

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-128

NOVEMBER TERM, 2017

Robert W. Boule	}	APPEALED FROM:
	}	
	}	Superior Court, Windsor Unit,
v.	}	Civil Division
	}	
Lisa Menard, Commissioner & Centurion	}	DOCKET NO. 473-9-15 Wrcv

Trial Judge: Robert P. Gerety, Jr.

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals pro se from the trial court’s order granting summary judgment to defendants on his complaint. We affirm.

Plaintiff is an inmate committed to the custody of the Commissioner of the Department of Corrections (DOC). In September 2015, he filed a pro se complaint seeking to enjoin defendants “from refusing necessary medical treatment” and seeking damages for pain and suffering. In July 2016, defendants moved for summary judgment. Plaintiff responded on August 5, 2016. In December 2016, plaintiff filed an “addendum” informing the court about certain anticipated medical treatment. The following month, he informed the court that he had received surgery on his shoulder.

In April 2017, the court granted summary judgment to defendants. The court recited undisputed facts concerning the medical care that plaintiff had received for various physical conditions. Based on these facts, defendants argued that DOC had been providing plaintiff with health care in accordance with prevailing medical standards. Defendants also argued that plaintiff’s medical malpractice claim failed because he did not have expert testimony to demonstrate that the DOC failed to provide adequate medical care for his shoulder. Defendants asserted that plaintiff failed to identify any genuine factual dispute sufficient to overcome their summary judgment motion.

The court explained that Vermont law required DOC to “provide health care for inmates in accordance with the prevailing medical standards.” 28 V.S.A. § 801(a). The court concluded that plaintiff failed to submit evidence to show that this statute had been violated. The record reflected that DOC, through its health care provider, had been providing ongoing medical care to plaintiff. As an example, the court noted that DOC medical staff met with plaintiff twelve times in the first two weeks of June 2016. The court found no evidence to show that the health care provided to plaintiff failed to meet prevailing medical standards. Plaintiff alleged that he requested but did not receive or timely receive, among other things, an MRI, “icy hot,” Kyann massage oil, and surgery on his shoulder. He continued to complain of substantial, debilitating pain. Even assuming the truth of plaintiff’s allegations, the court found such evidence insufficient to prove that defendants failed to meet the applicable standard of care. To the extent plaintiff raised a medical malpractice claim, plaintiff disclosed no expert, and the court found that the claims in this

case were not so apparent that they could be understood without the aid of medical expert testimony. While plaintiff sought to enjoin defendants “from refusing necessary medical treatment,” the court found no evidence to establish that defendants refused necessary medical treatment to plaintiff. It thus granted judgment to defendants. This appeal followed.

Plaintiff argues that he should have been provided a jury trial on his claim for money damages. He states that he continues to suffer pain and has suffered mental anguish due to his shoulder issues. He asserts that he now needs another surgery. According to plaintiff, defendants treated him with depraved indifference.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(a).

Plaintiff fails to show that the court erred in granting summary judgment to defendants. As set forth above, defendants identified undisputed facts detailing the extensive medical care provided to plaintiff. Given these facts, and even assuming the truth of plaintiff’s allegations, we agree with the trial court that plaintiff failed to create any dispute of fact as to DOC’s compliance with 28 V.S.A. § 801(a). To the extent that plaintiff raised a claim for medical malpractice, he was required to present expert testimony to support such claim. See 12 V.S.A. § 1908(1)-(3) (identifying elements of medical malpractice claim); Jones v. Block, 171 Vt. 569, 569 (2000) (mem.) (recognizing that ordinarily, elements of medical malpractice must be proved by expert testimony). This is not a case where “the alleged violation of the standard of care is so apparent that it may be understood by a lay trier of fact without the aid of an expert.” Larson v. Candlish, 144 Vt. 499, 502 (1984). Because the undisputed facts demonstrate that defendants were entitled to judgment as a matter of law, no trial was necessary. See, e.g., Sykas v. Kearns, 135 Vt. 610, 612 (1978) (explaining that “function of a summary judgment is to avoid a useless trial” (citation omitted)). We find no error in the court’s decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Karen R. Carroll, Associate Justice