

coordinator, who told him to slice lettuce but that Aberts did not show him how to operate the vegetable slicer. After about 10 or 15 minutes plaintiff said that his fingers were injured when they caught in the slicer blade. He then reported to Aberts whereupon she escorted him to the dispensary.

{¶5} Aberts testified that on the day of the accident, plaintiff told her that he had operated the machine before, but that she explained to plaintiff basic machine operation, pointing out that his fingers could be easily caught in the blade unless he was careful.

{¶6} Robison testified that on April 6, he gave plaintiff verbal and visual training. He stated that he demonstrated how to set up the slicer, but that he did fill out and sign a training form used by the prison to document the training.

{¶7} William Carmean, the safety coordinator, testified that while investigating this incident, he looked for a completed training form but could not find one. He also testified that the slicer was working properly and that all guards were in place.

{¶8} Plaintiff's claim sets forth a single cognizable action, sounding in negligence. 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.

{¶9} 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, 136. Reasonable care is that which would be utilized by an ordinary prudent person under certain circumstances. *Smith v. United Properties, Inc.*

(1965), 2 Ohio St.2d 310. An inmate laborer, such as plaintiff in the case at bar, 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, 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, 208.

{¶10} The court finds that defendant owed plaintiff a duty to adequately train him on the operation of the vegetable slicer and to warn him of the potential risks associated with its operation. The court also finds that even assuming defendant did instruct plaintiff in relation to the Hobart vegetable slicer, there was insufficient emphasis placed on operational instruction and the importance of safety. The court concludes that defendant breached its duty of reasonable care to protect plaintiff from harm by failing to adequately instruct plaintiff on the proper operation of the vegetable slicer.

{¶11} Although the court finds that defendant was negligent, Ohio's comparative negligence statute, R.C. 2315.19, bars plaintiff from recovery if his contributory negligence is greater (more than 50 percent) than defendant's negligence. In this case, the court finds that plaintiff disregarded a potential hazard and failed to use common sense when he inserted his hand into the chute of the slicer. The court concludes that plaintiff has proven that defendant breached its duty of reasonable care; however, the contributory negligence attributable to plaintiff is 40

percent. Accordingly, judgment is recommended for plaintiff with a 40 percent reduction in any future damages award.

{¶12} *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

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