

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Stacy Rose, :
Plaintiff-Appellant, : No. 04AP-1360
v. : (C.C. No. 2002-06201)
Ohio Department of Rehabilitation : (REGULAR CALENDAR)
and Correction, :
Defendant-Appellee. :
:

O P I N I O N

Rendered on August 2, 2005

Swope and Swope, and Richard F. Swope, for appellant.

Jim Petro, Attorney General, and Tracy M. Greuel, for appellee.

APPEAL from the Ohio Court of Claims.

BRYANT, J.

{¶1} Plaintiff-appellant, Stacy Rose, appeals from a judgment of the Ohio Court of Claims overruling his objections to a magistrate's decision and concluding defendant-appellee, the Ohio Department of Rehabilitation and Corrections ("ODRC"), is not liable on plaintiff's personal injury claim. Because the trial court improperly concluded plaintiff was the sole proximate cause of his injuries, we reverse.

{¶2} Plaintiff is an inmate at ODRC's Chillicothe Correctional Institution ("CCI"). Plaintiff saw a prison physician for back and shoulder problems that made it difficult for plaintiff to use the top bunk to which CCI had assigned him. On March 9, 2002, a prison physician issued him a bottom bunk restriction. According to CCI procedures, the restriction should have been forwarded to proper personnel, who then would assign plaintiff to a lower bunk. Nonetheless, four weeks passed without plaintiff's reassignment to a bottom bunk.

{¶3} On April 10, 2002, plaintiff was sleeping on his top bunk when a buzzer went off, suddenly waking him. Plaintiff alleges that, as he jumped from the bed to the floor, he lost his footing on a wet spot on the floor and fell, sustaining injury. Plaintiff filed a complaint in the trial court, asserting that ODRC negligently failed to repair problems with the windows and roof of the building that were causing water to leak onto the floor of his dormitory, that ODRC negligently failed to heed its physician's restrictions and move plaintiff to a lower bunk, and that ODRC's breaches of duty proximately caused the accident and his resulting injuries.

{¶4} The matter was tried to a magistrate, who heard testimony from plaintiff, a fellow inmate, and various prison personnel before concluding that plaintiff failed to prove any of his claims for relief. The magistrate's decision, in pertinent part, acknowledged that "the testimony does support the inference that the restriction was never placed in plaintiff's file[.]" (Magistrate Decision, 4.) The magistrate nonetheless concluded "it is also evident that plaintiff failed to exercise a reasonable degree of care for his own safety when he did not bring his bottom bunk restriction to the attention of defendant's staff. Plaintiff's bottom bunk restriction was issued on March 9, 2001. Plaintiff fell on April 10,

2001. Plaintiff failed to prove by a preponderance of credible evidence that he brought his bottom bunk restriction to the attention of his unit sergeant at any time during the four weeks after it was issued. The court finds that plaintiff's actions in failing to notify defendant's staff of his bottom bunk restriction was the sole proximate cause of his injuries." (Magistrate's Decision, 4-5.)

{¶5} In reviewing the magistrate's decision on plaintiff's objections, the trial court determined the magistrate's conclusions were supported by the greater weight of the evidence. Accordingly, the trial court rejected plaintiff's objections, adopted the magistrate's decision and recommendation as its own, and entered judgment for ODRC. Plaintiff appeals, assigning the following errors:

ASSIGNMENT OF ERROR NO. 1:

THE TRIAL COURT AND THE MAGISTRATE'S RULING THAT PLAINTIFF-APPELLANT HAD THE OBLIGATION TO ENSURE DEFENDANTS-APPELLEES FOLLOWED THEIR PROCEDURES FOR CIRCULATING BOTTOM BUNK RESTRICTIONS IS CONTRARY TO LAW AND INCONSISTENT WITH THE ACCEPTED FACTS.

ASSIGNMENT OF ERROR NO. 2:

THE TRIAL COURT'S AND THE MAGISTRATE'S RULING THAT DEFENDANTS-APPELLEES WERE NOT AWARE OF THE ACCUMULATION OF WATER ON THE FLOOR IN THE SIXTY YEAR OLD BUILDING IS CONTRARY TO THE ADMISSION WATER DID ACCUMULATE IN DROPLETS ON THE WALLS, THE FACT NO CORRECTIONAL OFFICER WHO WAS CONSISTENTLY ON DUTY IN THE DORM REFUTED THAT WATER DURING RAIN STORMS ACCUMULATED ON THE FLOOR AND NO FOLLOW UP WAS MADE AFTER SKINNER NOTED THE CONDITION CAUSED BY THE CONDENSATION.

ASSIGNMENT OF ERROR NO. 3:

THE TRIAL COURT'S AND THE MAGISTRATE'S RULING IS ERRONEOUS BECAUSE IT IS UNCONSTITUTIONAL AND CONTRARY TO THE FACTS ESTABLISHING PLAINTIFF-APPELLANT HAD A PRIOR SURGERY AND EXCLUDING WATER, EXIT FROM A TOP BUNK AS REQUIRED EASILY CAUSED THIS ACCIDENT AND AGGRAVATED PLAINTIFF-APPELLANT'S EXISTING INJURIES.

ASSIGNMENT OF ERROR NO. 4:

THE TRIAL COURT'S AND THE MAGISTRATE'S RULING IMPOSING A DUTY ON AN INMATE TO ENFORCE A DOCTOR'S ORDER IS INCONSISTENT WITH LAW, PRISON CONDITIONS AND RESTRICTIONS AS DEMONSTRATE[D] BY REVERSAL OF A TICKET ACCUSING PLAINTIFF-APPELLANT OF LYING ABOUT THE RESTRICTION.

ASSIGNMENT OF ERROR NO. 5:

THE TRIAL COURT AND MAGISTRATE ERRED IN RULING THERE WAS NO EVIDENCE OF CONSTRUCTIVE NOTICE BECAUSE EVIDENCE DEMONSTRATED THE CONDITION WAS OF LONG STANDING AND COMMON KNOWLEDGE BECAUSE OF THE OBVIOUS CONDITION OF WATER AND THE STATE OFFERED NO EVIDENCE TO REBUT CLEAR EVIDENCE OF THE CONDITION.

ASSIGNMENT OF ERROR NO. 6:

THE DECISION OF THE TRIAL COURT AND MAGISTRATE IS AGAINST THE WEIGHT OF THE EVIDENCE AND IS CONTRARY TO LAW.

{¶7} Because plaintiff's first, third, fourth and sixth assignments of error relate to ODRC's failure to move plaintiff to a lower bunk, we address them together. In them, plaintiff asserts the trial court erred in concluding that the sole proximate cause of plaintiff's accident was plaintiff's failure to inform prison staff of the bunk restriction prior to his accident. His sixth assignment of error, asserting the trial court's decision is against

the manifest weight of the evidence and contrary to law, sums up the more specific errors alleged in the first, third, and fourth assignments of error.

{¶8} Judgments supported by some competent credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. Because plaintiff alleged ODRC was negligent, plaintiff was required to show the existence of a duty, a breach of that duty, and an injury proximately caused by the breach. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. "Credibility issues are not resolved as a matter of law, but are left to the trier of fact to determine." *Ciccarelli v. Miller*, Mahoning App. No. 03 MA 60, 2004-Ohio-5123, ¶35, citing *Lehman v. Haynam* (1956), 164 Ohio St. 595.

{¶9} In the context of a custodial relationship between the state and its prisoners, the state owes a common law duty of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207. 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. The state is not an insurer of the safety of its prisoners, but once it becomes aware of a dangerous condition in the prison, it is required to take the reasonable steps necessary to avoid injury to prisoners. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 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.

{¶10} According to plaintiff, the trial court overlooked, or misinterpreted, competent, credible evidence supporting plaintiff's contention that ODRC knew or should have known about his bunk restriction but took no action to move him to the lower bunk. He thus contends the trial court erred in finding the sole cause of the accident was plaintiff's failure to properly notify prison personnel of his bunk restriction. Instead, plaintiff urges, ODRC's negligence in assigning plaintiff the top bunk and in permitting water to accumulate on the floor proximately caused plaintiff's fall and injury.

{¶11} At the hearing before the magistrate, plaintiff testified that at the time of the accident he was assigned to a top floor dormitory. He stated that when it rained, water came in through the windows and roof, sometimes in such volume that a bucket and mop were needed to clear away the water. He alleged he and others brought the water problem to the attention of prison staff, but nothing was done to address the problem.

{¶12} Regarding his medical injury and bunk restriction, plaintiff testified he sustained shoulder and back injuries in a van accident and, as a result, he suffered chronic pain. He said he saw a prison physician, who issued the bunk restriction on March 9, 2001. According to plaintiff, prison procedure called for medical staff to send copies of the restriction to him and the building sergeant. Plaintiff, however, stated that when he told Sergeant Teresa Skinner, the correctional counselor assigned to his floor, of his bunk restriction, she said she had not received a copy and he should bring one to her. He testified he then went back to medical staff and obtained another copy to show her, and after showing it to her, he still was not moved to a lower bunk.

{¶13} Plaintiff described how the accident occurred, stating that "right after * * * 4:00 count" when prisoners had "to be on your rack * * * I dozed off. After count cleared,

they ring a buzzer, and everybody gets up and do what you want to do. * * * The buzzer woke me up. I didn't even know it had rained, so when I jump off the bed, you have a foot locker right there. One foot landed on the locker. I use it like a step. One foot landed on the foot locker, and I wasn't expecting the floor to be wet. When I put my weight down as I step on the floor, I just lost my footing and fell." (Tr. 17.) Plaintiff testified that he did not get out of the top bunk any differently than he had in the past. When he hit the floor, "[i]t was more or less a heck of a jar. My head did hit the floor. My wrist hit the foot locker. That's what really hurt. My ankle twisted. Some guys—my bunky, the next guy that sleeps next to me, you know, they pretty much helped me up and everything, you know. It hurt." (Tr. 18.)

{¶14} After the fall, plaintiff went to the prison medical facility for assistance. He testified that when he returned, prison personnel continued to refuse to recognize his bunk restriction. Specifically, plaintiff "approached [Captain Davis] and said, 'Look, I fell. I need to be in the bottom bunk restriction. It's not—this is not working.' " (Tr. 21.) According to plaintiff, Davis' exact response was, " 'I'm not going to get hit with a lawsuit. I'm going to put you in isolation for one day[.]' * * * They didn't have [a lower bunk] they could give me, so he was going to put me in isolation, which is the hole, for one day until they got me a bottom bunk." Id. Plaintiff testified, "I think it was two or three days later I got a ticket which stated I was lying and giving false information and I disobeyed a direct order by not going to medical getting a bottom bunk restriction band or whatever, the documents. I don't know. He said he told me to do something, go to medical. But the main thing was lying and giving false information, saying I had a bottom bunk restriction. And

they said that I never even had one. So they charged me with saying I had a bottom bunk restriction, saying I didn't. But I did." (Tr. 21-22.)

{¶14} Sergeant Skinner testified she spent several hours a day in plaintiff's dormitory and was familiar with conditions there. She denied a significant amount of water accumulated on the floor, but rather testified water would form on the wall due to condensation. She stated she was unaware of inmates' complaints about the water, either to her or to each other.

{¶15} Regarding plaintiff's bunk restriction, Skinner testified plaintiff never showed her a medical restriction, but she remembered that he requested a bottom bunk as a privilege because he was a tutor. According to Skinner, when "medical" issues a bottom bunk restriction, the proper procedure is to give one copy to the prisoner and the other to the unit where the inmate slept. In this case, over 30 days elapsed between the prison physician's order and plaintiff's accident, but Skinner did not see the order.

{¶16} Scott Bolte, a registered nurse with the prison medical facility, also testified regarding prison procedure when a bunk restriction is issued. According to Bolte, after the physician ordered that plaintiff have a bottom bunk restriction, a notation should go into the medical records so indicating. Bolte stated a copy of the restriction also goes to the job coordinator, Terry Carroll in this case, who keeps it in a file, to the unit where the inmate is housed, and to the count office that is responsible for assigning beds. According to Bolte, the copy should arrive at the unit within a day or so.

{¶17} Fellow inmate Charles Simmons testified he was in the bunk next to plaintiff reading mail when the accident occurred. According to Simmons, it had been raining, the window was leaking, and so much water was entering the sleeping area that inmates

were moving or covering their personal items. He indicated he was not sure if anyone ever complained to the correctional officer about the water, but the inmates complained to each other. Simmons stated he could not remember if water was ever on the floor at a time when Skinner was inspecting.

{¶18} Kevin Scott, an institutional inspector, testified he oversaw inmate grievances, but he did not investigate plaintiff's fall. Scott explained the procedure plaintiff should have gone through in order to complain that his bunk restriction was not being honored. Specifically, Scott testified plaintiff should have made an informal complaint to "medical" and waited for a response. If the matter was not resolved, plaintiff should have filed a formal grievance. As Scott testified, "in his grievance, formal grievance, he can state in there he had been issued a bottom bunk and it has not been granted to him. And then I would investigate his grievance. And if I find by going through his medical file, whatever, that he has been issued a bottom bunk restriction for 90 days or whatever, I would see to it that he was put in his bottom bunk." (Tr. 91.)

{¶19} Scott further testified he heard about the accident in a "kite" plaintiff sent him. Scott testified the April 16 kite complained that plaintiff was in segregation, was injured in the April 10 accident, and was not receiving medical care. In response, Scott wrote to plaintiff and said he found out plaintiff was "in seg" for a Class 2 violation. (Tr. 86-87.)

{¶20} Given that testimony, we first address the magistrate's conclusion that plaintiff's failure to inform prison staff of his restriction was the sole proximate cause of the accident. Several witnesses testified that prison procedure required the medical staff to forward the bunk restriction to the inmate's unit. No witness testified that it was solely the

inmate's duty to bring a bunk restriction to the attention of prison staff, although Skinner indicated that, had plaintiff shown her the restriction, she would have arranged for a lower bunk. Apparently premised on Skinner's testimony, the magistrate concluded plaintiff's failure to bring the restriction to staff attention was the proximate cause of the accident. Stated otherwise, the magistrate concluded that, had plaintiff brought the bunk restriction to the attention of prison staff, he would have been moved to a lower bunk and the accident would not have occurred.

{¶21} While plaintiff testified he told Skinner of the restriction twice before the accident, Skinner admitted only that plaintiff asked for a lower bunk as a privilege because he was a tutor, not because of a medical restriction. The magistrate found, and the trial court agreed, that the testimony of Skinner and Scott was more credible than plaintiff's testimony. Because the magistrate personally observed the demeanor of the witnesses and was in a better position to assess their credibility, we ordinarily would accept that conclusion.

{¶22} Plaintiff, however, offered uncontroverted testimony that he told Captain Davis after the accident about his bunk restriction, his need to be moved because of the accident, and his inability to make the top bunk work for him. As a result, he was placed in solitary confinement and charged with lying. CCI's reaction to plaintiff following the accident negates ODRC's position that the accident resulted from plaintiff's breach of a duty to notify prison staff of the restriction: the undisputed evidence demonstrated that when plaintiff notified staff of his need for a bottom bunk, he was not believed. Only after he won the appeal of his conviction for lying was plaintiff moved to a lower bunk. The evidence thus allows only the conclusion that, even if plaintiff failed to advise Skinner of

the bottom bunk restriction, his failure was of no consequence, as his message would not have been effective.

{¶23} Contrary to that undisputed evidence, the trial court's decision essentially determined that plaintiff's own negligence in failing to inform prison staff of the restriction outweighed any possible negligence on the part of ODRC in failing to promptly implement his bunk restriction. Even if we discredit plaintiff's testimony that he tried multiple times before the accident to notify prison staff of his bunk restriction, the evidence demonstrates that when he notified them after the accident, he was punished; he was not given a bottom bunk. Cf. *May v. Dept. of Rehab. & Corr.* (June 28, 2001), Franklin App. No. 00AP-1327 (reversing the trial court's conclusion that the plaintiff's own negligence in failing to huddle with other inmates and use them for support while being forced to walk on an icy path demonstrated a failure to show reasonable care for his own safety, thus negating any ODRC breach of duty). The trial court erred in concluding plaintiff was to blame for his accident for failing to do something that would not have affected his bunk placement.

{¶24} Accordingly, plaintiff's first, third, fourth and sixth assignments of error are sustained to the extent indicated.

{¶25} Plaintiff's second and fifth assignments of error take issue with the court's findings regarding the allegation that accumulated water contributed to or caused plaintiff's slip and fall. Because the trial court focused primarily upon what it deemed was plaintiff's breach of duty to inform prison staff of the bunk restriction, the court did not address the issue of whether water was a factor in the accident. Absent the trial court's conclusion that plaintiff's failure to notify staff of the bunk restriction was the sole

proximate cause of the accident, the question is whether the remaining evidence would support a finding that ODRC was negligent. Specifically, if the trial court finds that the presence of water either caused plaintiff's fall or rendered his fall more injurious than it otherwise would have been, the court will need to consider whether prison staff knew or should have known about the water problem, and whether any failure to address the problem was actionable. Because the issues raised in plaintiff's second and fifth assignments of error were not fully considered in the trial court, these issues are not ripe for our review, and the second and fifth assignments of error are rendered moot.

{¶26} Having sustained plaintiff's first, third, fourth and sixth assignments of error to the extent indicated, rendering moot his second and fifth assignments of error, we reverse the judgment of the Ohio Court of Claims and remand for further proceedings in accordance with this opinion.

*Judgment reversed
and case remanded.*

FRENCH and McGRATH, JJ., concur.
