

[Cite as *Brehm v. Grafton Correctional Inst.*, 2005-Ohio-2543.]

IN THE COURT OF CLAIMS OF OHIO

GEORGE SCOTT BREHM :
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 Plaintiff : CASE NO. 2002-11131
 : Judge J. Craig Wright
 v. : Magistrate Steven A. Larson
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 GRAFTON CORRECTIONAL : MAGISTRATE DECISION
 INSTITUTION :
 :
 Defendant
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{¶ 1} Plaintiff brought this action against defendant, Grafton Correctional Institution (GCI), alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 3} Prior to June 26, 2002, plaintiff was housed at Marion Correctional Institution. During that time, plaintiff was granted a bottom bunk restriction. However, on June 26, 2002, when plaintiff was transferred to GCI, it was determined that he did not qualify for a bottom bunk assignment. Plaintiff contends that on July 3, 2002, he was injured when he fell from his top bunk after suffering a seizure.

{¶ 4} 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. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. 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.* (1965), 2 Ohio St.2d 310. However, the state is not

an insurer of inmates' safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, at 702.

{¶ 5} Plaintiff testified that he had suffered from knee and back problems and seizures. Upon transferring to GCI, a current bottom bunk restriction was listed on the "intrasystem transfer and receiving health screening form"; however, the restriction did not specify the medical reason for the restriction. (Joint Exhibit A.) According to plaintiff, he arrived at GCI in the evening, saw a nurse who scheduled a doctor's sick call for the following day, and slept in a bottom bunk that evening.

{¶ 6} On June 27, 2002, plaintiff was seen by Dr. Williams and nurse Wisnieski for a new inmate medical examination. Plaintiff testified that at the time of the examination his wrists and ankles were swollen and chafed from his transfer and that when Dr. Williams attempted to schedule additional testing at an outside facility, he refused. Plaintiff could not recall whether Wisnieski attempted to persuade him to attend the requested exams. After his examination, Dr. Williams determined that plaintiff did not qualify for a bottom bunk restriction.

{¶ 7} Plaintiff filed informal complaints on June 30, 2002, and July 1, 2002. The July 1 complaint states: "*** there is a likely hood [sic] that his actions of disregarding my medical problems may cause me physical injury." (Plaintiff's Exhibit 5.) Two days later, plaintiff claimed that he fell out of bed during a seizure. He stated that he could remember only that after breakfast he climbed into bed to watch television and that he woke up on the floor covered in blood.

{¶ 8} On July 3, 2002, inmate Myron Newsom was assigned to a bunk across from plaintiff. He testified that he returned to the dorm in the morning and was sitting on his bunk watching plaintiff's television when plaintiff fell out of the top bunk. Newsom did not see plaintiff strike any furniture; however, he saw blood on plaintiff's locker box.

{¶ 9} Inmate Jose Lewis Ocasio was sitting on his bunk across the aisle from plaintiff and also witnessed the fall. According to Ocasio, plaintiff had been standing next to his bed for a few minutes when he fell, striking his head on the locker box and causing a cut on his face. Ocasio testified that at the time of the fall, plaintiff was not in his bed nor was he attempting to climb into the top bunk.

{¶ 10} Wisnieski, the attending nurse during plaintiff's new-inmate exam, testified that plaintiff's medical chart showed that he had not been diagnosed with either a seizure disorder or spina bifida (the chart indicated only that these conditions were questionable); and that, therefore, Dr. Williams had recommended sending plaintiff to have a neurological consult and EEG to rule out seizures and an x-ray to rule out spina bifida. However, according to Wisnieski, plaintiff refused all of the testing without giving any reason. Wisnieski testified that had plaintiff mentioned that his wrists and ankles were chafed, the chart would have reflected plaintiff's complaints. Additionally, Wisnieski recalled specifically that she attempted to persuade plaintiff to comply with the testing and that at no time did plaintiff mention that he would be willing to go for an evaluation at a later date.

{¶ 11} The court's determination whether defendant breached a duty to plaintiff turns on witness credibility. "In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear, and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 12} In considering the conflicting testimony of the witnesses and applying the criteria in *Adair*, supra, to the testimony presented herein, the court finds the testimony of Ocasio and Wisnieski to be the more credible. While Ocasio acknowledged under oath that he was being treated with medication for schizophrenia at the time of the incident, the court finds that the witness was credible and forthright. Wisnieski was also an equally candid witness. The court is persuaded that plaintiff did not fall from his top bunk as a result of a seizure and that a seizure disorder was never medically diagnosed.

{¶ 13} The evidence proved that plaintiff refused medical testing that would have assisted in diagnosing any disorder. In that regard, plaintiff is required to exercise some degree of care for his own safety. See *Hartman v. Di Lello* (1959), 109 Ohio App. 387, 390-1; *Bowins v. Euclid General Hospital Assoc.* (1984), 20 Ohio App.3d 29, 31; *Thompson v. Kent State University*

(1987), 36 Ohio Misc.2d 16. In the instant case, the court finds that plaintiff failed to exercise a reasonable degree of care for his own safety when he refused to submit to further medical testing.

{¶ 14} Based upon the totality of the evidence presented and assessing the credibility of the witnesses, the court finds that plaintiff failed to prove that defendant was negligent in denying plaintiff's request for a bottom bunk restriction. The weight of the evidence demonstrates that plaintiff did not have a medically-diagnosed seizure disorder and that he refused to submit to additional medical testing.

{¶ 15} For the foregoing reasons, the court concludes that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

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MAGISTRATE DECISION

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