[Cite as *Horton v. Ohio Dept. of Rehab. and Corr.* , 2004-Ohio-5923.]

IN THE COURT OF CLAIMS OF OHIO

ANTHONY HORTON	:	
Plaintiff	:	CASE NO. 2001-01370 Magistrate Steven A. Larson
v.	:	MAGISTRATE DECISION
DEPT. OF REHABILITATION AND CORRECTION, et al.	:	
Defendants	:	

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{¶ 1} Plaintiff brought this action against defendant, Dept. of Rehabilitation and Correction, alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant[1] pursuant to R.C. 5120.16. Plaintiff alleges that he was involved in two separate incidents that caused him physical injury. The first claim relates to an injury that plaintiff allegedly sustained while being transported to a job site in the back of defendant's pickup truck. The second claim involves an injury that plaintiff allegedly sustained when he was cut on the neck by a corrections officer (CO). Defendant denies that it was negligent.

{¶ 3} Plaintiff resided at Lebanon Correctional Institution (LeCI) where he was assigned to work in the dairy farm. On the day of the incident, plaintiff was being transported to the hay barn in a Dodge half-ton pickup truck. The bed of the truck was enclosed with an aluminum camper shell that was supported by metal framework on the inside. The truck bed contained three benches which

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[1] For the purposes of this decision, "defendant" refers to the Department of Rehabilitation and Correction.

were bolted to the frame; two benches ran parallel to the sides of the truck and the third was parallel with the cab. The benches were not equipped with seatbelts or restraints.

{¶ 4} On the day in question, plaintiff and three other inmates were in the back of the truck while the farm coordinator, Edwin Bradshaw, drove the vehicle. Plaintiff testified that the truck was on the way down a hill when the left truck tires hit a large bump which caused plaintiff to be thrown against the roof of the metal bed cover, then onto the floor of the truck, and finally, against the front window of the bed cover. Plaintiff claimed that Bradshaw was driving too fast, approximately 30 mph, when he hit the bump.

{¶ 5} Bradshaw testified that on the day of the incident, he was driving around the barn and as he was pulling up alongside the barn doors he drove across a 10-by-20 foot cement slab located approximately 12 to 15 feet in front of the doors. As the truck crossed the cement slab, the slab suddenly collapsed, which caused the truck's right front tire to drop 12 to 18 inches into a hole. The impact did not cause any damage to the truck. Bradshaw explained that he had driven across the cement slab for many years without incident and that the slab was a cover to part of an old septic tank system.

{¶ 6} 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, 285.

{¶ 7} In the special relationship between the state and its prisoners, the state owes prisoners a duty of reasonable care and protection from unreasonable risks of harm. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, at 136. Reasonable care is that which would be utilized by an ordinarily prudent person under the same or similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310. An inmate laborer is not an employee of the state for purposes of R.C. Chapter 4113. *Fondern v. Dept. of Rehab. & Corr.* (1977), 51 Ohio App.2d 180, at 183-4. "*** [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, at 208.

{¶ 8} In this case, defendant owed plaintiff a duty to safely transport plaintiff while he was performing his work-related duties. The court finds that defendant safely transported plaintiff and was, therefore, not negligent.

{¶ 9} The court finds that the testimony of Bradshaw was more credible than plaintiff's with regard to the speed of the truck and the cause of its sudden bouncing. The court finds that as Bradshaw was slowly pulling the truck up to the barn doors, the right front tire dropped into a hole which had been covered by a cement slab, throwing plaintiff about the covered truck bed.

{¶ 10} This case can be distinguished from *Woods v. Dept. of Rehab. & Corr.* (1999), 132 Ohio App.3d 780. In *Woods*, inmates were transported to work in an overcrowded vehicle which was not designed to transport inmates, in that it lacked adequate seating, grab bars, or braces to accommodate the number of inmates being transported. In this case, plaintiff was being transported in the back of a covered pickup truck that was fitted with bench seats which were bolted to the bed of the truck. Plaintiff was seated on one of the bench seats and could have held on either to the bench or to the metal framework of the camper shell. Failure to provide restraints under the circumstances described by plaintiff does not constitute negligence per se. Id.

{¶ 11} Although the state is not an insurer of the safety of its prisoners, once it becomes aware of a dangerous condition, it is required to take the reasonable care necessary to make certain that the prisoner is not injured. *Clemets*, supra. However, a property owner is not responsible for injuries caused by conditions that are not reasonably foreseeable or for which the property owner does not have knowledge. *Smith v. Doane*, (June 26, 1998), Clark App. No. 98 CA 12.

{¶ 12} The distinction between actual and constructive notice is in the manner in which notice is obtained rather than the amount of information obtained. Wherever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶ 13} Plaintiff claims that defendant was negligent in failing to both maintain a lookout for hazards and avoid bumps during the transportation of inmate workers. In this case, the court finds that plaintiff has failed to produce sufficient evidence to establish that defendant had actual or constructive notice of the defective condition of the cement slab. Additionally, insufficient evidence was introduced to show that the collapse of the cement slab was foreseeable. In fact, the evidence adduced at trial shows that Bradshaw had worked around and driven over the cement slab an average of three times per week for several years without incident.

{¶ 14} Accordingly, the court finds that plaintiff has failed to prove either that defendant was negligent in the mode of transportation of inmate workers, or that defendant had notice that the cement slab in front of the hay barn doors was defective. Furthermore, the collapse of the cement slab was not reasonably foreseeable.

{¶ 15} Plaintiff's second claim arises out of an incident that occurred in March 1999. Plaintiff had just returned from the infirmary and was still wearing his orange transport suit. Plaintiff testified that he was talking with a friend when CO Lindsey approached him from behind and put a rusty pocketknife to his neck. He stated that his neck cracked when CO Lindsey grabbed him and that he felt a slight puncture, and then a burning sensation when sweat began to enter the wound. Plaintiff said that he called his mother and then reported the incident to a sergeant.

{¶ 16} CO Lindsey testified that he was a housing officer at the time in question and that he was inspecting cells when he approached plaintiff. He stated that earlier in the day he had asked plaintiff to conform to the institution's policy by changing out of the orange transport suit and into his brown uniform. When Lindsey came back to inspect cells later that day he observed that plaintiff had not changed his clothes. CO Lindsey testified that he asked plaintiff when he was going to get out of that suit and that plaintiff responded by turning his back and telling him to cut it out. According to CO Lindsey, he replied, jokingly, that he would cut it out and proceeded to place his hands on plaintiff's shoulders. When plaintiff moved, Lindsey said that the pen he was holding in his hand poked plaintiff in the neck.

{¶ 17} Sergeant Arthur Wash testified that plaintiff had complained to him that he had been stabbed in the neck by an officer. Sergeant Wash stated that when he inspected plaintiff's neck there were no noticeable marks or abrasions.

{¶ 18} David Simmons testified that he was the lieutenant working that day, that he received a phone call from CO Lindsey after the incident occurred, and that plaintiff came to his office where his neck was photographed. Lieutenant Simmons stated that after the photos were taken he inspected plaintiff's neck and that he could barely detect a mark. He described what he observed as looking like a small razor burn. He also said that the skin was not punctured.

{¶ 19} Barry Baker, the unit sergeant, testified that a few days after the incident, he was making rounds in the isolation unit when plaintiff stopped him. According to Sergeant Baker, plaintiff told him that he had been stabbed in the neck by a CO but that plaintiff refused to provide a name, stating that they had just been horseplaying and that the CO did not intend to hurt him. Sergeant Baker then contacted one of his supervisors who asked for a written statement regarding what plaintiff had said.

{¶ 20} The court finds CO Lindsey's testimony to be quite credible. The evidence shows that CO Lindsey did not injure plaintiff with a rusty knife but, instead, accidentally poked plaintiff with a pen. Additionally, the court finds that plaintiff's neck was not punctured but merely had an abrasion on it the size of a pen tip. Therefore, the court finds that plaintiff failed to prove any negligence on the part of defendant.

{¶ 21} Based upon the evidence presented, the magistrate recommends judgment in favor of defendants.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

STEVEN A. LARSON
Magistrate

Entry cc:

Richard F. Swope
6504 E. Main St.
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

William C. Becker
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendants

LM/cmd
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