



subsequently convicted of the offense for which he is now incarcerated.

On February 9, 2000, plaintiff arrived at LorCI some time between 3:00 p.m. and 6:00 p.m. During the intake process, plaintiff was interviewed by a registered nurse who asked plaintiff for his health history. Plaintiff informed the nurse that he had a history of epilepsy with seizures, for which he was taking prescription medication. The nurse noted the information on plaintiff's health history form. After the intake process was completed, plaintiff was transferred to a cellblock "pod" and assigned a cell and an upper bunk. The upper bunk assignment had been made by the "count office" prior to completion of the medical intake.

Plaintiff testified that, upon his arrival in the pod, he told Corrections Officer (CO) Beverly Reddick that he had an upper bunk restriction, but that she ordered him to sleep in his assigned bunk. Plaintiff stated that he complied because he was tired from the day's events.

Plaintiff testified that after going to sleep his next memory was awaking on the floor of his cell surrounded by COs and medical personnel. Plaintiff had fallen from the top bunk during an apparent seizure. Once an ambulance arrived, he was transferred to a local hospital for treatment and returned to LorCI a few hours later. Upon his return, he was given a permanent bottom bunk restriction because of his seizure disorder.

In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. In the context of a

custodial relationship between the state and its prisoners, the state owes a common law duty of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1985), 2 Ohio St.2d 310. Accordingly, the issue is whether defendant breached its duty of reasonable care under the circumstances of this case.

Plaintiff asserts that defendant knew or should have known that he suffered from epilepsy with a history of seizures because defendant was in possession of plaintiff's medical records from his prior incarceration. Plaintiff introduced his health history form that had been completed by defendant on February 22, 1995, which indicates that plaintiff reported his medical condition to defendant on that date. Additional records introduced by plaintiff indicate that plaintiff had a permanent bottom bunk restriction during his prior incarceration at LorCI because of his seizure disorder.

Defendant presented evidence that defendant could not have had knowledge of plaintiff's prior medical condition on February 9, 2000, because the records were not available. June Newman, Health Care Administrator for LorCI, testified that because plaintiff had not been at LorCI since March 1999, his medical records had been closed and placed in storage in Columbus; that plaintiff's medical records were not readily available on the institution's computer system due to patient confidentiality; that it normally takes at least three to four weeks to retrieve medical records from storage in Columbus; and

that plaintiff's use of an alias further complicated the record retrieval process.

However, after a review of plaintiff's intake records from February 9, 2000, Newman determined that plaintiff was, in fact, issued a bottom bunk restriction on that date. The restriction was based solely on the medical history of epilepsy and seizures given by plaintiff.

Newman explained that three copies of the restriction are created and are usually distributed to the count office, pod officer, and inmate. For an undetermined reason, only the count office's copy was distributed. The copies that are normally distributed to the pod officer and inmate were left in the medical file. Since the count office closes at 3:00 p.m., it could not have set up the restriction until the next day.

Plaintiff was assigned to CO Reddick's pod on the evening of February 9, 2000. That pod was an intake pod which was very busy and routinely moves twenty, thirty, or forty inmates in or out in a single day. CO Reddick explained that an inmate with a bottom bunk restriction usually has a copy of the restriction with him upon arrival and that she enforces the restriction upon receipt.

She further explained that if an inmate claimed that he had a bottom bunk restriction but did not have a copy, she would call the medical unit to verify the restriction. CO Reddick did not have the authority to change a bunk assignment without a copy of the restriction from the medical unit or a verification by telephone. Even upon receipt of a copy or verification, the final authority to move an inmate rests with either the shift captain or lieutenant.

CO Reddick vaguely remembered an inmate complaining that he should have been placed on a bottom bunk restriction on February 9, 2000. She could not remember if the inmate was plaintiff and no such request was entered in the pod's log, although such requests are not routinely logged.

Defendant maintains that plaintiff was contributorily negligent because he did not notify CO Reddick of his bottom bunk restriction. Defendant asserts that if plaintiff had, as he claims, requested a bottom bunk restriction from CO Reddick, she would have called the medical unit and discovered its existence.

Plaintiff's own negligence bars his recovery pursuant to Ohio's comparative negligence statute, R.C. 2515.19, if his own negligence is greater than defendant's.

The court finds that defendant could not be expected to have had knowledge of plaintiff's medical condition based upon closed records from his prior incarceration at LorCI. His previous lower bunk restriction could not reasonably have been discovered by defendant on plaintiff's first day of re-incarceration.

However, absent any information regarding plaintiff's prior incarceration, a nurse issued a lower bunk restriction solely on the basis of information provided by plaintiff during his medical intake interview. For reasons which are unknown, defendant failed to follow usual procedures and did not give a copy of the bottom bunk restriction to plaintiff or the pod officer. As a result, plaintiff was not reassigned to a bottom bunk as directed by the nurse. Thus, the court finds that defendant breached its duty of reasonable care by not implementing the bottom bunk restriction which was ordered for plaintiff's own safety.

**[Cite as *Hambrick v. Lorain Corr. Inst.*, 2001-Ohio-3956.]**

The court further finds that defendant failed to prove by a preponderance of the evidence that plaintiff failed to notify CO Reddick of his request for a lower bunk. CO Reddick testified that she vaguely remembered an inmate requesting a bottom bunk on February 9, 2000. Although she had no independent recollection of plaintiff or his request for a bottom bunk, she acknowledged that LorCI procedures required her to verify a bottom bunk restriction if an inmate claimed to have one. In contrast, plaintiff testified that he specifically asked CO Reddick to investigate his bottom bunk restriction, without result.

The court concludes that plaintiff has proven by a preponderance of the evidence that defendant breached its duty of reasonable care, and that defendant's breach was the proximate cause of plaintiff's injuries, if any. Accordingly, judgment is recommended in favor of plaintiff on the issue of liability.

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**STEVEN A. LARSON**  
**Magistrate**

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