

[Cite as *Rose v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-3820.]

IN THE COURT OF CLAIMS OF OHIO

STACY ROSE	:	
Plaintiff	:	CASE NO. 2002-06201
	:	Magistrate Steven A. Larson
v.	:	
	:	<u>MAGISTRATE DECISION</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	
Defendant	:	
	:	

{¶1} On July 29, 2003, this case came on for trial at Ross Correctional Institution. The case was tried to a magistrate of this 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 pursuant to R.C. 5120.16. At the time of the alleged injury, plaintiff was at Chillicothe Correctional Institution (CCI). His complaint alleges that a medical bottom bunk restriction was not honored and that when he was attempting to get out of the top bunk he slipped and fell in water coming into the cell from a leaky window. Defendant contends that it was not negligent and that plaintiff's own negligence contributed to the injury.

{¶3} 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.

{¶4} It is uncontested that plaintiff received a bottom bunk restriction for an injured shoulder on March 9, 2001, and that as of April 10, 2001, plaintiff remained assigned to the top bunk in his cell. On that day, plaintiff fell while moving from the top bunk to the floor.

Plaintiff testified that he was awakened after "count" and jumped down on his locker from the top bunk. He said that the floor was wet and that he slipped in a puddle. Plaintiff also testified that any time it rained, the windows would leak and puddles would form on the floor. On cross-examination, plaintiff stated that he had told both the corrections officer (CO) on duty and the building sergeant about the problem.

{¶5} Plaintiff called inmate Charles Simmons, who testified that a lot of water accumulated on the floors depending upon how much it rained. He could not recall whether any inmate had complained to the COs; however, he did testify that the inmates complained among themselves often.

{¶6} Sergeant Theresa Skinner was the correctional counselor for plaintiff's cell block. One of her job duties was to document inmate complaints. She testified that she made two rounds a day in the cell block each of which lasted several hours. Sergeant Skinner testified that the inmates never complained about any problems with leaky windows and that had plaintiff raised a complaint it would have been entered in the logbook. No such entries were found. Sergeant Skinner also testified that although she had seen condensation on the walls she had never observed any puddles on the floors.

{¶7} Kevin Scott, the institutional inspector who oversaw inmate grievances, also testified. Scott explained that informal inmate complaints were sent to the supervisor and that if the response from the supervisor was unsatisfactory, the inmate could then file an informal grievance. He stated that prior to April 10, 2001, he never received any inmate complaints about water leaking through the windows.

{¶8} With regard to the issue of whether plaintiff slipped and fell in a puddle of water, the court finds the testimony of Sergeant Skinner and Scott to be more credible than that either of plaintiff or Simmons. The court finds that plaintiff failed to prove by a preponderance of the evidence that there was water on the cell block floor on April 10, 2001.

{¶9} As to the issue of the bottom bunk restriction, both parties agree that plaintiff was in possession of a bottom bunk restriction and that, on April 10, 2001, the restriction had yet to be put into effect. However, there is conflicting testimony as to why plaintiff's bottom bunk restriction had not been honored.

{¶10} Plaintiff testified that he had talked to both Sergeant Skinner and Captain Davis prior to April 10, 2001, about not receiving his bottom bunk assignment. In addition, plaintiff stated that he also sent kites to Sergeant Skinner about the restriction and that he provided another copy of the restriction to her upon her request.

{¶11} Scott Alan Bolte, a registered nurse at CCI, explained how a bottom bunk restriction is circulated among the staff at CCI. He testified that after a medical restriction is issued, one copy is placed in the medical records, a second copy is sent to the unit where the inmate is housed, and a third copy is provided to the inmate.

{¶12} Sergeant Skinner testified that she did not see the restriction in plaintiff's file and that she could not remember if the file had ever contained the restriction. She also stated that she had never received a complaint from plaintiff about the bottom bunk restriction not being honored. Additionally, she stated that she had never seen any complaints filed in the logbook. Sergeant Skinner did attest that plaintiff, who was a tutor at the time, had asked for a bottom bunk through seniority in the tutoring program. However, she maintained that plaintiff never mentioned his medical restriction.

{¶13} Scott testified about the proper procedure for an inmate to follow if a medical restriction was not honored. He stated that the inmate would first file an informal complaint with the medical staff. If it were not resolved at that level, Scott himself would then receive and review a formal complaint. Scott explained that all documentation is retained and that upon review of plaintiff's file, he could not locate any record of plaintiff's bottom bunk restriction. Scott also testified that inmates receive information of the grievance procedures during their orientation and in a handbook, and that materials were also kept available in the library.

{¶14} 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 Assoc.* (1984), 20 Ohio App.3d 29, 31; *Thompson v. Kent State University* (1987), 36 Ohio Misc.2d 16. In the instant case, the court finds the testimony of Sergeant Skinner and Scott to be more credible. While the testimony does support the inference that the restriction was never placed in plaintiff's file, it is also evident that plaintiff failed to exercise a reasonable degree of care for his own safety when he did not bring his bottom bunk restriction to the attention of defendant's staff.

Plaintiff's bottom bunk restriction was issued on March 9, 2001. Plaintiff fell on April 10, 2001. Plaintiff failed to prove by a preponderance of credible evidence that he brought his bottom bunk restriction to the attention of his unit sergeant at any time during the four weeks after it was issued. The court finds that plaintiff's actions in failing to notify defendant's staff of his bottom bunk restriction was the sole proximate cause of his injuries. Assuming, *arguendo*, that defendant was in part negligent, plaintiff's own negligence exceeds 50 percent of the total attributed to plaintiff and defendant.

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

{¶16} *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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LM/cmd
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