

considerations. Because plaintiff was not on psychotropic medication and he was vague about his symptoms, the treatment team decided to continue him on the mental health caseload with monthly reviews and a meeting with the psychiatrist every 90 days. Dr. Hasan determined that medication was not necessary at that time. (Defendant's Exhibit B.)

{¶4} Dr. Lehman testified that she usually saw plaintiff weekly on rounds. They would discuss how he was feeling and what benefits and side effects of various medications would be if he were to take them. She documented his mental health file monthly.

On July 10, 2002, Dr. Lehman reported that she saw plaintiff at his cell and that he "did not report any specific problems [he] was cooperative and soft spoken." (Defendant's Exhibit B.) The progress notes for August 21, 2002, indicate in part that plaintiff was "seen on weekly rounds *** coping well at this time, adjusting to SOCF. Cooperative, smiling occasionally, pleasant soft spoken. No thoughts of harm to self or others." (Defendant's Exhibit B.)

{¶5} On September 17, September 30, and October 1, 2002, plaintiff refused to meet with the treatment team. On October 15, 2002, Dr. Lehman met with plaintiff on her weekly rounds to discuss whether he should remain on the mental health caseload. Plaintiff stated that he was coping well and no longer needed mental health services.

{¶6} On November 19, 2002, plaintiff was seen again by the treatment team. During the meeting with the treatment team, plaintiff told them that he was depressed and had attempted suicide in his cell on three occasions. He admitted that he told Dr. Lehman that he was doing fine, but claimed it was not true. Because plaintiff stated that he was depressed and that he had

attempted suicide, Dr. Hasan prescribed Paxil, an anti-depressant, and continued him on the mental health caseload.

{¶7} Plaintiff's medical records indicate that on July 24, 2002, he was treated for both acne on his shoulders and athlete's foot. He also complained of chronic back pain, which was treated with Tylenol. (Defendant's Exhibit A.)

{¶8} Plaintiff alleges that the treatment for his medical needs and mental health was substandard. He opined that he should have received psychotropic medication upon his arrival at SOCF and that waiting until November 19, 2002, for medication was far too long.

{¶9} In *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, the Supreme Court of Ohio established plaintiff's burden of proof in a medical malpractice case:

{¶10} "*** in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon [in this case a psychiatrist] of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things."

{¶11} In *Buerger v. Ohio Dept. of Rehab. & Corr.* (1989), 64 Ohio App.3d 394, the Tenth District Court of Appeals found the *Bruni v. Tatsumi* standard applicable to a claim of medical malpractice brought by a prisoner.

{¶12} Dr. Hasan testified that he was a medical doctor with a specialty in psychiatry. He had worked at SOCF since December 1997, and he had been board-certified in psychiatry since October 1999. He testified it was proper not to prescribe medication to plaintiff upon his arrival at SOCF because plaintiff was diagnosed with adjustment disorder and antisocial disorder, both of which are minor forms of mental illness that do not require medication. Medication was eventually prescribed for plaintiff because he said he was depressed and had attempted suicide. In addition, Dr. Hasan reviewed plaintiff's mental health records and opined that plaintiff's mental health treatment met community standards for mental health treatment and that there was nothing substandard about it.

{¶13} Plaintiff failed to produce any evidence other than his own testimony that either his mental health treatment or his medical treatment were substandard in any way.

{¶14} The court concludes that plaintiff failed to prove by a preponderance of the evidence that defendant did not provide proper mental health and medical treatment upon his arrival at SOCF. In fact, the evidence adduced supports a finding that plaintiff received prompt and continuing professional, psychological and medical treatment at SOCF.

{¶15} Accordingly, judgment is recommended in favor of defendant on the issue of liability.

{¶16} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision*

unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

Entry cc:

Reginald L. Pratt, #R145-048
P.O. Box 45699
Lucasville, Ohio 45699-0001

Plaintiff, Pro se

Tracy M. Greuel
Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

Attorney for Defendant

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