IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

RICHARD K. JACKSON,	)	
	)	C.A. No. 07C-11-030 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
JEANNETTE MINNER, DEBBIE STYLES, MILES EDGE, DAVE HALL, STANLEY TAYLOR, PAUL HOWARD, DELAWARE DEPARTMENT OF CORRECTIONS, DELAWARE BUREAU OF PRISONS, and THE STATE OF DELAWARE,	)	
	)	
Defendants.	)	

Submitted: October 8, 2012
Decided: March 1, 2013

Richard K. Jackson, *Pro Se.*

Marc P. Niedzielski, Esq., and Ophelia Waters, Esq., Department of Justice, Wilmington, Delaware. Attorneys for Defendants.

Upon Consideration of Defendants'
Motion for Summary Judgment
GRANTED

VAUGHN, President Judge

Jackson v. Minner, et al.
C.A. No. 07C-11-030 JTV
March 1, 2013

OPINION

In this civil action, the plaintiff, Richard Jackson, seeks damages for injuries allegedly caused by the negligence of various correctional officers and supervisors during his incarceration at Sussex Correctional Institute. All of the defendants have moved for summary judgment pursuant to Superior Court Civil Rule 56(b).

FACTS

On May 23, 2006, the plaintiff was taken by prison transport van from Sussex Correctional Institute to a Board of Parole hearing at, what was then, the Delaware Correctional Center. When he was transported, the plaintiff was placed in handcuffs, leg irons, a waist restraint chain, and a rectangular metal box, known as a "black box," which was placed over his handcuffs to provide additional restraint on the plaintiff's range of movement, in accordance with standard operating procedure.

After completing his Board of Parole hearing, the plaintiff was returned to the prison van, escorted by correctional officers, Jeannette Minner, Debbie Styles, and Miles Edge. The plaintiff was again restrained as he was previously, but this time with leg irons that had a shorter chain that connected his feet together. When the plaintiff reached the van, which was equipped with a step to assist prisoners in entering the van, he asked the correctional officers to help him into the van. According to the plaintiff, the correctional officers ignored his request and continued to converse with each another. When the plaintiff attempted to enter the van, he lost his balance and fell from the step of the van to the ground, allegedly injuring his lower back.

PROCEDURAL HISTORY

The plaintiff originally filed a lawsuit against individual defendants, Jeannette Minner, Debbie Styles, and Miles Edge, who were the correctional officers involved in transporting the plaintiff, and individual defendants, Dave Hall, Stanley Taylor, and Paul Howard, who were Department of Correction supervisors. Specifically, he sued all individual defendants under common law negligence claims (Counts I through VII), and for due process violations under 42 U.S.C. § 1983 (Count VIII). The plaintiff also sued the Delaware Department of Correction, Delaware Bureau of Parole, and the State of Delaware, alleging that they were responsible for the actions and omissions of their employees (Count IX).

On April 9, 2010, the Court granted summary judgment in favor of the Delaware Department of Correction, Delaware Bureau of Parole, and the State of Delaware on sovereign immunity grounds.[1] On March 17, 2011, the Court granted summary judgment in favor of all individual defendants as to the plaintiff's 42 U.S.C. § 1983 claims.[2] In that opinion, the Court stated that it would not address the defendants' Motion for Summary Judgment pertaining to the plaintiff's negligence claims in Counts I through VII, because the defendants failed to adequately address those claims in their motion. As a result, the Motion for Summary Judgment was denied as to those Counts without prejudice.[3]

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[1] *Jackson v. Minner*, C.A. No. 07C-11-030 JTV (Del. Super. Apr. 9, 2011) (ORDER).

[2] *See Jackson v. Minner*, 2011 WL 947069 (Del. Super. Mar. 17, 2011).

[3] *Id.* at *3.

On August 9, 2012, all of the defendants moved for summary judgment as to the plaintiff's remaining common law negligence claims. This is the Court's opinion regarding those claims.

THE PLAINTIFF'S REMAINING COMPLAINTS

The plaintiff's remaining claims in Counts I through VII center around the alleged negligence of the correctional officers responsible for the plaintiff's transport on May 23, 2006. In Counts I through VI, the plaintiff alleges that the correctional officers, Minner, Styles, and Edge, were negligent, grossly negligent, and reckless in failing to assist him in entering the van; ignoring his request for assistance in entering the van; failing to comply with the Operating Policies and Procedures of Delaware Fleet Services; and failing to warn him of the risk of falling when entering the van. In addition, the plaintiff faults defendant-Minner for using a shorter length of chain on his leg irons, and for placing the leg irons on him in such a manner as to substantially increase the danger of falling.

The plaintiff also claimed, in Count VII, that the correctional officers' supervisors, Hall, Taylor, and Howard, were grossly negligent and reckless in failing to adopt, promulgate, and/or enforce written regulations, rules, policies, and practices regarding the safe entry of inmates into prison vans; failing to adequately train, supervise, and monitor the job performance of the correctional officers involved in this case; entrusting the custody of the plaintiff's transport to inadequately trained, supervised, and monitored correctional officers; and entrusting the operation of the van to inadequately trained, supervised, and monitored correctional officers.

PARTIES' CONTENTIONS

The defendants have moved for summary judgment, claiming that under the "public duty doctrine," the defendants, as employees of the Delaware Department of Correction, owed a duty of care to the general public only and not to the plaintiff personally. Additionally, they contend that even if the public duty doctrine is inapplicable in this case, they are immune from civil liability under the State Tort Claims Act, 10 *Del. C.* § 4001, and are entitled to summary judgment as a matter of law.

The plaintiff contends that under the "law of the case doctrine," the defendants are precluded from arguing that they owed no duty of care to the plaintiff or that they are immune under the State Tort Claims Act, because this Court allegedly already addressed and rejected those contentions in a prior Motion to Dismiss.[4] The plaintiff further contends that the defendants are not entitled to summary judgment because the public duty doctrine is inapplicable in this case, because 11 *Del. C.* § 6504 imposes on the Department of Correction a duty of care to all prisoners personally. In addition, the defendants are not immune under the State Tort Claims Act, the plaintiff contends, because the "defendants [were] acting within the scope of their employment," and there is sufficient evidence to find that the defendants were grossly negligent.

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[4] The docket shows that a Motion to Dismiss has never been filed or adjudicated in this case. As mentioned above, the Court has previously denied the defendants' Motion for Summary Judgment without prejudice as to the plaintiff's negligence claims, because the defendants failed to adequately address those claims in their motion.

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[5] The moving party bears the burden of establishing the non-existence of material issues of fact.[6] If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.[7] In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.[8] Thus, the Court must accept all undisputed factual assertions and accept the non-movant's version of any disputed facts.[9] Summary judgment is inappropriate "when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances."[10]

DISCUSSION

I will first address the plaintiff's argument that the law of the case doctrine precludes the defendants from arguing that they do not owe a duty of care to the

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[5] Super. Ct. Civ. R. 56(c).

[6] *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

[7] *Id.* at 681.

[8] *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99 (Del. 1992).

[9] *Sztybel v. Walgreen Co.*, 2011 WL 2623930, at *2 (Del. Super. June 29, 2011).

[10] *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super. Jan. 31, 2007).

plaintiff or that they are immune under the State Tort Claims Act. The law of the case doctrine holds that:

> [O]nce a matter has been addressed in a procedurally appropriate way by a court, it is generally held to be the law of that case and will not be disturbed by that court unless compelling reason to do so appears. The law of the case doctrine requires that matters previously ruled upon by the same court should be put to rest. The doctrine comes into play, however, only when a prior decision actually or necessarily decides an issue.[11]

As mentioned above, the defendants have previously moved for summary judgment in this case. This Court granted that motion with respect to the plaintiff's 42 U.S.C. § 1983 claims, but denied the defendant's motion, without prejudice, with respect to the plaintiff's negligence claims in Counts I through VII, because the defendants failed to adequately address those claims in their motion.[12] Because the defendants' motion was denied without prejudice to allow them to specifically address the plaintiff's negligence allegations, and because this Court did not actually decide that issue on the merits, the plaintiff's contention that the law of the case doctrine precludes the defendants from moving for summary judgment again is without merit. I will now address the merits of the defendants' Motion for Summary Judgment.

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[11] *Odyssey Partners v. Fleming Co.*, 1998 WL 155543, at *1 (Del. Ch. Mar. 27, 1998) (citations and internal quotation marks omitted).

[12] *See Jackson v. Minner*, 2011 WL 947069, at *3 (Del. Super. Mar. 17, 2011).

PUBLIC DUTY DOCTRINE

It is well-settled that negligence is premised upon the existence of a legal duty, a breach of that duty, and injury proximately caused by that breach.[13] The defendants contend that they owed no legal duty to the plaintiff under the "public duty doctrine." That doctrine holds that where government action is involved, the duty that is claimed to be owed to the injured party by a governmental agency or its agents runs to the public at large and not to the specific individual.[14] The public duty doctrine, however, is inapplicable when there is a "special relationship" between the governmental agency or its agents and the injured individual.[15] Such a special relationship exists when there is:

> (1) an assumption by the governmental agency or its agents, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the governmental agency or its agents that inaction could lead to harm; (3) some form of direct contact between the governmental agency or its agents and the injured party; and (4) that party's justifiable reliance on the affirmative undertaking of the governmental agency or its agents.[16]

I find that a special relationship does exist in this case between the plaintiff, a

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[13] *See e.g.*, *Patton v. Simone*, 1993 WL 144367, at *10 (Del. Super. Mar. 22, 1993).

[14] *Castellani v. Delaware State Police*, 751 A.2d 934, 938 (Del. Super. 1999).

[15] *See Patton*, 1993 WL 144367, at *13.

[16] *Castellani*, 751 A.2d at 938.

prison inmate, and the defendant correctional officers (*i.e.*, Minner, Styles, and Edge), but not the defendant supervisors (*i.e.*, Hall, Taylor, and Howard).

With respect to the defendant correctional officers, I find that the first prong of the special relationship test has been satisfied. 11 *Del. C.* § 6504 provides in pertinent part: "The Department [of Correction] . . . shall have the duties set forth in this chapter and the exclusive jurisdiction over the care, charge, custody, control, management, administration and supervision of: (1) All offenders and persons under the custody of the Department." Therefore, Section 6504 imposes on the Department of Correction and its employees an affirmative duty to care for, control, and supervise prisoners.[17] The statute does not impose this duty on correctional officers for the benefit of the general public.[18] In addition, other courts have held that an affirmative duty to care for inmates is also imposed on correctional officers, in part, based on the nature of the correctional officer/prisoner relationship, because inmates have limited

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[17] *See Multiple Claimants v. N.C. Dept. Of Health and Human Servs.,* 646 S.E.2d 356, 360 (N.C. 2007) (holding that the State's Department of Health and Human Services had a statutorily imposed affirmative duty to inspect the jails to ensure their compliance with minimum standards for fire safety, and therefore, the public duty doctrine was inapplicable when several inmates sued the for negligence when a fire broke out in the prison and injured the plaintiffs); *Geiger v. Bowersox*, 974 S.W.2d 513, 517 (Mo. Ct. App. 1998) (holding that the public duty doctrine was inapplicable when a prison nurse, who was required under prison policy to maintain and administer medication to inmates, allowed a prison guard to administer the plaintiff inmate's Maalox prescription, which had floor wax placed in the bottle and caused injuries to the plaintiff).

[18] *See Geiger*, 974 S.W.2d at 517 ("[The nurse's] alleged failure to follow prison policy regarding the administration and maintenance of prescriptions did not affect the general public, but only [the plaintiff inmate] who had a special, direct, and distinctive interest in [the nurse's] performance of her ministerial duties.").

ability to care for themselves.[19] At the time of the incident, the defendant correctional officers were acting in their capacity as correctional officers, and therefore, had an affirmative duty to ensure that the plaintiff was escorted into the van and transported safely.

I also find that the second prong of the special relationship test is met here. The plaintiff alleges in his complaint that he asked the correctional officers for assistance in entering the van, but that they ignored his request and continued to converse with each other. He also alleged that the defendants knew of the risk of injury when they failed to assist him into the van. Accepting the plaintiff's allegations as true, the Court finds that it is reasonable to conclude that the defendant correctional officers had knowledge that their inaction could have led to the plaintiff's harm. Prong three of the special relationship test is also satisfied, because it is undisputed that the defendant correctional officers had direct contact with the plaintiff during the incident, because they escorted him to the prison van and they were standing only several feet away from him when he fell. Lastly, I find that the fourth prong of the special relationship test is satisfied, because the plaintiff could have justifiably relied on the correctional officers for assistance, given the duty of care imposed on them by 11 *Del. C.* § 6504 and the general nature of the correctional officer/prisoner relationship. Accordingly, the Court finds that the public duty doctrine is inapplicable to the defendant correctional officers, because all four of the

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[19] *See e.g.*, *N.C. Dept. Of Health and Human Servs.,* 646 S.E.2d at 360 ("The special relationship exception also applies . . . because of the relationship between the State and inmates by reason of the inmates' inability to care for themselves.").

special relationship factors have been met.

The defendants cite this Court's decision in *Segars v. Redman*[20] for the proposition that Department of Correction employees do not owe a duty of care to inmates. *Segars* is distinguishable, however, because in that case, the inmate plaintiff sued Department of Correction employees for negligence when a correctional officer failed to lock the doors to the plaintiff's dormitory, which allegedly allowed three other inmates to enter the dormitory and steal the plaintiff's property. The plaintiff sued the defendants alleging that they breached their duty of care to provide reasonable security for his personal property. In holding that the Department of Correction employees did not owe a duty to inmates to ensure the security of their personal property, this Court stated, "Delaware, unlike a number of other states, has not imposed a statutory duty on the Department of Correction to secure an inmate's belongings when he is placed in detention."[21] Here, the plaintiff is not alleging that his property was stolen and that the Department owes a duty of care to protect his property. Rather, he alleges, and the Court agrees, that under 11 *Del. C.* § 6504, the Department owes a duty of care to him personally.

As mentioned above, however, I find that there is no special relationship between the plaintiff and the defendant supervisors. In his complaint, the plaintiff alleges that the defendant supervisors were negligent as the supervisors of the correctional officers, and for failing to adopt and/or enforce written regulations

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[20] 1986 WL 9014 (Del. Super. Aug. 18, 1986).

[21] *Id.* at *1.

regarding the safe entry of inmates into prison vans; failing to adequately train, supervise, and monitor the job performance of the correctional officers involved in this case; entrusting the custody of the plaintiff's transport to inadequately trained, supervised, and monitored correctional officers; and entrusting the operation of the van to inadequately trained, supervised, and monitored correctional officers. The plaintiff does not allege, and the record does not show, that the supervisors had any knowledge of this particular plaintiff,[22] or that they had direct contact with him at the time of the plaintiff's fall from the prison van.[23] Accordingly, the plaintiff cannot satisfy the special relationship test with respect to the defendant supervisors, and they are entitled to summary judgment, because they owed no duty to the plaintiff personally.

Having found that the public duty doctrine is inapplicable to the defendant correctional officers, I will next address whether they are immune under the State Tort Claims Act.

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[22] *See Jeffrey v. W.V. Dept. Of Public Safety*, 482 S.E.2d 226, 231 (W. Va. 1996) (holding that the public duty doctrine barred the plaintiff's wrongful death action against the Department of Correction when a prison inmate escaped and killed the plaintiff's wife, because "there is no indication that Correction had any indication that escape of any inmate could result in harm specifically to [the victim]").

[23] *See Davis-Bey v. Missouri Dept. of Corrections*, 944 S.W.2d 294, 299 (Mo. Ct. App. 1997) (holding that the public duty doctrine barred a claim against the superintendent of the prison when the plaintiff inmate was injured in a motor vehicle accident while being transporting, because the court found "no allegations that [the superintendent] directed, encouraged, ratified or personally cooperated in the collision").

STATE TORT CLAIMS ACT

The Court must now consider whether the defendant correctional officers are immune under sovereign immunity principles. Under the State Tort Claims Act, State employees are exempt from civil liability for acts or omissions taken in their capacity as such, if:

> (1) The act of omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;
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> (2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and
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> (3) The act or omission complained of was done without gross or wanton negligence.[24]

Stated differently, in order to defeat the qualified immunity defense of State employees under 10 *Del. C.* § 4001, the plaintiff must show that the defendants were engaged in: (1) ministerial actions; (2) actions taken in bad faith and not in the public interest; or (3) actions of gross or wanton negligence.[25] I will now address each

[24] 10 *Del. C.* § 4001.

[25] *Lovett v. Pietlock*, 2011 WL 2086642, at *3 (Del. Super. Apr. 26, 2011).

element to determine if the defendants are immune from civil liability.

First, I find that the actions or omissions of the defendants were not ministerial. Discretionary acts are those that require some determination or implementation which allows for a choice of methods, or stated differently, those acts where there are no hard and fast rules as to a course of conduct that one must or must not take.[26] "Ministerial acts are those which a person performs in a prescribed manner without regard to his own judgment concerning the act to be done."[27] Here, 11 *Del. C.* § 6504 charges the Department of Correction with the "exclusive jurisdiction over the care" of inmates. Although the statute mandates that the Department of Correction exercise care over inmates, it does not specify *how*, or the *manner* in which, the Department must care for inmates. This was the critical distinction articulated in *Sadler v. New Castle County*,[28] where the Delaware Supreme Court held that when New Castle County rescuers negligently rescued the plaintiff from a fall at Brandywine Falls, their decision to carry the plaintiff across the river, rather than up a cliff, was a discretionary decision.[29] A similar decision was reached in *Simms v. Christina School*

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[26] *Higgins v. Walls*, 901 A.2d 122, 143-44 (Del. Super. 2005) (citations omitted).

[27] *Id.*

[28] 565 A.2d 917 (Del. 1989).

[29] *Id.* at 922. *See also Sussex County v. Morris*, 610 A.2d 1354, 1359 (Del. 1992) (discussing the *Sadler* case and stating that "it is not *what* was used, but *how* it was used that allegedly caused the plaintiff's injuries"); *Higgins v. Walls*, 901 A.2d 122, 144 (Del. Super. 2005) (explaining, in *dicta*, that even if the defendant were a State actor, its actions were ministerial, because it "failed to follow the *prescribed procedure* for issuing hunting licences" (emphasis added)).

District,[30] where the plaintiff sued the school district and a number of its employees for the allegedly negligent supervision of one of its employees. In *Simms*, this Court held that "where there does not seem to be any hard and fast rule concerning the manner in which [the supervisor] was to supervise [the employee] as a residential advisor, I am persuaded that the supervision of [the employee] was also discretionary."[31]

The Delaware Supreme Court, in *Sussex County v. Morris*,[32] has stated that the care of prisoners is generally a ministerial act. However, that proposition applies only when public employees are specifically charged by statute, regulations, or other established procedures to perform particular actions. In *Morris*, the defendant, a Sussex County constable, who was specifically responsible for the transportation of prisoners, was deemed to have been engaging in a ministerial act when he negligently transported a mentally ill patient in his own vehicle, which was not specially equipped to transport such patients. The Supreme Court, in *Morris*, cited the Restatement (Second) of Torts § 895D cmt. h (1979), which in turn cited *Clark v. Kelly*[33] for the proposition that the care of prisoners is ordinarily considered a ministerial act. In *Clark*, the city jailer was deemed to have been engaging in a ministerial act when he was required by statute to "keep the jail clean and well

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[30] 2004 WL 344015 (Del. Super. Jan. 30, 2004).

[31] *Id*. at *8.

[32] 610 A.2d 1354 (Del. 1992).

[33] 133 S.E. 365 (W. Va. 1926).

ventilated, and in good sanitary condition at all times, and free from bugs and vermin," and "to furnish every prisoner with a bed and bedding cleanly and sufficient, and to have his apartment warmed when it is proper."[34] The West Virginia Supreme Court of Appeals held in that case that those duties were ministerial, because they were "all positive duties, the reasonable compliance with which there can be no escape."[35]

Here, 11 *Del. C.* § 6504 only imposes on the Department a general obligation for the "exclusive jurisdiction over the care, charge, custody, control, management, administration and supervision" of all inmates. Importantly, 11 *Del. C.* Ch. 65 does not prescribe a particular manner, or any hard and fast rules, in which the Department must care for, control, or supervise inmates. Therefore, I find that the correctional officers' control over the movement of the plaintiff in this case involved the exercise of discretion under the State Tort Claims Act, and thus, the defendants are immune from liability on that ground.

Secondly, I find that the plaintiff has failed to plead any facts that show that the defendants acted, or failed to act, in bad faith. Bad faith "contemplates a state of mind affirmatively operating with furtive design or ill will."[36] It is not simply "bad judgment or negligence, but rather it implies the conscious doing of a wrong because

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[34] *Id*. at 369.

[35] *Id*.

[36] *Brittingham v. Bd. of Adjustment of City of Rehoboth Beach*, 2005 WL 1653979, at *1 (Del. Super. Apr. 26, 2005) (citing Black's Law Dict. 134 (7th ed. 1999)).

of dishonest purpose or moral obliquity."[37] The plaintiff does not allege, and there is nothing to suggest, that the defendants engaged in conduct with the purpose of injuring the plaintiff. In his complaint, the plaintiff alleges that the defendant correctional officers were engaged in a conversation with each other; that they ignored the plaintiff's request for help; and that correctional officer Minner used a shorter chain to connect his leg irons, which allegedly increased the risk of the plaintiff falling. This conduct, however, was not done with the purpose of injuring the plaintiff, and does not constitute bad faith on the part of the defendants.

Lastly, I find that the alleged acts and omissions of the defendants do not constitute gross negligence as a matter of law. Gross negligence is the "extreme departure from the ordinary standard of care."[38] The plaintiff faults defendant correctional officers for failing to assist him into the prison van, and failing to warn him of the risk and danger of falling. In addition, he faults the defendant Minner with substantially increasing the risk of falling by using a shorter chain to connect his leg irons. Accepting the plaintiff's allegations as true, I find that that conduct would constitute mere negligence at best, and does not constitute an "extreme departure" from ordinary care as a matter of law. Prisoners frequently load and unload from prison vans without the assistance of correctional officers, and without falling and injuring themselves. In fact, the plaintiff successfully entered the prison van without

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[37] *Id.*

[38] *Browne v. Robb*, 583 A.2d 949, 953 (Del. 1992) (citing W. PROSSER, HANDBOOK OF THE LAW OF TORTS 150 (2d ed. 1955)).

the assistance of a correctional officer earlier that day. The fact that the plaintiff was able to walk to the prison van and reach his foot onto the step of the van, even with the shorter leg irons chain, suggests that the chain was not so short as to completely preclude him from safely entering the van by himself. Therefore, I find that the plaintiff has failed to plead facts to demonstrate that the defendants were grossly negligent, and has failed to defeat the defendants' qualified immunity defense under the State Tort Claims Act.

For the foregoing reasons, the defendants' Motion for Summary Judgment is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

cc: Prothonotary
Order Distribution
Mr. Richard K. Jackson
File