

[Cite as *Torres v. Ross Correctional Inst.*, 2003-Ohio-4159.]

IN THE COURT OF CLAIMS OF OHIO

RANDY TORRES :

Plaintiff : CASE NO. 2002-01268

v. : MAGISTRATE DECISION

ROSS CORRECTIONAL INSTITUTION : Magistrate Steven A. Larson

Defendant :

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{¶1} On December 5, 2002, this case came on for trial at Ross Correctional Institution before a magistrate of this court. At trial, counsel for defendant made a motion to bifurcate the issues of liability and damages. The court granted that motion, and the case proceeded on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that Russell Dickey, a Corrections Officer (CO) for defendant, negligently supervised the inmates who worked in the food services department, and as a result, plaintiff suffered the loss of the tip of his right middle finger. Defendant contends that CO Dickey was not negligent and that plaintiff's own negligence contributed to the injury.

{¶3} Plaintiff reported to work in the kitchen around 8:30 a.m. on January 18, 2000. A heavy steel door that leads into the center kitchen area and swings in both directions was held open by a deadbolt that locked into the floor. Plaintiff had worked in the kitchen area for two years and had passed through the doorway

frequently. When CO Dickey pulled the deadbolt to close the door, plaintiff reached his hand out to stop the door from closing and caught his right middle finger between the door and the door jamb, severing the fingertip. The fingertip was recovered by a CO and was placed on ice. Plaintiff and his fingertip were transported to The Ohio State University Medical Center (OSUMC) Emergency Room.

{¶4} 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. Plaintiff testified that prior to his injury, CO Dickey was throwing crumpled paper towels around the kitchen and that when plaintiff bent down to pick them up, the door shut on his finger. However, plaintiff's testimony was contradicted by other witnesses. For example, CO Dickey testified that paper towels were not being thrown at any time on January 18, 2000, and that he had voiced a verbal warning that he was going to shut the door before he closed it. Additionally, although inmate Leroy New testified that there was horseplay in the kitchen area that day, he stated that the horseplay had ended a few minutes before plaintiff caught his hand in the door. The court finds that inmate New and CO Dickey's testimony was more credible than plaintiff's testimony; that even if there had been paper towels thrown on the floor, horseplay had ended before the door was shut and was not the cause of the injury. In this case, plaintiff has failed to prove negligence by a preponderance of the evidence.

{¶5} Assuming, arguendo, that defendant was negligent, plaintiff would still not prevail. The court finds that CO Dickey's testimony was credible when he stated that he delivered a

verbal warning to plaintiff before closing the door. Additionally, plaintiff is required to exercise some degree of care for his own safety. See *Hartman v. Di Lello* (1959), 109 Ohio App. 387, 390-1; *Bowins v. Euclid General Hospital* (1984), 20 Ohio App.3d 29, 31; *Thompson v. Kent State University* (1987), 36 Ohio Misc.2d 16. "Contributory negligence" means "any want of ordinary care on the part of the person injured, which combined and concurred with the defendant's negligence and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred." *Joyce-Couch v. DeSilva* (1991), 77 Ohio App.3d 278, 290. In the instant case, plaintiff failed to exercise a reasonable degree of care for his own safety when he did not heed CO Dickey's warning and attempted to walk through the doorway with his hand held out in front of him.

{¶6} Plaintiff also asserts that defendant failed to provide him with adequate and timely medical care. Plaintiff testified that on the way to OSUMC the two officers accompanying him stopped for lunch and that by the time they arrived at OSUMC, his fingertip was so frostbitten that it could not be reattached. CO Scott Hardesty was the transportation officer on duty that day and he testified that plaintiff and his fingertip were taken directly to the hospital. The court finds that CO Hardesty's testimony is more credible than plaintiff's testimony and that defendant administered timely medical care to plaintiff when he was transported to OSUMC. Additionally, plaintiff produced no expert testimony to substantiate the claim that he did not receive adequate medical care. Thus, plaintiff has failed to prove by a preponderance of the evidence that defendant breached any duty with respect to plaintiff's medical treatment.

{¶7} Accordingly, the court finds that plaintiff failed to prove any of his claims for relief. Judgment is recommended in favor of defendant.

{¶8} *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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