

[Cite as *Martin v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-4461.]

IN THE COURT OF CLAIMS OF OHIO
www.cco.state.oh.us

SHAWN MARTIN :

Plaintiff : CASE NO. 2003-04899
Judge J. Craig Wright
v. : Magistrate Anderson M. Renick

OHIO DEPARTMENT OF : MAGISTRATE DECISION
REHABILITATION AND CORRECTION

Defendant :

: : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action against defendant, alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability.¹

{¶ 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. Plaintiff worked as a cooking assistant in the kitchen at Belmont Correctional Institution (BeCI) where he helped prepare meals for other inmates. On July 10, 2002, plaintiff was directed by Corrections Officer (CO) Brian Boston, a food service coordinator, to prepare butter by blending it with hot water in a large mixer. Plaintiff estimated that he had performed this task about ten times before the day of the incident. After Boston provided him with butter, plaintiff filled a 28-gallon "Rubbermaid" plastic container with hot water from a large heating appliance

¹On April 4, 2005, defendant filed a motion to strike plaintiff's March 31, 2005, filing that directed the court's attention to two decisions from this court and included a copy of one of those decisions. The court notes that both decisions were referenced in the parties' closing arguments and, for that reason, defendant's motion to strike is DENIED.

known as a "tilt skillet." The plastic container was equipped with wheels, which plaintiff pulled approximately ten feet to the location of the mixer. Plaintiff testified that he had turned away from the plastic container and toward the mixer when he felt a "stinging" sensation that was caused by hot water spilling from the container onto his legs. Plaintiff sustained severe burns to his hands, arms, legs, and buttocks when he slipped and fell onto the wet floor.

{¶3} Plaintiff was initially treated at BeCI inmate health services and was later transported to The Ohio State University Hospital for further treatment of his burns.

{¶4} Plaintiff asserts that defendant failed to properly train and supervise him and that as a result of this failure, he attempted to transport heated water in a plastic container which buckled and spilled the water that caused his burns. Defendant maintains that plaintiff received adequate training and that his own negligent handling of the hot water was the cause of his injuries.

{¶5} 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; *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Defendant owed plaintiff the common law duty of reasonable care. *Justice v. Rose* (1957), 102 Ohio App. 482. Reasonable care is that which would be utilized by an ordinarily prudent person under similar circumstances. *Murphy v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-132, 2002-Ohio-5170, at ¶13. A duty arises when a risk is reasonably

foreseeable. *Menifee*, supra, at 75. Such a duty includes the responsibility to exercise reasonable care to protect inmates against those unreasonable risks of physical harm associated with institutional work assignments. *Boyle v. Ohio Dept. of Rehab. & Corr.* (1990), 70 Ohio App.3d 590, 592.

{¶ 6} While the court is cognizant of a "special relationship" between an inmate and his custodian, no higher standard of care is derived from the relationship. *Clemets v. Heston* (1985), 20 Ohio App.3d 132. The state is not an insurer of the safety of its prisoners; however, once it becomes aware of a dangerous condition in the prison, it is required to take the degree of reasonable care necessary to protect the prisoner from harm. *Id.* "*** [W]here a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional facts which characterize the particular work performed." *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208.

{¶ 7} Boston testified that at the time of the incident plaintiff had worked as a cooking assistant for "a couple months." Boston further testified that he did not witness the incident because he was supervising another area of the kitchen when plaintiff began preparing the butter. Boston stated that he became aware that plaintiff had been injured when he saw plaintiff jumping and heard him exclaim that he had been burned. Boston testified that inmate John Smith told him that he had witnessed the accident. Boston directed another CO to escort plaintiff to the inmate health services office.

{¶ 8} Boston also testified regarding the equipment that was used by the inmate workers and kitchen training procedures. Boston explained that the tilt skillet was equipped with a thermostat that

could be adjusted to reach a temperature of 420°F and that it was used to boil and to store water for food preparation.

{¶ 9} With regard to plaintiff's training, Boston testified that plaintiff signed an orientation list that was used to document required training in kitchen safety. Boston also identified plaintiff's training records that showed that he had received printed orientation materials that included a booklet entitled "About Kitchen Safety." Boston testified that plaintiff had learned the process of preparing butter through "on-the-job training."

{¶ 10} In contrast to Boston's testimony, plaintiff testified that he did not receive orientation training and that he merely made check marks on the orientation training list when he was directed to do so. Plaintiff testified that he had not been trained to prepare butter or to complete other kitchen tasks and that he had learned how to perform those duties by watching other inmates.

{¶ 11} The trial testimony was also contradictory on whether defendant was aware of the practice of using the plastic containers to carry hot water. Both Boston and Kathleen Beigler, the food service manager, testified that they had never observed an inmate use the plastic containers to transport hot water. Boston testified that it was improper for workers to handle hot water in such a manner and that defendant's employees should not have allowed the containers to be used for that purpose. However, plaintiff testified that Boston had observed him using the plastic container to transfer water to the mixer and that other inmates had previously used the same procedure to transport hot water.

{¶ 12} Plaintiff's testimony regarding the use of plastic containers by inmate workers was supported by two other inmates, Nicholas Robinson and Steven Miller, and by an Ohio State Highway Patrol trooper who investigated the incident. Both Robinson and Miller testified that they had observed other inmates use the plastic containers to obtain hot water from the tilt skillet. Miller testified that he had seen hot water poured into the containers "quite a few times," and Robinson testified that on the day of the incident he had put hot water in one of the containers to clean pots and pans. Trooper Mark Stelzer, an investigator assigned to the district that includes BeCI, testified that he interviewed a CO at BeCI who stated that "it was not uncommon" for the containers to be used for that purpose. Although Stelzer did not recall the name of the CO who made that statement, he did recall the substance of the interview. Stelzer further testified that he interviewed inmate John Smith and that Smith reported that he had observed the plastic container collapse. Stelzer did not identify any other witness to the incident.

{¶ 13} Based upon the foregoing testimony, the court finds that plaintiff proved by a preponderance of the evidence that he and other inmate kitchen workers occasionally used the plastic containers to hold water that had been heated in the tilt skillet and that defendant's employees allowed plaintiff to transfer the hot water from the tilt skillet to the mixer in a hazardous manner.

The court further finds that defendant knew of the practice and that the practice created a foreseeable and unreasonable risk of harm to plaintiff. Indeed, BeCI's food service coordinator and its food service manager testified that kitchen workers should not have been allowed to use the plastic containers to carry hot water. The

court concludes that defendant breached its duty of reasonable care to protect plaintiff from harm by failing to adequately train him and by failing to properly supervise his work in the kitchen.

{¶ 14} Although the court finds that defendant was negligent, Ohio's comparative negligence statute, former R.C. 2315.19, is applicable.² CO Captain Larry Dyer, the shift commander on the day of the incident, testified that he reviewed the video that was taken by a security camera located in the kitchen in an attempt to determine if any "foul play" was involved in causing plaintiff's injuries. According to Dyer, plaintiff pulled the container across the kitchen floor and then tripped and fell as the container tipped over. During his testimony, plaintiff acknowledged that he moved the container with one hand while he used his other hand to eat a turkey sandwich. Dyer testified that there was no obstruction on the floor and that he believed that plaintiff's hand was on the tub when he fell.

{¶ 15} The court finds that plaintiff disregarded a potential hazard and failed to take adequate care when he was handling the plastic container. Therefore, the court finds that although plaintiff's own negligence was a proximate cause of his injuries, plaintiff's negligence was not greater than defendant's. The court further finds that the degree of fault attributable to plaintiff is 40 percent.

{¶ 16} Accordingly, judgment is recommended for plaintiff with a 40 percent reduction in any award for damages.

{¶ 17} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party*

²R.C. 2315.19 was repealed effective April 9, 2003; however, the statute applies to causes of action that accrued before its repeal.

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).

ANDERSON M. RENICK
Magistrate

Entry cc:

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Attorneys for Plaintiff

John M. Alton
175 South Third Street, Suite 360
Columbus, Ohio 43215-5100

Douglas R. Folkert
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

AMR/cmd
Filed August 10, 2005
To S.C. reporter August 29, 2005