

canal. As Lane applied pressure to the plunger, water was pushed out of the narrow end of the syringe-like device and into plaintiff's ear canal.

{¶5} Plaintiff and Lane agreed that there were at least three attempts to irrigate plaintiff's ear. Plaintiff described the first attempt at irrigation as water being shot with such force that it caught him off guard. He testified that during the second attempt, he felt a little pressure, which made him uncomfortable and that he tried to situate himself in his seat to brace himself. Plaintiff claimed that he said to Lane, "this is hurting," as he braced himself for the pressure. On the third attempt, plaintiff felt a little more pressure being applied and heard a loud "pop." Plaintiff fell to the floor in severe pain and blood began to come out of his right ear.

{¶6} Lane testified that she had performed ear irrigations at least fifty times, and that she followed the procedure described in the Lippincott Manual. According to Lane, this nursing manual sets the standard of care for nursing procedures, including ear irrigation. Lane agreed that she made three or four attempts to irrigate plaintiff's right ear. During the final attempt, Lane heard a "pop" in plaintiff's right ear and witnessed him fall to the floor "writhing" in pain. When asked if plaintiff complained of pain at any time prior to the "pop," Lane responded: "I don't remember him saying he was in pain. We were talking all the time."

{¶7} Plaintiff was transported directly to the emergency room at Elyria Memorial Hospital where he complained of throbbing pain and bleeding from his right ear. He was diagnosed with a "probable ruptured eardrum," released back to GCI and "placed on something for pain and some antibiotic ear drops." The doctor also recommended that plaintiff be seen by an ear specialist within three days.

{¶8} Upon his return to GCI, plaintiff complained that he was disoriented and in severe pain. He testified that he received only Tylenol or aspirin, which was not adequate to prevent his pain. Plaintiff finally contacted family members who interceded on his behalf, with the result that plaintiff was transported to the Correctional Medical Center (CMC) in Columbus, Ohio for evaluation. On June 3, 1997, Dr. Julie Redmon of the CMC Otolaryngology Clinic confirmed that plaintiff had a central perforation of the right tympanic membrane (eardrum) with mild to moderately severe hearing loss in his right ear. A tympanoplasty (repair of the eardrum) was recommended.

{¶9} On June 27, 1997, surgery was performed at OSU Hospital. Plaintiff was given a general anesthetic before a small amount of skin was cut from behind his ear and grafted over the perforation of the eardrum. After surgery, plaintiff was released to CMC to recuperate before returning to GCI on July 2, 1997.

{¶10} The surgery was unsuccessful. Consequently, a second surgery was performed at OSU Hospital on November 11, 1997. The procedure was the same as the first. Plaintiff was placed under general anesthetic, his right ear was cleaned of debris, and a small amount of skin was again cut from behind his ear and grafted over the perforation. After a period in the recovery room, plaintiff returned to CMC for postoperative recuperation.

{¶11} Again, the procedure failed to correct the perforation. A third surgery has been recommended but has not been performed.

{¶12} Plaintiff described the effects of living with a perforated eardrum. He testified that he has diminished hearing in his right ear and must either turn his left ear toward people speaking to him or watch their lips as they speak. His balance has been affected which has caused him to be “clumsy” and has limited his ability to participate in sports or other

{¶13} physical activities. In addition, any liquid entering his right ear, such as water or shampoo during a shower, goes directly through the perforation into his throat.

{¶14} 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:

{¶15} *** 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 nurse] 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.

{¶16} 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.

{¶17} Edward E. Dodson, M.D., plaintiff's expert witness, testified by way of a video trial deposition. (Plaintiff's Exhibit 8.) Dr. Dodson is on staff at OSU Hospital and is board-certified in otology, a branch of medicine concerning the anatomy, physiology, and pathology of the ear. He was the surgeon who performed both of plaintiff's ear surgeries.

{¶18} On July 19, 2001, at the request of plaintiff's attorney, Dr. Dodson conducted an audiological evaluation of plaintiff's right ear. Dr. Dodson also reviewed plaintiff's DRC records, including grievance reports, medical records from Elyria Memorial Hospital, and medical records and previous audiological evaluations from OSU Hospital.

{¶19} Dr. Dodson testified that ear irrigation is a common procedure most often performed by a nurse to clear earwax from the ear canal. Although earwax can be suctioned from the ear with sophisticated equipment, most medical personnel irrigate the ear with a syringe-type device similar to the one used by Lane. It is a "blind" procedure, meaning that it is impossible to view the eardrum while the liquid is being flushed into the ear canal. Dr. Dodson testified that because it is a blind procedure, it is necessary to stop the procedure immediately upon any expression of pain by the patient.

{¶20} Dr. Dodson conceded that a perforated eardrum is a recognized risk associated with an ear irrigation even when it is performed within acceptable medical standards. However, Dr. Dodson testified that, if plaintiff expressed that he was experiencing any pain during the procedure, Lane should have stopped the procedure immediately and re-evaluated her approach. In Dr. Dodson's opinion, if Lane had continued the irrigation procedure after plaintiff had experienced pain, her conduct fell below the accepted standard of medical care for a nurse performing such a procedure.

{¶21} The court finds that plaintiff was credible when he testified that he complained of pain during the procedure. Lane did not testify that plaintiff failed to complain, but only that she was with him during the procedure and did not remember that he complained of pain. Therefore, the court concludes that plaintiff has proven by a preponderance of the evidence that the medical care provided by defendant fell below the accepted standard of medical care and, as a direct and proximate result, plaintiff suffered a perforated right eardrum.

{¶22} In considering damages, the court finds that plaintiff suffered a painful traumatic perforation of his right eardrum as a direct and proximate cause of defendant's negligence. He was

treated at the emergency room, returned to GCI to recuperate, and prescribed only Tylenol or aspirin for pain. Over the next several days the pain and inflammation gradually subsided. On June 3, 1997, plaintiff was evaluated at CMC in Columbus and advised he would need surgery to repair his eardrum. He underwent the first surgery at OSU Hospital on June 27, 1997, recuperated at CMC, and then returned to GCI on July 2, 1997. The surgery was unsuccessful and a second surgery was performed at OSU on November 11, 1997. The second surgery was also unsuccessful, leaving plaintiff to contend with the effects, as previously described, of living with a perforated eardrum. Both surgeries required a general anesthetic, the harvesting of a small piece of skin from behind his ear, and the grafting of the skin over the perforation.

{¶23} Plaintiff has not incurred any cost for the two surgeries or for other treatment. Dr. Dodson has recommended that plaintiff undergo a third surgery. Plaintiff stated that he is considering the recommendation. Plaintiff will not be released from prison before the year 2004. Therefore, even if plaintiff elects to have a third surgery the cost of that surgery will be paid by defendant.

{¶24} Dr. Dodson testified that, within a reasonable degree of medical certainty, a third surgery will more likely than not be successful. Specifically, in Dr. Dodson's opinion, a third surgery would have a sixty-to-seventy percent chance of success. However, according to Dr. Dodson, even if a third surgery is successful, plaintiff is likely to have some permanent hearing loss and, at best, his hearing in the right ear would be restored to the low-normal range.

{¶25} Therefore, judgment is recommended in favor of plaintiff in the amount of \$45,000, which includes, but is not limited to pain, physical impairment, loss of enjoyment of life and inability to perform everyday activities.

STEVEN A. LARSON
Magistrate

Entry cc:

Alan Wayne Sheppard
1900 Crown Park Court
Columbus, Ohio 43235-2407

Attorneys for Plaintiff

Peter Precario
326 South High Street Annex
Suite 100
Columbus, Ohio 43215-4525

James P. Dinsmore
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

SAL/cmd
Filed 3-4-2002
To S.C. reporter 4-15-2002