. *Fletcher* at ¶5. Specifically, Civ.R. 10(D)(2)(a) states in relevant part as follows: "[A] complaint that contains a medical claim \* \* \* as defined in section 2305.113 of the Revised Code, shall include one or more affidavits of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability."

{¶14} R.C. 2305.113, which governs the limitation of actions for medical malpractice, defines "medical claim" as:

(3) \* \* \* any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person;

(b) Claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies:

(i) The claim results from acts or omissions in providing medical care.

(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment.

(c) Claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under section 3721.17 of the Revised Code.

R.C. 2305.113(E)(3).

{¶15} The purpose behind the requirement in Civ.R. 10(D)(2) is to deter individuals from filing frivolous medical malpractice claims and to "establish the adequacy of the complaint." *Fletcher* at ¶10; Civ.R. 10(D)(2)(d). Thus, Civ.R. 10(D)(2)(d) imposes a heightened standard of pleading upon a plaintiff and goes directly to the sufficiency of the complaint, thereby making a motion to dismiss for failure to state a claim upon which relief can be granted the proper remedy to impose when a plaintiff fails to include an affidavit of merit. *Fletcher* at ¶14.

{¶16} Additionally, Civ.R. 10(D)(2)(b) allows a plaintiff to file a motion to extend the period of time to file an affidavit of merit. If a plaintiff demonstrates good cause, a court must grant a reasonable period of time within which to file the affidavit of merit. However, that time period shall not exceed 90 days, unless an extension is necessary due to a defendant or non-party's failure to cooperate with discovery, or if other circumstances exist which warrant an extension. See Civ.R. 10(D)(2)(b). Furthermore, a dismissal for failure to comply with Civ.R. 10(D)(2) operates as a failure otherwise than on the merits. See Civ.R. 10(D)(2)(d).

{¶17} Appellant's claim here clearly falls within the definition of a "medical claim." Thus, she was required to attach an affidavit of merit to her complaint. Pursuant to Civ.R. 10(D)(2)(b), the Court of Claims provided appellant a reasonable extension of time to file her affidavit of merit. However, appellant failed to file an affidavit of merit within the additional time period provided by the court and did not request an additional extension. A court properly dismisses a medical claim that lacks an affidavit of merit because without the accompanying affidavit, the complaint does not plead a claim upon which relief could be granted. *Fletcher* at ¶15. See also *Nicely* at ¶6.

{¶18} We further note that some of appellant's current arguments, as well as her assignment of error, which appears to attempt to raise an issue of "deliberate indifference" and a violation of her civil rights under 42 U.S.C. 1983, are seemingly directed towards constitutional issues. However, appellant's amended complaint did not clearly raise these issues, and the Court of Claims did not discuss or address any potential claim for "deliberate indifference." Although pro se litigants are given some degree of latitude, there are limits to the court's ability to interpret pleadings. *State v.*

*Dunlap*, 10th Dist. No. 05AP-260, 2005-Ohio-6754. "If a court cannot understand the arguments advanced by a party, relief cannot be granted." *Id.* at ¶10. See also *Williams v. Griffith*, 10th Dist. No. 09AP-28, 2009-Ohio-4045.

{¶19} Moreover, to the extent appellant was attempting to allege a claim against the Center for "deliberate indifference to serious medical needs," thereby alleging cruel and unusual punishment in violation of her Eighth Amendment rights and requesting relief pursuant to 42 U.S.C. 1983, such relief could not be granted by the Court of Claims, even if the claim had been clearly asserted. This court has consistently held that the Court of Claims does not have jurisdiction over actions brought pursuant to 42 U.S.C. 1983. See *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), 10th Dist. No. 98AP-1105; *White v. Chillicothe Corr. Inst.* (Dec. 29, 1992), 10th Dist. No. 92AP-1230; and *Rankin v. Ohio Reformatory for Women*, 10th Dist. No. 09AP-524, 2009-Ohio-6575, ¶20 (the requirement that appellant "demonstrate an element of state action in the constitutional violation removes the claim from the Court of Claims' jurisdiction, which is limited to actions against the state as between private parties," because the state is not a person subject to liability under 42 U.S.C. 1983). See also *Burkey v. S. Ohio Corr. Facility* (1988), 38 Ohio App.3d 170 (state agencies are not "persons" and cannot be sued under 42 U.S.C. 1983).

{¶20} Accordingly, we overrule appellant's sole assignment of error and affirm the judgment of the Court of Claims.

*Judgment affirmed.*

BROWN and SADLER, JJ., concur.