

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
Case No. 10-2089**

DALLAS COBBS,

Plaintiff-Appellee,

v.

Before Judges Batchelder,
Cole, and Cook

GEORGE PRAMSTALLER, Chief Medical
Officer, Michigan Department of Corrections,

Defendant-Appellant,

and

CRAIG HUTCHINSON, Doctor, *et al.*,

Defendants.

PLAINTIFF-APPELLEE’S SUPPLEMENTAL BRIEF

At oral argument, Judge Cole noted that defendant Dr. Pramstaller conceded in his deposition that a patient should have a cataract removed in certain situations:

...if they have a posterior subcapsular cataract and it causes glare, the glare interferes with the vision from the good eye and makes it difficult for them to visualize what’s going on around them; therefore, they need that cataract taken out so that the glare disappears.

The other thing is, ... if you have someone who ... has 20/20 vision in the first cataract eye, but the second cataract eye is 20/400, and you can’t see a thing out of that eye, the disparity in the visual cortex makes it difficult, so we would probably do that cataract, also.

R.106, Exh. H, Pramstaller Dep., at 56 and 58; R.106, Exh. O, “Pass-Through Sheet” (permitting nurses to approve cataract surgeries for these two reasons).

Judge Batchelder then asked what specific records defendant Pramstaller had reviewed when he made or endorsed the decision to deny Mr. Cobb's second (left-eye) cataract surgery. The answer to that question is clear.

The decision to deny surgery, made by Dr. Pramstaller and the Medical Services Advisory Committee on 4/25/06, was based on a form prepared by the optometrist Dr. McGrath on 3/1/06.¹ R.106, Exh. C, at 36. Dr. McGrath wrote in the box for "Supporting History":

Please approve cataract surgery OS [left eye] Patient has dense cataract [left eye] with possible [secondary] glaucoma a risk factor

He wrote in the box for "Supporting Physical Exam" that the right eye was 20/20.

But for the left eye he wrote: "**no lens helps – 20/600.**" *Id.* (Emphasis added.)

He faxed the form to utilization review (CMS) on 3/6/06, which denied the request for an ophthalmology consultation on 3/15/06, noting that "MDOC/MSAC already reviewed this case,² and has not authorized. Patient had good response to surgery on his Rt. eye." R. 106, Exh. C. at 39. Dr. McGrath responded on the same form, on 3/29/06: "Surgery advised to prevent secondary glaucoma. No view of lens/ retina possible to check eye health." *Id.* CMS responded on 4/3/06: "Case

¹ Dr. McGrath testified that he did not know what the criteria were for approving or denying second cataract surgeries. R.106, Exh. F, at 115.

² The previous MSAC review was in October 2004, approximately 18 months earlier.

sent to MSAC – already not authorized.” *Id.* On 4/3/06, Dr. McGrath added his final comment: “Patient needs cataract surgery – hypermature cataract surgery is more complicated and there is risk of OS glaucoma.” *Id.*

On 4/25/06, Dr. Pramstaller signed the MSAC memo that “upheld non-approval,” based on these submissions. R.106, Medical Records, Exh. C, at 41.

Accordingly, on 4/25/06, Dr. Pramstaller and the MSAC knew that Mr. Cobbs had a cataract on his left eye that had reduced his vision in that eye to 20/600 even with glasses (“no lens helps”), that the cataract was hypermature, and that the optometrist could not see into the lens or the retina. (At the least there is a fact dispute about what Dr. Pramstaller knew and when he knew it.)

CONCLUSION

For the above reasons, Mr. Cobbs asks the Court to affirm the district court’s denial of qualified immunity, and to remand the case for trial.

Respectfully submitted,

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Dated: December 1, 2011

PROOF OF SERVICE

The plaintiff-appellee's supplemental brief was filed using the Court's ECF system, which will provide same-day e-mail service to all counsel of record.

/s/ Paul D. Reingold
Attorney for Plaintiff-Appellee

Dated: December 1, 2011