

[Cite as *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-6571.]

IN THE COURT OF CLAIMS OF OHIO

MARK MCELFRESH :
Plaintiff : CASE NO. 2001-08013
v. : Magistrate Steven A. Larson
DEPARTMENT OF REHABILITATION :
AND CORRECTION : MAGISTRATE DECISION
Defendant :
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{¶1} This case was tried before a magistrate at the Ross Correctional Institution (RCI) on July 22, 2002. Plaintiff alleges that defendant was negligent in placing plaintiff in an unsafe working environment. At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Chillicothe Correctional Institution (CCI) pursuant to R.C. 5120.16.

{¶2} On September 9, 2000, plaintiff was working with a carpentry crew to dismantle a temporary non-load-bearing wall on the second floor, Room 106, of the Administration Building. The wall was constructed of panels made of sheet metal and tin and held up by screws and clamps. Bottom panels were approximately 6 feet high by 4 feet wide. Smaller panels, between 18 and 24 inches, were placed on top of the bottom panel to reach the ceiling, which was estimated to be 8 feet high. The top was attached to the ceiling by 4 foot sections of channeling which, when fastened together, ran the entire length of the room. Tin trim pieces

approximately 3 inches wide were fastened between the panels to hide the seams.

{¶3} Plaintiff maintains that he was struck in the head by a piece of trim that was loosened by an inmate in the process of dismantling the wall. Plaintiff asserts that defendant was negligent in failing to provide a safe working environment and in not requiring hard hats to be worn to prevent injury.

{¶4} In order for plaintiff to prevail on his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty and that the breach was the proximate cause of his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235. The duty of care owed to an inmate by his custodian is one of ordinary care in the furtherance of the custodial relationship. See *Jenkins v. Krieger* (1981), 67 Ohio St.2d 314. The requisite standard of care is that which is reasonable and ordinary for the health, care, and well being of the prisoner. *Clemets v. Heston* (1985), 20 Ohio App.3d 132.

{¶5} Plaintiff testified that he had been an inmate at CCI for four years and had worked in the carpentry shop for the past three years. On January 9, 2000, he was assigned to a work crew supervised by Erin R. Rinehart. Rinehart had been a carpentry supervisor since December 1996 and, prior to that, a corrections officer for 16 years. Rinehart's crew, consisting of plaintiff and two other inmates, went to the administration building to assist another crew in removing a temporary wall. Plaintiff began working

with the other crew members to dismantle the wall and remove the debris. Since the wall was about 8 feet high, some of the work was overhead. Although hard hats were available, neither crew members from either crew nor supervisors wore them.

{¶6} Rinehart testified that his crew was sent to help the other crew dismantle the wall because his crew had the experience necessary to do the job. Although hard hats were available to the carpentry crew, Rinehart testified that, in his judgment, they were not necessary for this particular job. He explained that his crew used hand tools such as screwdrivers, crowbars, and hammers to remove the wall. Although some of the work was overhead, it was all within arm's reach. Rinehart admitted that he pried a piece of tin trim loose from the wall overhead and, as it fell, one end struck plaintiff on the head. As the trim came loose, Rinehart said he warned plaintiff by yelling, "Look out Hoghead!" (Plaintiff's nickname.) Rinehart estimated that the trim was 4 feet in length and weighed 5 pounds. He remembered holding one end of the trim as it fell, therefore, he said, only one-half of the weight of the trim struck plaintiff. He described plaintiff's injury as a small red bump on his head that looked like a mosquito bite. Rinehart further testified that he asked plaintiff if he wanted to go to the infirmary to have his injury treated, but plaintiff replied, "F*** no! Let's get back to work." He resumed work after a few minutes. Rinehart explained that he did not immediately report the incident because minor injuries such as scratches, bruises, and scrapes occur daily to members of the carpentry crew.

{¶7} Plaintiff testified that he had been working with three other inmates to dismantle the wall when he was hit from behind by

a piece of trim that had been pried loose by inmate Hall. He claimed that the impact knocked him to his knees. He remembered that Rinehart was standing four or five feet away and that he was laughing. Plaintiff testified that he walked out of the room to regain his senses and then went to the infirmary where his wound was cleaned and he was checked for a concussion. Plaintiff further testified that after being treated, he returned to the carpentry shop but not to the job site.

{¶8} Daniel Ray Holloway testified that he was an inmate working with plaintiff to dismantle the wall the day plaintiff was injured. Holloway described the trim that struck plaintiff as being 3½ to 4 feet in length, 3 inches in width, with an estimated weight of 1 or 2 pounds. He recalled that Rinehart was supervising. He did not see plaintiff get hit by the trim, but observed plaintiff rubbing his head after he was struck. He testified that plaintiff was asked if he wanted to go to the infirmary and that plaintiff replied, "F*** no! Go back to work." Additionally, Holloway stated that he was not wearing a hard hat and did not consider it a necessity for the job that day.

{¶9} Inmate Raymond D. Hall testified that he and plaintiff were standing under a concrete pillar that ran across the top of the ceiling, and to which the temporary wall was fastened. He stated that his back was turned when he heard plaintiff mutter obscenities. He turned to see that a piece of cosmetic trim had struck plaintiff on the head. He estimated that the trim was 4 to 5 feet in length and weighed approximately 8 pounds. Hall testified that Reinhart had been working to loosen the trim just prior to it falling. After the trim struck plaintiff, Hall recalled that plaintiff muttered obscenities, rubbed his head, and

continued working. Hall did not remember Rinehart shouting a warning to plaintiff prior to the trim falling.

{¶10} Inmate Vaughn William Aneshansel testified that he was picking up bits of plank and debris from the floor when the trim struck plaintiff. Just prior to the trim striking plaintiff, Aneshansel saw Rinehart working to loosen the trim with plaintiff facing Rinehart a few feet away. Although he did not actually see the trim fall, Aneshansel testified that he heard Rinehart say at least twice, "Look out Hoghead!" before it fell. Aneshansel explained that he turned around immediately after hearing the crash to see plaintiff standing up rubbing his head. Aneshansel further remembers Rinehart asking plaintiff if he wanted to go to the infirmary and that plaintiff responded, "F*** that! Let's work."

{¶11} The evidence is uncontroverted that plaintiff was struck on the head by a piece of tin trim while working to remove a temporary wall. However, the court finds plaintiff's testimony to be unreliable in several respects. For example, the court finds that Rinehart loosened the piece of trim that fell and hit plaintiff; that the force of the impact did not knock plaintiff to his knees; that plaintiff suffered a minor injury for which he did not seek any medical attention, and that he went back to work on the project after he was hit by the trim.

{¶12} Plaintiff's testimony established that plaintiff had three years of experience on the carpentry crew prior to his injury. His crew, supervised by Rinehart, worked almost daily on construction projects which, because of the nature of the work, often resulted in minor injuries. Rinehart, who had years of experience supervising construction crews, testified that hard hats were available, but that they were not necessary for the job of

removing the temporary wall. Holloway, an inmate crew member called as a witness by plaintiff, also testified that hard hats were not necessary for the job. Further, there is no evidence that plaintiff requested a hard hat for the job or was denied use of one. Finally, plaintiff failed to present sufficient evidence to prove that failing to require crew members to wear hard hats violated Administrative Regulation 4121:3-03(A)(4), under the circumstances presented.

{¶13} In short, upon review of the evidence, the court concludes that plaintiff has failed to show, by a preponderance of the evidence, that defendant was negligent in failing to provide him with a hard hat for the job.

{¶14} For reasons set forth above, judgment is recommended in favor of defendant.

{¶15} *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 East Main Street
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

Eric A. Walker
Assistant Attorney General
150 East Gay Street, 23rd Floor

Attorney for Defendant

Case No. 2001-08013

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MAGISTRATE DECISION

Columbus, Ohio 43215-3130

SAL/cmd

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