[Cite as McQueen v. Ohio Dept. of Rehab. & Corr., 2005-Ohio-5066.]

IN	THE	COURT	OF	CLAIMS	OF	OHIO
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EDGAR MCQUEEN	:	
Plaintiff	:	CASE NO. 2004-06836 Judge J. Craig Wright
ν.	:	DECISION
OHIO DEPARTMENT OF	:	DECIDION
REHABILITATION AND CORRECTION	:	
Defendant		
: : : : : : : :	: :	: : : : : : :

{¶ 1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

 $\{\P 2\}$ At all times relevant to this action, plaintiff was an inmate at the Warren Correctional Institution (WCI) in the custody and control of defendant pursuant to R.C. 5120.16. In July 2003, plaintiff completed training in the WCI carpentry shop where inmates can develop skills in the construction trade.

{¶3} On March 10, 2004, plaintiff was using a table saw to "rip cut" a board into one-quarter-inch strips that would be used to construct a jewelry box. Plaintiff was using a device known as a "push stick" with his right hand to feed the board into the table saw blade when the board "kicked back" and caused the middle finger of his left hand to come in contact with the blade. Plaintiff received first aid at the carpentry shop and then was sent to the WCI infirmary. Plaintiff was subsequently treated at a local hospital.

 $\{\P, \mathbf{4}\}$ Plaintiff asserts that defendant negligently removed a safety quard that was designed to prevent the operator's hands from coming into contact with the blade. Additionally, plaintiff claims that defendant was negligent in its duty to properly supervise and train him in the use of the saw and that defendant failed to warn him of the defective condition of the machine. 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, Defendant owed plaintiff the common law duty of reasonable 77. Justice v. Rose (1957), 102 Ohio App. 482. Reasonable care care. is defined as the degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. Woods v. Ohio Dept. of Rehab. & Corr. (1998), 130 Ohio App.3d 742, 745.

{¶5} 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 The state is not an insurer of the safety of its App.3d 132. prisoners, but once it becomes aware of a dangerous condition in the prison, it is required to take the reasonable steps necessary to protect the prisoner from harm. Id. at 136. Prisoners, however, are also required to use reasonable care to ensure their own safety. See, e.g., Macklin v. Ohio Dept. of Rehab. & Corr., Franklin App. No. 01AP-293, 2002-Ohio-5069, ¶21, citing Perry v. Eastgreen Realty Co. (1977), 55 Ohio App.2d 130, 132. "*** [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.

{¶ 6} William Parizek, the carpentry shop instructor, testified that he conducted a safety orientation with plaintiff after he enrolled in the carpentry program. Parizek explained that the orientation training covered operating procedures and safety features for each power tool that plaintiff was taught to operate. Parizek recalled that plaintiff had worked in the construction trade and that he had experience operating power tools. Parizek testified that plaintiff's training records showed that plaintiff completed approximately one hour of instruction on the table saw on July 9, 2003. Parizek evaluated plaintiff's proficiency on the table saw and noted in the training record that plaintiff was "skilled" in all categories including "rip cut" and "safety." (Defendant's Exhibit C.) Plaintiff also signed an "Acknowledgment of Safety Practices" form that documented that he received additional training on the table saw on July 11, 2003. (Defendant's Exhibit A.) Parizek testified that he would not allow any inmate to operate the table saw until the inmate had demonstrated proficiency using it.

 $\{\P,7\}$ On the day of the incident, Parizek instructed a class on installing roof shingles while inmate Brunty, a program aide with 20 years of construction experience, supervised the area where the table saw was located. Parizek testified that he gave plaintiff permission to remove the safety guard and that he saw plaintiff do so prior to beginning his work on the machine. Parizek explained that the design of the table permitted the operator to remove the guard to perform the very type of detailed work plaintiff attempted to perform. According to Parizek, inmate Brunty had earlier in the day cautioned plaintiff to use the proper cutting technique after the wood that plaintiff was cutting "kicked back." Parizek also testified that both he and inmate Brunty had observed plaintiff carelessly reach over the table saw blade on the day of the incident. Parizek further testified that he had also warned plaintiff that same day not to use the table saw in an unsafe manner and that he directed plaintiff to stand behind the machine so that plaintiff would not reach over the saw blade.

 $\{\P 8\}$ The testimony and evidence established that plaintiff had experience operating a variety of power tools. Plaintiff testified that he received training on the table saw and that he signed training records that documented the areas of operational and safety training which he had received. Plaintiff stated that he had "quite a bit" of experience using the saw during his time working in the carpentry shop and that he received specific instructions regarding the use of a push stick to feed wood into the saw blade. Plaintiff also acknowledged that Parizek warned him that improperly operating the saw could result in injury. Based upon the foregoing, the court finds that plaintiff received adequate training in the safe operation of the table saw, but that he was using the saw in an improper manner when he was injured. The court concludes that plaintiff failed to prove that defendant breached its duty to provide adequate operational and safety training on the table saw.

{¶9} Although plaintiff asserts that defendant was negligent for allowing him to use the table saw without the safety guard, he offered no support for his assertion that the saw was not intended for use without the guard. Parizek testified that the saw could be operated safely without the guard and that certain cutting techniques required that the guard be removed.

 $\{\P\ 10\}$ Furthermore, the credibility of witnesses is a significant issue in this case, as there is conflicting testimony whether the safety guard was installed on the table saw prior to

plaintiff's use of the machine. Although plaintiff testified that he never observed the safety guard on the saw, Parizek testified that the guard was installed on the saw on the day of the accident and that plaintiff removed it before he began to operate the machine. Based upon the evidence presented in this case, the court finds that Parizek was the more credible witness. The court further finds that plaintiff failed to prove that the table saw was defective or that defendant allowed him to use a saw that was unreasonably dangerous. The court concludes that plaintiff has failed to satisfy his burden of proof on the issue of negligence. Accordingly, judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

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EDGAR MCQUEEN	:		
Plaintiff	:		2004-06836 Craig Wright
v.	:		
		JUDGMENT	ENTRY
OHIO DEPARTMENT OF	:		
REHABILITATION AND CORRECTION			
	:		

Defendant

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal. J. CRAIG WRIGHT Judge

Attorney for Defendant

Entry cc:

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AMR/cmd Filed September 1, 2005 To S.C. reporter September 26, 2005