

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

FILED  
IN CLAIMS COMMISSION  
OFFICE  
2014 OCT -2 A 11:18

JOHN HESSMER # 314971,                    )  
  ) Claim No. T20121394  
    Claimant,                                    )  
  )  
vs.    )  
  )  
STATE OF TENNESSEE,                        )  
  ) Regular Docket  
    Defendant.                                 )

**ORDER GRANTING SUMMARY JUDGMENT AND DISMISSAL OF CLAIM**

This matter came on before Robert N. Hibbett, Commissioner and judge of the facts and law, upon the State’s Second Motion to Dismiss or for Summary Judgment. The State alleges the Claimant has failed to move his case to disposition in a period which exceeds one year and the State was not responsible for Claimant’s medical care. Furthermore, the State had no notice of the shortcomings in Claimant’s medical care and there is no proof of breach of duty. The Tribunal has previously ruled that the Claimant failed to comply with the mandatory provisions of the Health Care Liability Act and that no state employee was involved in his medical care. The Tribunal granted dismissal on the claims except for negligent care, custody, and control of persons in State’s

custody. The Tribunal incorporates the Order Granting Partial Summary Judgment filed on October 30, 2013 by reference.

The Tribunal ordered the State to allow the Claimant to review his medical records that are in the State's custody. Claimant has not properly responded to the Motion for Summary Judgment and Statement of Material Facts pursuant to Tennessee Rule of Civil Procedure 56.03.

Because the health care liability claim has already been dismissed, the Tribunal shall focus on the material facts, as alleged by the State, which negate the claim for negligent care, custody and control of persons in State's custody.

The State has alleged these material facts:

1. The claimant did not provide notice to the defendant that he was allegedly receiving substandard medical care.
2. The claimant did not receive substandard care and to the contrary, was regularly provided with routine, comprehensive, and competent care by prison medical staff.
3. The claimant has not taken any steps to move this case to disposition for a period in excess of one year.

The Claimant has filed a Writ of Coram Nobis which is largely unresponsive to the Motion for Summary Judgment and the Statement of Undisputed Material Facts.

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

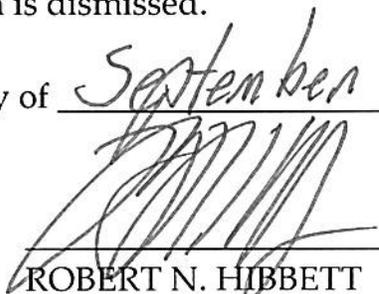
The Claimant has not followed this directive and the Tribunal must accept the State's Statement of Material Facts except for the Claimant's failure to move the case to disposition. A Scheduling Order has been in place and directed that a trial date would not be set until after August 1, 2014.

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 attached medical records, it is clear that TDOC has continually provided the Claimant access to medical providers throughout the events he has alleged in his Complaint. Therefore, his claim for negligent care, custody and control has been negated by the undisputed material facts and must be dismissed.

**IT IS, THEREFORE, ORDERED:**

1. That the State's Second Motion for Summary Judgment is granted.
2. That the entire claim is dismissed.

ENTERED this 30 day of September, 2014.

  
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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 2<sup>nd</sup> day of October, 2014.

*Paula Swanson*

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PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission