[Cite as *Williams v. Ohio Dept. of Rehab. and Corr.*, 2004-Ohio-5914.]

IN THE COURT OF CLAIMS OF OHIO

FRED WILLIAMS	:	
Plaintiff	:	CASE NO. 2003-07626
		Judge J. Warren Bettis
v.	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	DECISION
	:	
Defendant		

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{¶ 1} Plaintiff brought this action against defendant alleging a claim of negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability. At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 2} In his complaint, plaintiff alleges that he slipped and fell on a wet concrete floor caused by a leak in the roof. Plaintiff maintains that defendant was negligent in failing to fix the leak and in failing to warn him about the wet floor. Defendant denies liability; in the alternative, defendant claims that plaintiff's own negligence contributed to his 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} Plaintiff testified that on February 23, 2003, while he was walking to the bathroom he slipped and fell in a puddle of water in the area of the telephones in I-dorm. In the subsequent accident report plaintiff stated that the water came from a leak in the ceiling. At trial, plaintiff described the location where he fell as one typically having wet areas due to an ice machine, water fountain, and shower area that were all within close proximity of each other. He claimed that the

lighting in the area was poor and that the concrete floor was as slick as shower tile because it was buffed once a month. However, plaintiff could not recall if the concrete was painted or sealed.

{¶ 5} Additionally, plaintiff stated that when he fell he was wearing tennis shoes and while he did not notice any wet floor signs, he was not looking at the floor as he walked through the area. Plaintiff claims that he spent approximately 14 hours a day in I-dorm and that he walked by the area where he fell about 10 times a day.

{¶ 6} Inmate James Bell testified that he was using the telephone next to the water fountain when plaintiff fell immediately in front of him. Inmate Bell also stated that he had lived in I-dorm about a year and that the area where plaintiff fell was known to have water on the floor. He said he had walked over the floor when it was wet and that the floor was not excessively slippery and that he could see the water because it caused the concrete to look like a stain.

{¶ 7} Ray Hintz, Southeastern Correctional Institute's maintenance supervisor, testified that leaks were a recurring problem in the institution's roof beginning when exhaust fans were installed. Hintz also said that in the winter the leaks could not be fixed until the snow or ice on the roof melted.

{¶ 8} James Bradford was a maintenance repair worker at the time when plaintiff fell. He testified that he was the person who fixed the leak in I-dorm's ceiling and that repairs reflected in the February 21, 2003, work order (Defendant's Exhibit B & Plaintiff's Exhibit 8) were not completed until May 6, 2003, due to snow and ice covering the damaged roof. The work order shows that it took six hours to repair the leak. Additionally, Bradford testified that he could not recall a prior work order for that particular location although he was aware of prior leaks in other areas of I-dorm.

{¶ 9} Phil McKnight, the unit manager, testified that the area where plaintiff slipped and fell was typically wet due to its proximity to the ice machine and the bathrooms. He described the distance between the ice machine and the bathrooms as being about seven feet with a light above the area. He also testified that the floor was cement and was not covered with paint or sealers. McKnight stated that he walked rounds three times a day; once in the morning, once in the afternoon, and again before leaving for the day. During those rounds no inmate had identified any problems with a leak. McKnight further stated that he was unaware of plaintiff's fall until after plaintiff was transferred to another institution.

{¶ 10} Mike Lockhart, an officer in I-dorm also testified about the area where plaintiff slipped and fell. He said that there was water in the vicinity where plaintiff fell because of the ice machine and the showers and that when the concrete floor became wet the area would appear darker. Officer Lockhart further testified that the concrete was porous and did not shine when the floor was buffed. He claimed that he could recall seeing evidence of leaks in the roof of I-dorm although he could not remember if he saw them before or after plaintiff's fall.

{¶ 11} Jamie Spergin was the relief officer on duty when plaintiff slipped and fell. Officer Spergin completed the inmate accident report using information supplied to him by plaintiff. When Officer Spergin went to inspect the area where plaintiff fell, he said that he did not see dripping water but that there was a puddle about six inches wide on the floor. He also testified that it was common to see water in the area and that a person could readily discern the water on the concrete flooring. Officer Spergin was aware of other leaks in the roof throughout the prison, however he did not have any notice of the water plaintiff slipped in prior to plaintiff's accident.

{¶ 12} 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, at 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.

{¶ 13} The court must first decide whether or not defendant had actual or constructive knowledge of the roof leak and the resulting water puddle. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than the amount of information obtained. Wherever 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 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.

{¶ 14} Both Hintz, the maintenance supervisor, and Officer Spergin testified that there were prior roof leaks throughout the institution. Additionally, Bradford, the worker who fixed the leak at issue in this case, testified that he could recall past leaks in I-dorm. Officer Lockhart, who was assigned to work in I-dorm, also confirmed that there were prior leaks in the roof of I-dorm.

While defendant did not have actual notice of the specific leak which resulted in plaintiff's incident, the court finds that defendant did have constructive notice based on the fact that there was a continuous problem with roof leaks not just in I-dorm but throughout the institution.

{¶ 15} However, the owner of premises has no duty to warn of a dangerous condition which is so open and obvious that a person may reasonably be expected to discover it and protect themselves against it. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573. In this case, plaintiff failed to be observant as he walked to the bathroom. Both corrections officers (COs) and inmate Bell testified that the concrete would become darker when wet. Additionally, the unit manager described the area where plaintiff fell as having a light above it. The court finds that the water on the floor was clearly visible and so open and obvious that it could have been avoided. For the foregoing reasons, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant breached any duty of care owed to him.

{¶ 16} Moreover, plaintiff was under a duty to exercise a reasonable degree of care for his own safety. *Dean v. Department of Rehabilitation & Corrections* (Sept. 24, 1998), Franklin App. No. 97API12-1614. Plaintiff testified that he spent 14 hours a day in I-dorm and that he walked in the area where he slipped about ten times a day. Plaintiff, inmate Bell, and all of the COs testified that in the area where plaintiff fell, the floor was typically wet due to the showers, water fountain, and ice machine. Finally, plaintiff testified that he was not looking where he was walking just before he slipped. The court finds that plaintiff knew or should have known that the floor where he fell was typically wet and that plaintiff failed to exercise reasonable care while traversing the area. Therefore, even assuming defendant breached a duty to plaintiff, the court concludes that plaintiff was more than 50 percent responsible for his action. Accordingly, judgment must be rendered in favor of defendant.

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FRED WILLIAMS :

Plaintiff : CASE NO. 2003-07626

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OHIO DEPARTMENT OF REHABILITATION AND CORRECTION : JUDGMENT ENTRY

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Defendant

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

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J. WARREN BETTIS
Judge

Entry cc:

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LM/cmd
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