

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ANDREW DAVIS-BEY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-07431

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action 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, plaintiff was an inmate in the custody and control of defendants¹ pursuant to R.C. 5120.16. On the morning of January 18, 2006, plaintiff and 26 other inmates were transported via bus from the Mansfield Correctional Institution to the Corrections Medical Center (CMC) in Columbus. The driver of the bus, Corrections Officer (CO) Jeffrey White, testified that while traveling south on U.S. Route 23 toward CMC, a tow truck ahead of the bus pulled off the road onto the right berm of the four-lane highway. White stated that he was driving in the right lane at the time and thus steered the bus into the left lane to allow for safe passage around the tow truck. However, according to White and CO Johnathan Wallace, who was a passenger on the bus, the tow truck darted back onto the roadway and stopped directly ahead of the bus

¹The term “defendants” shall hereinafter refer to the Ohio Department of Rehabilitation and Correction and the Mansfield Correctional Institution.

to assist a disabled vehicle in the median. White stated that in order to avoid the tow truck, he applied the brakes, waited for a tractor-trailer to pass in the right lane, then steered the bus into the right lane and drove past the tow truck. From there, the bus continued on to CMC without further incident.

{¶ 3} Plaintiff testified that from his seat on the right side of the bus, he observed that when White began to re-enter the right lane to avoid the tow truck, he steered the bus into the path of the tractor-trailer. According to plaintiff, the driver of the tractor-trailer sounded a horn, causing White to swerve the bus back into the left lane and slam on the brakes. According to plaintiff, the bus was traveling “fast” when the incident occurred and the sudden swerving and application of the brakes caused him to hit his forehead on the seat in front of him and twist his back.

{¶ 4} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that defendants’ acts or omissions resulted in a breach of that duty, and that the breach proximately caused him to suffer injury. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207-208. Reasonable 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. However, the state is not an insurer of inmates’ safety. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App.3d 107, 112.

{¶ 5} White testified that the tractor-trailer driver did sound a horn, but that it was directed at the tow truck rather than the bus. According to White, the horn sounded just as the tow truck crossed the southbound lanes ahead of the tractor-trailer and the bus. White stated that he was aware of the tractor-trailer, that he waited for it to pass

before steering into the right lane, and that the bus never swerved in the manner described by plaintiff.

{¶ 6} White stated that due to snow accumulation on the roadway, he drove the bus well under the posted speed limit of 55 miles per hour (mph). According to White, he was driving approximately 43 mph when he first noticed the tow truck pulling onto the right-hand berm, at which time he released the gas pedal. White testified that after the tow truck darted in front of the bus, he “lightly” applied the brakes to avoid colliding with it.

{¶ 7} Wallace testified that when the bus arrived at CMC, approximately six inmates including plaintiff complained that they had sustained injuries during the incident. Wallace stated that in response to their complaints, he arranged for those inmates to be examined immediately upon entering CMC.

{¶ 8} Plaintiff was examined by nurse Denise Crowder. Crowder testified that during such routine examinations, she would prepare a report recording the inmate’s vital signs and noting any injuries about which the inmate complained. The report that Crowder prepared during her examination of plaintiff reflects that he complained of lower-back pain, but not an injury to his forehead. (Defendant’s Exhibit C.) According to Crowder, if plaintiff had a visible forehead injury or had told her of the same, she would have noted it in her report. Crowder also stated that plaintiff’s vital signs did not suggest that he had experienced any recent “distress.”

{¶ 9} Upon review of the evidence, the court finds that plaintiff’s version of the incident lacks credibility. Although plaintiff contends that the bus made a sudden, sharp turn to avoid the tractor-trailer, the testimony of Wallace and White established that the bus made no such movement. In addition, Wallace and White both completed incident reports in which they wrote that the bus did not swerve or skid at any time. (Defendant’s Exhibits A and B.) Furthermore, in contrast to plaintiff’s testimony that the bus was traveling at a high rate of speed, White’s testimony established that he drove the bus at a reasonable speed for snowy conditions.

{¶ 10} There is also no medical evidence to support plaintiff's claim that he suffered injuries to his forehead during the incident. The only medical evidence introduced at trial was the report from Crowder's examination of plaintiff. Although the report reflects that plaintiff complained of back pain, it shows that he did not complain of a forehead injury and it contains no objective findings to evidence any injuries.

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

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

Case No. 2006-07431

- 5 -

MAGISTRATE DECISION

Jennifer A. Adair
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Andrew Davis-Bey, #405-289
Allen Correctional Institution
P.O. Box 4501
Lima, Ohio 45802

Magistrate Steven A. Larson

RCV/cmd
Filed September 14, 2009
To S.C. reporter October 6, 2009