

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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STACY ROSE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2002-06201

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} Plaintiff brought this action alleging negligence. On November 22, 2004, the court rendered judgment in favor of defendant. On August 2, 2005, the Tenth District Court of Appeals reversed the judgment of this court and remanded the case for further proceedings, stating in relevant part:

{¶2} “[T]he trial court's decision essentially determined that plaintiff's own negligence in failing to inform prison staff of the [lower bunk] restriction outweighed any possible negligence on the part of ODRC in failing to promptly implement his bunk restriction. Even if we discredit plaintiff's testimony that he tried multiple times before the accident to notify prison staff of his bunk restriction, the evidence demonstrates that when he notified them after the accident, he was punished; he was not given a bottom bunk. * * * The trial court erred in concluding plaintiff was to blame for his accident for failing to do something that would not have affected his bunk placement.

{¶3} “* * *

{¶4} “[T]he court did not address the issue of whether water was a factor in the accident. Absent the trial court's conclusion that plaintiff's failure to notify staff of the bunk restriction was the sole proximate cause of the accident, the question is whether the remaining evidence would support a finding that ODRC was negligent. Specifically, if the trial court finds that the presence of water either caused plaintiff's fall or rendered his fall more injurious than it otherwise would have been, the court will need to consider whether

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prison staff knew or should have known about the water problem, and whether any failure to address the problem was actionable.” *Rose v. Ohio Dep’t of Rehab. & Corr.*, Franklin App. No. 04AP-1360, 2005-Ohio-3935, ¶23, 25.

{¶5} Upon remand, a second trial was held on February 5, 2007, on the issue of liability.¹ Due to the unavailability of former inmate Charles Simmons and former Sergeant Teresa Skinner, their testimony from the previous trial was admitted as evidence. (Plaintiff’s Exhibit 7 and Defendant’s Exhibit D, respectively.)

{¶6} As a preliminary matter, in accordance with the judgment of the court of appeals, the court finds that defendant was negligent when it failed to implement plaintiff’s lower bunk restriction; that defendant’s negligence was a proximate cause of plaintiff’s injuries; and that, in this particular case, plaintiff was not contributorily negligent when he failed to notify defendant of his lower bunk restriction.

{¶7} 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. Plaintiff was housed in dormitory D-5, which is an open dormitory that houses over 100 inmates. The layout of dormitory D-5 consists of three rows of bunk beds with one row of beds along each outside wall and a third row located in the middle of the dormitory. According to plaintiff, on the afternoon of April 10, 2001, he was sleeping in his upper bunk which was located along an outside wall near two windows. When a buzzer sounded signaling that it was count time, plaintiff attempted to exit his bunk. Plaintiff placed one foot on his locker box and the other foot on the floor, where he allegedly encountered a puddle of water. Plaintiff testified that it had rained that day and that the windows near his bed leaked when it rained. Plaintiff lost his balance, fell, and sustained

¹At trial, plaintiff made an oral motion to bifurcate the issues of liability and damages. For good cause shown, plaintiff’s motion is GRANTED, and the court hereby ORDERS that the issues of liability and damages are BIFURCATED for trial. If liability is established, a trial on the issue of damages shall be scheduled at a later date.

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injury. After his fall, plaintiff filed an informal complaint with Sergeant Skinner wherein he alleged that “the two windows in my bed area leak and pour water.” (Plaintiff’s Exhibit 6.) Plaintiff contends that defendant was aware that water leaked through the windows when it rained and that defendant was negligent when it failed to repair the windows. Plaintiff also testified that he had made written complaints about the leaking windows prior to his fall but that he could not provide documentation to support that assertion. Lastly, plaintiff testified that he did not see the water before he fell because he did not look at the floor before exiting his bed.

{¶8} Charles Simmons, an inmate at CCI at the time of the incident, testified that he was sitting on his bunk, which was adjacent to plaintiff’s bunk, reading his mail when plaintiff fell. Simmons also testified that it had rained that day, and that rain water would seep in through the cracks of the window behind his bunk. Simmons further stated that inmates with bunks in the area had to cover up their television sets when it rained to prevent them from getting wet. Although Simmons was unable to recall an instance prior to plaintiff’s fall where inmates had complained to corrections officers about the water, he testified that inmates would complain to one another. Simmons stated that he and other inmates mopped up the water when it appeared on the floor.

{¶9} Sergeant Teresa Skinner testified that she was a correctional counselor in the D-5 unit at the time of the incident. Skinner was not present when plaintiff fell. Skinner testified that, in the wintertime, droplets of water would form on the walls of D-5 because of condensation, but that she never saw any puddles accumulate on the floor. Skinner also testified that she told the maintenance department about the condensation but that the problem was never corrected. Skinner denied that any inmates had complained to her about any puddles of water in the dormitory prior to plaintiff’s fall.

{¶10} Kevin Scott, the institutional inspector at CCI, testified that his duties included overseeing the inmate grievance procedure. Scott explained that inmates are informed of the grievance procedure during orientation when they are provided with an inmate

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handbook. Scott stated that there are three levels in the grievance procedure. The first level is for an inmate to file an informal complaint with the supervisor who is responsible for the section of the institution where the grievance arises. According to Scott, it is the inmate's responsibility also to provide a copy of the informal complaint to the institutional inspector. The informal complaint is logged. If the informal complaint is not resolved, the second step is for the inmate to file a formal grievance with the institutional inspector. The institutional inspector investigates the grievance and provides a written response to the inmate within 14 days of the filing of the grievance. The third step is an appeal, whereby the inmate may file an appeal of the institutional inspector's findings with the chief inspector in Columbus, Ohio.

{¶11} Scott testified that in February 2001, plaintiff had filed an informal complaint regarding his request for a lower bunk and that it was returned to plaintiff with instructions on how to properly file an informal complaint. (Defendant's Exhibit C.) Scott testified that he had no other correspondence from plaintiff regarding any other issues, and that he did not receive any complaint or grievance about a leaky window problem.

{¶12} On the day of his fall, plaintiff related to the nurse that he fell getting out of his upper bunk because "there was water on the floor from the rain coming in the windows." (Plaintiff's Exhibit 4.) In plaintiff's informal complaint regarding the accident, he stated that he fell because the windows near his bed leaked and poured water when it rained. In response to his informal complaint, Sergeant Skinner wrote that "I believe maintenance is aware of the problem." (Plaintiff's Exhibit 6.)

{¶13} Upon review of the evidence, the court finds that plaintiff has proven by a preponderance of the evidence that water was present on the dormitory floor on April 10, 2001, and that the water was a proximate cause of his injuries.

{¶14} 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 defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his

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injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶15} Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends on whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137. However, an inmate incarcerated in a state penal institution is not afforded the status of any of the traditional classifications. In the context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab & Corr.* (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state is not an insurer of the safety of its inmates. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 699, 702. An inmate plaintiff is also required to use reasonable care to ensure his own safety. *Macklin v. Ohio Dep't of Rehab. & Corr.*, Franklin App. No. 04AP-1020, 2002-Ohio-5069.

{¶16} “It is only when there are perils or dangers known to the owner *and not known to the person injured* that liability may be established and recovery permitted.” *Black v. The Kroger Co., Inc.* (Mar. 22, 1988), Franklin App. No. 87AP-499, quoting *Englehardt v. Phillipps* (1939), 136 Ohio St. 73, paragraph 3 of the syllabus. (Emphasis added.) “There is no obligation to protect the invitee against dangers which are known to him.” *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 48.

{¶17} Plaintiff testified that he had complained about the presence of water on the floor to corrections officers prior to his fall. However, he was unable to provide any evidence that he had filed a complaint about the presence of water on the floor prior to his fall. Plaintiff also admitted that he did not look down at the floor before he exited his bunk.

{¶18} In order to prove his claim of negligence, plaintiff must prove that defendant had either actual or constructive notice of the presence of water on the floor.

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{¶19} The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever 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 notice 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

{¶20} The court finds that Sergeant Skinner's testimony about her knowledge of the condensation on the dormitory walls, coupled with her response documented in Plaintiff's Exhibit 6 show that defendant was aware of a problem with water leaking in from the windows in the dormitory. Upon review of the evidence, the court finds that defendant had actual notice of a problem with water leaking in from the dormitory windows.

{¶21} However, the court finds that plaintiff himself had actual knowledge of the potential presence of water on the floor. Plaintiff testified that he and other inmates in the dormitory were aware that windows leaked during rainstorms and that they frequently complained to each other about it. Therefore, although water may have been a factor in plaintiff's fall, the court finds that the potential danger of a wet floor was known to him as he exited his bunk. The court further finds that plaintiff failed to use reasonable care to ensure his own safety when he did not look at the floor before exiting his upper bunk and, accordingly, Ohio's comparative negligence statute, former R.C. 2315.19, is applicable.²

{¶22} For the foregoing reasons, the court finds that plaintiff has proven his claim of negligence and, accordingly, judgment is recommended in favor of plaintiff as to that claim. The court further finds that the degree of fault attributable to plaintiff with regard to his

²R.C. 2315.19 was repealed effective April 9, 2003; however, the statute applies to causes of action that accrued before its repeal.

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failure to look at the floor before he exited his bunk is 30 percent. Accordingly, judgment is recommended for plaintiff with a 30 percent reduction in any award for damages.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

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Magistrate Steven A. Larson

CJT/HTS/cmd
Filed October 1, 2007
To S.C. reporter October 9, 2007