

[Cite as *Harwell v. Grafton Corr. Inst.*, 2004-Ohio-4720.]

IN THE COURT OF CLAIMS OF OHIO

EARNEST HARWELL :
Plaintiff : CASE NO. 2003-04961
v. : Judge J. Warren Bettis
: Magistrate Steven A. Larson
GRAFTON CORRECTIONAL : JUDGMENT ENTRY
INSTITUTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court. On May 11, 2004, the magistrate issued a decision recommending judgment for defendant.

{¶2} Civ.R. 53(E)(3)(a) states: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c). ***” Plaintiff timely filed his objections. Additionally, this court granted plaintiff leave to file an affidavit of evidence.

{¶3} Plaintiff filed three objections to the magistrate's decision:

{¶4} “1.) The Magistrate’s recommendation and findings are not supported by the evidence;

{¶5} “2.) The Magistrate’s recommendation and findings are against the manifest weight of the evidence;

{¶6} “3.) The Magistrate improperly found the injuries were self inflicted without any medical testimony.”

{¶7} Ultimately, plaintiff's first two objections are arguing that the magistrate's decision was against the weight of the evidence. After reviewing the record, affidavit of evidence, exhibits, and the magistrate's decision, the court finds that the magistrate's conclusions regarding liability are supported by the greater weight of the evidence.

{¶8} Plaintiff's third objection to the magistrate's decision is unfounded. Upon review of the decision, the court finds that while the magistrate cited testimony of a corrections officer (CO)

concerning plaintiff's injuries, the magistrate found only that plaintiff failed to prove that excessive tightness of the cuffs caused any injuries. The magistrate did not specifically find that plaintiff's injuries were self-inflicted. Additionally, the magistrate's finding is supported by the CO's testimony which was properly admitted over plaintiff's objection. Ohio Evid.R. 701 states that lay witnesses are allowed to give opinion testimony. The staff note clarifies the rule and states: "A prime example is that of the non-expert witness testifying as to physical condition." In the case at hand, the CO testified as to plaintiff's physical condition. Therefore, plaintiff's third objection is OVERRULED.

{¶9} Upon review of the record, the magistrate's decision, and the objections, the court finds that the magistrate correctly analyzed the issues and applied the law to the facts. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Attorney for Plaintiff

Peggy W. Corn
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

LM/cmd
Filed September 2, 2004
To S.C. reporter September 7, 2004