

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 16-6333

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

Sep 18, 2017

DEBORAH S. HUNT, Clerk

STACY PARTIN,

Plaintiff-Appellant,

v.

RON H. TILFORD, Ophthalmologist at Paducah  
Retinal Center,

Defendant-Appellee.

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ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF  
KENTUCKY

**ORDER**

Before: SUHRHEINRICH, MOORE, and CLAY, Circuit Judges.

Stacy Partin, a pro se Kentucky prisoner, appeals the district court's order granting summary judgment to the defendant, Dr. Ron H. Tilford, and dismissing Partin's civil suit. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

This suit arose after Tilford performed retinal surgery on Partin's eye, which Partin has had severe problems with since his youth. In his complaint, Partin alleged that the surgery was ill-advised and unnecessary and that it injured his eye. He asserted a federal claim under 42 U.S.C. § 1983, alleging that Tilford acted with deliberate indifference to his medical needs. The district court also construed Partin's pleadings to allege a state-law negligence claim. Tilford moved for summary judgment, arguing, among other things, that Partin did not exhaust his administrative remedies for his federal claim and that his state-law claim failed because Partin did not provide any expert testimony, which Kentucky law requires. The district court granted Tilford's motion for those reasons and dismissed Partin's complaint without prejudice.

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On appeal, Partin makes three arguments: (1) either his efforts to exhaust his administrative remedies were sufficient, or he should be excused from the exhaustion requirements; (2) his medical negligence claim does not require expert testimony; and (3) the judge who originally had the case erred by transferring it to another judge.

We review a district court's grant of summary judgment de novo. *Kuhn v. Washtenaw Cty.*, 709 F.3d 612, 620 (6th Cir. 2013). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In resolving a summary judgment motion, we view the evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

A prisoner may not sue over prison conditions under § 1983 unless he has exhausted his available administrative remedies. 42 U.S.C. § 1997e(a). "[T]o properly exhaust administrative remedies prisoners must 'complete the administrative review process in accordance with the applicable procedural rules,'" and the rules "are defined . . . by the prison grievance process itself." *Jones v. Bock*, 549 U.S. 199, 218 (2007) (quoting *Woodford v. Ngo*, 548 U.S. 81, 88 (2006)).

Partin acknowledges that he did not exhaust his claim through the prison's grievance system, but he makes several arguments to excuse himself from that requirement. None suffices. "[E]xhaustion is required even if the prisoner subjectively believes the remedy is not available, even when the state cannot grant the particular relief requested, and 'even where [the prisoners] believe the procedure to be ineffectual or futile.'" *Napier v. Laurel Cty.*, 636 F.3d 218, 222 (6th Cir. 2011) (alteration in original) (citations omitted) (quoting *Pack v. Martin*, 174 F. App'x 256, 262 (6th Cir. 2006)). Substantial compliance is insufficient. *Brock v. Kenton Cty.*, 93 F. App'x 793, 799 (6th Cir. 2004). Here, the grievance procedure specifically provides for a "Health Care Grievance Process," and Partin admittedly did not avail himself of that process. His federal claim, therefore, was correctly dismissed.

As for Partin's state-law claim, the district court granted summary judgment to Tilford because Partin submitted no expert testimony to support his medical-negligence claim. "Except in limited factual circumstances, . . . the plaintiff in a medical negligence case is required to

present expert testimony that establishes (1) the standard of skill expected of a reasonably competent medical practitioner and (2) that the alleged negligence proximately caused the injury.” *Andrew v. Begley*, 203 S.W.3d 165, 170 (Ky. Ct. App. 2006).

Partin argues that his case meets one of the “limited factual circumstances.” It involves the doctrine of *res ipsa loquitur*: expert testimony is not required when it is obvious that a doctor did not take proper skill or care, such as when a “surgeon leaves a foreign object in the body or removes or injures an inappropriate part of the anatomy.” *Id.* Partin argues that he was referred to Dr. Tilford for evaluation of glaucoma or a cataract, but that Tilford decided to operate on his retina. Partin also claims that Tilford burned his hand during the operation, which Partin argues meets the example of the surgeon injuring an inappropriate part of the body. Partin admits that for some time he did not think that Tilford caused the burn, but that he later changed his mind. Still, he argues that there is conflicting evidence creating a genuine dispute suitable for trial.

But Partin cannot fall back on *res ipsa loquitur*. The average layperson could not determine whether Partin’s eye problem was glaucoma or a cataract, as he believes, or a retinal problem, as Tilford did, or whether Tilford was negligent in performing surgery. Those things are not obvious, like when a surgeon leaves a glove in a patient’s body. Partin “was required to present expert testimony on the issue of medical malpractice. Because [he] did not, summary judgment in favor of [Tilford] was proper.” *Id.* at 171.

Lastly, Partin’s argument that it was improper for the original judge to transfer the case to another judge is baseless.

Accordingly, we **AFFIRM** the district court’s order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH

STACY L. PARTIN

PLAINTIFF

v.

CIVIL ACTION NO. 5:13-cv-00193-CRS

RON TILFORD

DEFENDANT

MEMORANDUM OPINION

Defendant Ron Tilford moves the Court for summary judgment on *pro se* Plaintiff Stacy L. Partin's Section 1983 and Kentucky medical negligence claims. The Court will grant Tilford's motion.

BACKGROUND

Partin is incarcerated at the Kentucky State Penitentiary. Prior to incarceration, he experienced extensive problems with his right eye stemming from an accident when he was five years old. His vision was "basically non-exist[e]nt, though [he] could detect some light and shape." Compl. 4, ECF No. 1. In May 2012, while incarcerated at the penitentiary, he began to experience an odd pain in the eye. Two months later, he could "no longer detect any light at all." *Id.* 4 – 5.

After discussing these issues with a prison optometrist, the optometrist referred Partin for medical care to a retinal surgeon – Tilford. On November 6, 2012, Tilford performed surgery in an attempt to reattach the retina in Partin's right eye. The parties dispute whether the surgery was necessary or advisable and whether Partin complied with Tilford's post-operative medical

directives. Post-operation, Partin's retina slightly detached. He also experienced corneal clouding and other post-operative complications.

#### STANDARD

Before granting a motion for summary judgment, the Court must find that "there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The Court must view the evidence in a light most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). The non-moving party must show that a genuine factual issue exists by "citing to particular parts of materials in the record" or by "showing that the materials cited do not establish the absence ... of a genuine dispute[.]" Fed. R. Civ. P. 56(c)(1). "The mere existence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

#### DISCUSSION

##### 1. Section 1983 Claim

Under the Prison Litigation Reform Act of 1995, prisoner litigation brought under Section 1983 may only be brought after a prisoner has exhausted available administrative remedies. *See* 42 U.S.C. § 1997e(a) ("[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner ... until such administrative remedies as are available are exhausted"); *see also, Scott v. Ambani*, 577 F.3d 642, 647 (6th Cir. 2009). The Kentucky State Penitentiary offers prisoners the opportunity to file grievances. *See* Inmate Grievance Proc., ECF No. 57-10. Prisoners may file an administrative grievance for general issues or, as here, for healthcare issues that arise while the inmate is

incarcerated at the Kentucky State Penitentiary. *Id.* 7 – 14. While the grievance procedure does not specify whether it should be used for complaints against private doctors, the procedure's general language covers *any* health-related issues. *See, e.g., id.* 13 (“A health care grievance may pertain to more than one health care issue.”). The grievance procedure does not restrict healthcare issue complaints to those arising within the penitentiary. Instead, the grievance procedure covers inmate complaints for any healthcare related issue during the individual's incarceration.

Partin has not filed any internal grievances against Tilford. *See* Pl.'s Mot. to Quash Subpoena 1 – 2, ECF No. 39 (noting “no such grievance [against Tilford] has been filed”). Under the Prison Litigation Reform Act, Partin may only bring his suit after exhausting the available administrative remedy – filing a grievance in accordance with the Kentucky State Penitentiary's inmate grievance procedures. Partin has not done so. Therefore, the Court will grant Tilford's motion for summary judgment on Partin's Section 1983 claim.

## 2. State Law Medical Negligence Claim

Partin alleges Tilford was negligent in deciding to and in performing surgery on his right eye. Under Kentucky law, “Except in limited factual circumstances ... the plaintiff in a medical negligence case is required to present expert testimony that establishes (1) the standard of skill expected of a reasonably competent medical practitioner and (2) that the alleged negligence proximately caused the injury.” *Andrew v. Begley*, 203 S.W.3d 165, 170 (Ky. Ct. App. 2006). “To survive a motion for summary judgment in a medical malpractice case in which a medical expert is required, the plaintiff must produce expert evidence or summary judgment is proper.” *Id.*

There are two exceptions to the expert testimony requirement. Each exception relies on the *res ipsa loquitur* doctrine.

One exception involves a situation in which “any layman is competent to pass judgment and conclude from common experience that such things do not happen if there has been proper skill and care”; illustrated by cases where the surgeon leaves a foreign object in the body or removes or injures an inappropriate part of the anatomy. The second occurs when ‘medical experts may provide a sufficient foundation for *res ipsa loquitur* on more complex matters.’” An example of the second exception would be the case in which the defendant doctor makes admissions of a technical character from which one could infer that he or she acted negligently.

*White v. Norton Healthcare, Inc.*, 435 S.W.3d 68, 76-77 (Ky. Ct. App. 2014) (quoting *Begley*, 203 S.W.3d at 170 – 71) (internal citations omitted); *see also Dennison v. Hardin Cty. Det. Ctr.*, Civil Action No. 3:14-CV-P378-DJH, (W.D. Ky. Feb. 24, 2016); *Reynolds v. Elizabeth*, Civil Action No. 1:11CV-P142-M, (W.D. Ky. Sept. 29, 2015).

The Court agrees with Tilford that he is entitled to summary judgment as a matter of law on Partin’s medical negligence claim. Partin has failed to produce any expert witness evidence critical of the care he received in this matter. Contrary to Partin’s assertions, an expert witness is necessary. Whether surgery is advisable for a particular patient is almost always an issue of medical judgment. Here, a layperson could not conclude Tilford performed an unnecessary surgery on Partin’s right eye when there is ample medical history of Partin’s recent problems with that eye.

Likewise, determining whether surgery was properly performed almost always requires an expert familiar with the procedure performed. Here, a layperson could not conclude Tilford performed the surgery improperly without at least the proper evidentiary foundation of what a

proper retinal operation entails. There is no such foundation. The *res ipsa loquitur* exceptions to the medical expert requirement do not apply in this matter.<sup>1</sup>

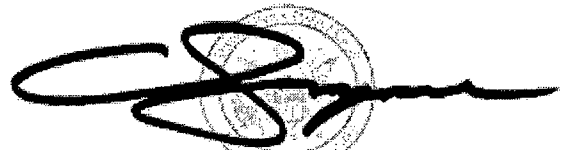
Partin has not presented the required expert testimony establishing the requisite standard of skill, nor has he presented evidence that Tilford's alleged negligent actions caused the injury. Therefore, the Court will grant Tilford summary judgment on Partin's state law medical negligence claim.

**CONCLUSION**

The Court will grant Tilford's motion for summary judgment.

The Court will enter a separate order in accordance with this opinion.

June 6, 2016



**Charles R. Simpson III, Senior Judge  
United States District Court**

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<sup>1</sup> Partin also mentions that he discovered a burn on his wrist after surgery. In Partin's proffered exhibits, Partin acknowledges he was uncertain of the burn's providence. *See* Nov. 8, 2012 Partin Letter, ECF No. 90-4. Assuming the existence of this injury, Partin has failed to offer sufficient evidence that Tilford's allegedly negligent actions caused the burn. *Begley*, 203 S.W.3d at 170 (noting that the claimant must prove "that the alleged negligence proximately caused the injury"). Indeed, Partin's submitted evidence suggests otherwise. In Partin's letter after the surgery, he writes that he "assume[s] the nurse accidentally placed something hot next to [his] hand during surgery or [he] inadvertant[ly] jerked it onto something hot." Nov. 8, 2012 Partin Letter.



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH

STACY L. PARTIN

PLAINTIFF

v.

CIVIL ACTION NO. 5:13-cv-00193-CRS

RON TILFORD

DEFENDANT

ORDER

For the reasons set forth in the Memorandum Opinion entered this date and the Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Defendant Ron Tilford's motion for summary judgment (DN 57) is **GRANTED** and this action is **DISMISSED WITHOUT PREJUDICE**.

There being no just reason for delay in its entry, this shall constitute the final judgment of the Court.

June 6, 2016



Charles R. Simpson III, Senior Judge  
United States District Court

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