[Cite as *Ortiz v. Chillicothe Correctional Inst.* , 2005-Ohio-3210.]

IN THE COURT OF CLAIMS OF OHIO

ROCCO ORTIZ	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10957-AD
CHILLICOTHE CORRECTIONAL INSTITUTION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On August 18, 2004, plaintiff, Rocco Ortiz, an inmate incarcerated at defendant, Chillicothe Correctional Institution ("CCI"), suffered personal injury while using the West bathroom facilities at defendant's institution. Specifically, plaintiff's fingers were lacerated when he attempted to close a window in the CCI bathroom area and the window frame fell upon his left hand. Plaintiff received prompt medical treatment for the lacerations to his fingers. Seven sutures were required to close the wound on plaintiff's left index finger and eight sutures were needed for the wound on his left middle finger. Topical medication was applied to the lacerations. The injured areas were bandaged and plaintiff was released back to CCI with instructions to have the sutures removed ten to fourteen days after the date of the injury. According to plaintiff, the sutures were removed by a CCI nurse twenty days after he received treatment. Plaintiff asserted his finger injuries are permanent. Plaintiff stated, "I now have (2) two permanent scars, a lump on the middle finger, and limited range of motion on the middle fingers of my left [hand]."

{¶ 2} Plaintiff has contended his hand injury was proximately

caused by negligence on the part of defendant in maintaining a hazardous condition on the CCI premises. Plaintiff professed the West bathroom window at CCI constituted a latent defect and defendant should bear liability for any personal injury resulting from coming into contact with this hazard. Therefore, plaintiff filed this complaint seeking to recover $2,500.00 for pain and suffering for the finger injuries he suffered on August 18, 2004. In his complaint, plaintiff pointed out his injury occurred in October, 2004, although submitted treatment records and other documents including a grievance filed by plaintiff, list the date of the injury as August 18, 2004.

{¶ 3} Plaintiff offered a written description of the incident forming the basis of this claim. Plaintiff related, "[w]hen I entered the bathroom a window was open and being that it was in October, it was cold, so I noticed that there was a stick hold[ing] the window up and open." Apparently plaintiff decided to close the open window without asking for any assistance from fellow inmates or CCI personnel. In order to shut the window plaintiff noted, "I attempted to lift the window to close it and it wouldn't move." Plaintiff asserted he then decided to close the window by removing the stick supporting the window. Plaintiff further asserted, as he pulled the supporting stick from the window, he "immediately noticed the entire window dislodged, from its frame." Plaintiff maintained he tried to stop the falling window by catching it in his left hand before it hit the sill. However, the weight of the window was too much for plaintiff to hold with one hand resulting in the window pinching plaintiff's hand against the window sill.

{¶ 4} Plaintiff surmised, "the track, which should have carried the weight of the window was completely broken." Plaintiff stated he was able to pull his trapped hand from under the window upon, "exerting a great amount of effort." After washing his injured

hand in a nearby sink and wrapping his fingers in a wash cloth, plaintiff recalled he then reported the injury occurrence to a CCI Corrections Officer. While receiving initial medical treatment for his injury at the CCI infirmary, plaintiff noted a CCI employee identified as C.J. Brown admitted knowing about the broken bathroom window and previous injuries caused by this window. Plaintiff also noted he subsequently learned an inmate identified as John Allen had been injured by the West bathroom window at sometime in 2002.

{¶ 5} Defendant denied any liability in this matter. Defendant asserted plaintiff has failed to produce sufficient evidence to establish his injury was proximately caused by any negligent conduct attributable to CCI staff. Defendant argued the fact the window was propped open by a wood support presented an open and obvious state in respect to its general condition. Defendant suggested the presence of the wood support itself put plaintiff on notice that the window was only being kept open by the support device. Defendant professed the support device constituted sufficient warning of the condition of the window and the resulting probability the window would fall when the wooden support was removed. Furthermore, considering plaintiff's own statements about underestimating the weight of the window, and the fact plaintiff had the capacity to appraise the particular situation, defendant contended plaintiff surely knew the window would fall and fall with heavy force when the wood prop was removed. Defendant explained plaintiff, acting on his own volition, miscalculated his physical ability to hold the window up with one hand while removing the wooden support prop with the other hand. Defendant stressed that because the condition of the window was open and obvious and plaintiff was essentially injured by his own devise, no set of facts have been presented to find liability.

{¶ 6} Since the condition of the window as defendant insists was

open and obvious, there was no duty of care to protect persons such as plaintiff from hazards arising from the condition. See *Armstrong v. Best Buy*, 99 Ohio St. 3d 79, 2003-Ohio-2573. Defendant maintained the rule of law pertaining to the absence of a duty to protect injured persons from open and obvious dangers applies to parties involved in the instant claim. Therefore, defendant reasoned, since no duty existed to warn or protect plaintiff from an open and obvious hazard, no negligence can be found, and no liability can be determined for injuries suffered.

{¶ 7} Alternatively, defendant asserted, if negligence is found on the part of CCI, the facts support a finding that plaintiff's own conduct constituted negligence greater than 51% of the total negligence present in this action. Essentially, defendant claimed plaintiff's negligent act of knowingly placing himself in a position where injury was likely to occur amounted to greater than half, if not all, the total negligence involved. Defendant stated, "[t]he law in Ohio is clear, however, that an inmate is not free to place himself in harms way, and then complain after he was injured that DRC failed to protect him. *Dean v. Ohio Dept. of Rehab. & Corr.* 1988 WL 655281 (Ohio App. 10th Dist. No. 97AP112-1614);

{¶ 8} *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App. 3d 517, 587 N.E. 2d 870; *Jones v. Department of Rehabilitation and Correction*, 2002 WL 31989400 (Ohio Ct. Cl. No. 99-13355)." Defendant contended plaintiff, "freely and knowingly" put himself at risk by removing a window prop and thereby placing himself in a situation with a high probability of injury resulting from a falling window. Defendant argued plaintiff was in a position to assess the danger presented from his voluntary act and still proceeded with the particular act, which was negligent.

{¶ 9} Plaintiff seemingly acknowledged the propped open window in the CCI bathroom presented an open and obvious condition. In

fact, plaintiff maintained the condition of the window was open and obvious to CCI staff as well as himself. Plaintiff, therefore, asserted CCI personnel should have been charged with a duty to protect him from this open and obvious danger. Furthermore, plaintiff insisted defendant should have posted warning signs about the condition of the window, despite the fact the wooden support prop certainly served as a form of warning. Plaintiff alluded to a previous injury occurring from a falling bathroom window at CCI. However, plaintiff did not produce sufficient evidence to prove a previous injury occurred in the same place, manner, and fashion as his injury. Plaintiff argued proof of a previous injury from the CCI West bathroom window should serve as proof of negligence in the present claim.[1]

{¶ 10} Additionally, plaintiff argued that because defendant alternatively raised the defense of comparative negligence, an admission of negligence on the part of CCI was entered. No admission or stipulation of a negligent act or omission was ever made by defendant. The issue of comparative negligence was raised as an alternative affirmative defense and shall be dealt with accordingly.

{¶ 11} In order to prevail on a claim of negligence, a plaintiff must show the existence of a duty on the part of defendant, a breach of that duty, and injury proximately resulting therefrom. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77. Ohio law generally imposes upon the state a duty of reasonable care and protection of its prisoners. *Clemets v. Heston* (1985), 20 Ohio App. 3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. *Antenori v. Ohio*

[1] Plaintiff filed a response on March 31, 2005.

Dept. of Rehab. and Corr., Franklin App. No. 01AP-688, 2001-Ohio-3945.

{¶ 12} Plaintiff proposed the doctrine of res ipsa loquitur should have application under the facts of the instant action. This doctrine does not apply to the fact pattern here. Such doctrine permits, but does not require, the trier of fact to draw an inference of negligence when the thing causing the harm - in this claim a defective window - was in the exclusive control and management of the defendant, and the circumstances surrounding the injury were of such character as to warrant the conclusion that defendant's lack of ordinary care was responsible for plaintiff's injury. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App. 3d 107, 112, citing *Renneckar v. Canton Terminal Restaurant* (1947), 148 Ohio St. 119.

{¶ 13} The window that injured plaintiff was not in the exclusive control of CCI. Anyone had access and use of the windows at the institution. Also, the injury in the present claim was not a result of unexplained circumstances. See *Moore*, supra. Furthermore, plaintiff's conduct was directly related to the injury incident. Consequently, res ipsa loquitur does not apply.

{¶ 14} Based on plaintiff's status as an inmate at defendant's institution, CCI owed him a duty to exercise reasonable care in keeping the premises in a safe condition and warning plaintiff of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St. 2d 51, 52-53; *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29, 31; *Sweet v. Clare-Mar Camp, Inc.* (1987), 38 Ohio App. 3d 6. However, a property owner is under no duty to protect a person such as plaintiff from hazards which are so obvious and apparent that the plaintiff is reasonably expected to discovery and protect against them himself. *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45,

paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203, 203-204; *Brinkman v. Ross*, 68 Ohio St. 3d 82, 84, 1993-Ohio-72.

{¶ 15} An unreasonably dangerous condition does not exist in situations where persons who are likely to encounter a condition may be expected to take good care of themselves without exercising any further precautions. *Baldauf v. Kent State Univ.* (1988), 49 Ohio App. 3d 46, 48. Additionally, the owner of premises has no duty to warn of a dangerous condition which is so open and obvious that a person may reasonably be expected to discover it and protect themselves against it. *Armstrong v. Best Buy Company, Inc.*, supra. "The open and obvious nature of the hazard itself serves as a warning." *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d, 642, 644, 1992-Ohio-42. The facts of the instant claim show plaintiff volitionally exposed himself to an open and obvious hazardous condition. The presence of a wooden support prop accompanied with the appreciable size of the window bore sufficient imprint of the window's defective nature. Defendant, under the circumstances, is not charged with a duty to protect plaintiff from conditions of the premises (such as a defective window), which are so obvious and apparent to plaintiff that he should reasonably be expected to discover and protect himself against them. *Keiser v. Giant Eagle, Inc.* (1995), 103 Ohio App. 3d 173. In other words, no liability shall attach to defendant for an injury to plaintiff arising out of a dangerous condition on the premises of which plaintiff has knowledge and fully appreciates the risk of injury involved. *Paul v. Uniroyal Plastics Co.* (1988), 62 Ohio App. 3d 277. Plaintiff, in the instant claim, by choosing to close the propped window with full knowledge of the defective nature presented, voluntarily exposed himself to a known danger and thereby relieved defendant of any duty to protect him. Consequently, plaintiff's claim is

denied.

IN THE COURT OF CLAIMS OF OHIO

ROCCO ORTIZ	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10957-AD
CHILLICOTHE CORRECTIONAL INSTITUTION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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