

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED
IN THE CLAIMS COMMISSION
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MIKE HENRY #405122,)
) Claim No. T20141228
 Claimant,)
)
 vs.)
)
 STATE OF TENNESSEE,)
) Regular Docket
 Defendant.)

**ORDER GRANTING SUMMARY JUDGMENT AND
DISMISSING CLAIM**

The Claimant, Mike Henry, seeks damages arising from treatment of an injury he incurred while incarcerated at Turney Center Industrial Complex, a facility operated by the Tennessee Department of Correction (TDOC). According to his Complaint, he severed the tendon in his left thumb and was taken to Nashville Metro General Hospital where his wound was closed and covered with a splint. The tendon was not reattached at that time. Corizon, the contracted medical provider, neglected to set an appointment for him for surgery to have the tendon reattached. Almost six weeks later, he was examined by a doctor who opined too much time had passed and the tendon could not be reattached. A month later, he was examined by a doctor at Vanderbilt University

Medical Center who also opined surgery had been delayed too long to successfully reattach the tendon. However, the surgery was attempted anyway. Claimant avers the negligence of TDOC employees and Corizon, as the medical provider and/or agent of TDOC, has left him partially disabled and in constant pain in his left thumb.

The State has filed a Motion for Summary Judgment based on three arguments: (1.) The medical providers and schedulers were not state employees. (2.) The Claimant failed to submit a good faith certificate with the complaint as required by Tenn. Code Ann. 29-26-122. (3.) The Claims Commission does not have subject matter jurisdiction over the negligent deprivation of constitutional rights. The State has filed the Claimant's medical records, portions of the Claimant's deposition and the affidavit of Dr. Otis Campbell in support of its motion.

The Claimant has responded to the State's Motion for Summary Judgment and the Statement of Undisputed Facts. With his response, he filed a medical record from 2012 that was written before his accident and he filed his July 22, 2014 medical record showing he still suffered pain in his left hand.

**STATE'S UNDISPUTED MATERIAL FACTS RELEVANT TO SUMMARY
JUDGMENT**

The State filed a Statement of Undisputed Material Facts with its Motion for Summary Judgment. The Court shall recite only the facts that are relevant to its decision.

On April 29, 2013, Claimant Michael Henry, a Tennessee Department of Correction inmate, sliced his left thumb with a razor blade by accident, lacerating the tendon. (Medical Records, pp. 2-3). Pursuant to Corizon Medical Director Dr. Otis Campbell's order, the Turney Center prison van took Claimant to the Metro General Emergency Room where he was treated and released. (*Id.*, pp. 3, 11, 61). On April 30, 2013, Dr. Campbell reviewed the ER Chart, noting an assessment of a lacerated left thumb tendon, a procedure of loose sutures and a spica cast and a recommendation for an orthopedic evaluation. (*Id.*, pp. 35, 56). Also, Dr. Campbell examined Claimant and ordered that he be sent for an orthopedic consultation when approved. (*Id.*, pp. 11, 35). On April 30, 2013, Dr. Campbell filled out and submitted a request to Corizon that Claimant receive a consultation with Dr. Baker. (*Id.*, pp. 35, 55). Corizon approved the request and set an appointment for Claimant with Dr. Baker at Meharry Orthopedic Clinic for June 3, 2013. (*Id.*, p. 54). On May 22, 2013, Corizon rescheduled the appointment to June

10, 2013. (*Id.*, p. 51). On June 10, 2013, Dr. Baker saw the Claimant and recommended surgical reconstruction of the extensor tendon. (*Id.*, p. 51). On June 20, 2013, Dr. Campbell reviewed Dr. Baker's report then wrote and submitted a request to Corizon to approve surgery for the Claimant. (*Id.*, pp. 29, 48, 49). Corizon approved and scheduled a surgical consultation appointment with Dr. Lee at the Vanderbilt Orthopedic Clinic on July 11, 2013. (*Id.*, p. 47). The surgical consultation was completed on July 11, 2013 and Dr. Lee recommended a tendon transfer procedure. (*Id.*, pp. 24, 25). On August 1, 2013, Dr. Campbell reviewed the recommendation and submitted a request for approval of the surgery. (*Id.*, pp. 25, 46). Corizon approved the request on August 1, 2013 and scheduled an appointment at the Vanderbilt Medical Center on October 25, 2013. (*Id.*, p. 45). Centurion then rescheduled the appointment for surgery on October 28, 2013 at the Vanderbilt Nashville Surgery Center. (*Id.*, pp. 42, 44). On October 28, 2013, Vanderbilt University Medical Center Dr. Donald Lee performed the surgery. (*Id.*, p. 39). Centurion approved and scheduled post-op follow-up appointments on November 21, 2013 and December 17, 2013 at Vanderbilt Medical Center. (*Id.*, pp. 37, 38). On December 17, 2013, Vanderbilt removed the cast and ordered occupational therapy. (*Id.*, pp. 15, 62). On December 30, 2013, Centurion Medical

Director Dr. Campbell examined claimant and noted that Claimant's condition was improving and that there would be no further follow-up as Claimant stated that he did not want to go back. (*Id.*, p. 13). On January 22, 2014, Claimant informed the clinic that his hand was stiffening; thereupon, Dr. Campbell ordered hand exercises. (*Id.*, p. 12). On April 29, 2013, Dr. Otis Campbell was the Corizon Medical Director at Turney Center prison in Only, Tennessee, and in such capacity, he treated inmate Mike Henry for his April 29, 2013 injury to his left thumb. (Campbell affidavit). Corizon is a private company on contract with the State of Tennessee to provide medical care and services to inmates, including the provision of medical care providers and the scheduling of all appointments with medical care providers outside of Turney Center prison (including hospitals and private doctors for such services as medical consults, treatments and surgeries and including appointments conducted at other prisons, such as the Deberry Special Needs Facility in Nashville, Tennessee). (Campbell affidavit). The Metro General Emergency Room, to which Dr. Campbell sent inmate Henry on April 29, 2013, is not a state agency. (Campbell affidavit). Dr. Baker, to whom Dr. Campbell sent inmate Henry for an orthopedic consult, is not a state employee. (Campbell affidavit). Meharry Orthopedic Clinic is not a state agency. (Campbell affidavit).

Dr. Donald Lee of the Vanderbilt Orthopedic Clinic, who conducted a surgical consultation and surgery on inmate Henry, is not a state employee. (Campbell affidavit). Vanderbilt Orthopedic Clinic and Vanderbilt Medical Center are not state agencies. (Campbell affidavit). On September 9, 2013, Centurion, a private company, took over the provision of medical care and services to inmates, including the scheduling of all medical appointments outside of Turney Center prison. (Campbell affidavit). At that time, Dr. Campbell became the Centurion Medical Director at Turney Center prison. (Campbell affidavit). Mr. Henry's medical providers were not state employees. (Affidavit of Dr. Campbell). The people who scheduled Mr. Henry's medical appointments were not state employees. (*Id.*).

In his response to the State's undisputed material facts as recited herein, the Claimant emphasizes Dr. Campbell's recommendation for orthopedic evaluation and consultation were marked "urgent." He disputes that the December 30, 2013 examination by Dr. Campbell showed his injury was improving. He argues that Corizon, its medical providers, and schedulers are agents of the State. He further argues that any medical service provider or scheduler compensated by the State is, in fact, employed by the State. The Court

finds that the Claimant's disputed facts are not material and his arguments concerning the status of the contractors and their employees are legal disputes.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Tennessee Rules of Civil Procedure provides that summary judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law.

Summary judgment is proper when the moving party can demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Tenn. R. Civ. P. 56.04. The Court finds that there is no genuine issue of material fact and this claim is ripe for summary judgment.

CONCLUSIONS OF LAW

The Claims Commission's jurisdiction over this action is set forth in Tenn. Code Ann. § 9-8-307(a)(1)(D) and (E), which states:

The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of "state employees," as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

* * *

(D) Legal malpractice or health care liability by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons;

Tenn. Code Ann. § 9-8-307

Liability

The State argues that the Claims Commission lacks jurisdiction in this case because the medical providers and schedulers are not state employees. The State has offered the Affidavit of Dr. Otis Campbell as an offer of proof. Dr. Campbell was the Corizon Medical Director at Turney Center and treated the Claimant for his April 29, 2013 injury to his left thumb. Dr. Campbell stated Corizon is a private company on contract with the State of Tennessee to provide medical care and services to inmates, including the provision of medical care providers and the scheduling of all appointments with medical care providers outside Turney Center prison. Furthermore, he stated that Doctors Baker and Lee are not state employees. In addition, Metro General Emergency Room, Meharry Orthopedic Clinic, Vanderbilt Orthopedic Clinic, and Vanderbilt Medical Center are not state agencies.

The Claimant filed a response but did not provide any evidence or affidavits that countered the State's offer of proof. Furthermore, the Claimant failed to comply with the mandatory provisions of the Health Care Liability Act, Tenn. Code Ann. 29-26-101, et seq., because the Claimant did not provide a certificate of good faith required by Tenn. Code Ann. 29-26-122.

Therefore, Claimant's health care liability claims regarding health care services while being housed at Turney Center must be summarily dismissed because (1.) No state employee was involved in his medical care and (2.) He failed to comply with the Health Care Liability Act.

Negligence by private medical contractors

It is well-settled law that the State may not be held liable for the negligence of its contractors. In a case in which the Claimant was suing the State because of the acts of CCA, a private prison contractor, the Court of Appeals held that the State was not liable for the negligence of the contractor's employees:

This Court has previously held that CCA employees are not state employees. *See Martin v. State*, No. No. M1999-01642-COA-R3-CV, 2001 WL 747640 (Tenn. Ct. App. July 5, 2001). The *Martin* Court noted that, under the Private Prison Contract Act of 1986 (as codified at T.C.A. § 41-24-107(b)), the sovereign immunity of the State does not apply to private contractors, such as the CCA. *Martin*, at *2. The *Martin* Court specifically stated that, "[w]here the acts complained of were not committed by state employees, the State enjoys

sovereign immunity.” Consequently, as the Commission correctly found, the proper defendant for negligence claims arising from the action of private contractors, or their employees, in operating correctional facilities is the contractor, and not the State. *See also Greer v. Corrections Corp. of America*, No. 01A01-9604-CH-00150, 1996 WL 697942 at *2 (Tenn. Ct. App. Dec.6, 1996) (no Tenn. R. App. P. 11 application filed).

Younger v. State, 205 S.W.3d 494, 499 (Tenn. Ct. App. 2006)

In an unreported case adjudicated before *Younger*, the Court of Appeals found the State was not liable for the alleged negligence of a contracted medical provider. Dr. Paul Somers was a physician contracted by the Department of Correction to provide medical care for inmates. In upholding the dismissal of the Claims Commissioner (Trial Court), the Court affirmed his holding that:

Dr. Somers was not a “state employee” within the meaning of Tennessee Code Annotated section 8-42-101(a)(3)(A)(Supp.1998).

Paul v. State, No. M2003-01244-COA-R9CV, 2003 WL 22964298, at *3 (Tenn. Ct. App. Dec. 16, 2003)

The law is clear that the State cannot be held liable for the alleged negligence of contracted medical providers. None of the medical providers named in the instant claim were state employees and Corizon is not an agency of the State but only a contractor. Therefore, the claim fails on this specific basis.

Private right of action

Tenn. Code Ann. § 41-1-408 states:

The department of correction shall provide adequate medical care, including twenty-four-hour emergency care, at all prison facilities. The department may contract with the county health department or other appropriate entities to secure trained medical personnel.

This statute does not contain language conferring a private right of action to an individual to sue the State. To sue for alleged negligent deprivation of statutory rights against the State in the Claims Commission, the statute must contain such language, pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(N), which states that the Claims Commission has jurisdiction over claims for

(N) Negligent deprivation of statutory rights created under Tennessee law, except for actions arising out of claims over which the civil service commission has jurisdiction. The claimant must prove under this subdivision (a)(1)(N) that the general assembly expressly conferred a private right of action in favor of the claimant against the state for the state's violation of the particular statute's provisions.

Because the General Assembly did not grant a private right of action in Tenn. Code Ann. § 41-1-408, the claim also fails on this basis.

General negligence under Tenn. Code Ann. § 9-8-307(a)(1)(E)

The State does have the duty to render medical aid when necessary. In other words, the State must provide reasonable access to necessary health care. In an unreported opinion involving the negligence claims of an inmate, the Court

of Appeals concurred with the determinations of the Claims Commissioner (Trial Court):

However there is a factual issue concerning subsection five of TCA 9-8-307 concerning the negligent care, custody, and control of persons. In order for the claimant to recover, the claimant must show that the State of Tennessee was negligent and failed in the required duty that it had toward the claimant. It is the opinion of the Commissioner that the duty of care required by the State of Tennessee is one in which it owes to a prisoner in its care the duty to exercise ordinary diligence to keep him safe and free from harm, *to render him medical aid when necessary*, and to treat humanly and refrain from oppressing that prisoner. Where the State or its officials is negligent in the care and custody of a prisoner or fails in the performance of its duties to him, and as a result the prisoner is injured, the State of Tennessee is liable. (Emphasis added)

Laws v. State of Tennessee Dep't of Correction, No. C.A. 36, 1986 WL 8820, at *1 (Tenn. Ct. App. Aug. 14, 1986)

In the instant case, the Tribunal finds the State rendered Mr. Henry access to reasonable medical aid or care. When the State contracted Corizon to provide medical care to inmates, the State fulfilled its obligation under Tenn. Code Ann. § 9-8-307(a)(1)(E). Employees of Corizon, the contractor, and not the State, did the scheduling of medical appointments. Because of the foregoing reasons, summary judgment must be rendered in favor of the State of Tennessee.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED:

1. That Summary Judgment is rendered on behalf of the State of Tennessee.

2. That the claim is dismissed with prejudice.
3. That the court costs, if any, are taxed to the Claimant.
4. That this is a final judgment.

ENTERED this 21 day of March, 2016.



ROBERT M. 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 24 day of March, 2016.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission