

[Cite as *Barnett v. Madison Corr. Inst.*, 2004-Ohio-4562.]

IN THE COURT OF CLAIMS OF OHIO

KEITH BARNETT :
 :
 Plaintiff : CASE NO. 2003-08177
 : Judge J. Warren Bettis
 v. : Magistrate Steven A. Larson
 :
 MADISON CORRECTIONAL : MAGISTRATE DECISION
 INSTITUTION :
 :
 Defendant :

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{¶1} This case was tried to a magistrate of the court on the issue of liability. Plaintiff asserts that he was injured when he was struck by a vehicle that was negligently operated by defendant’s employee during response to an emergency.

{¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. On May 18, 2002, plaintiff was returning to his dorm from lunch at the dining hall at Madison Correctional Institution (MaCI). He testified that he was walking on the right side of the sidewalk when Lieutenant Rubina Baker approached him from behind at a high rate of speed driving a four-wheel, John Deere, all-terrain vehicle, referred to as a “Gator.” Plaintiff stated that he turned to his right to try to avoid being struck, but Lieutenant Baker mistakenly also turned to the right, which caused a collision with him. As a result, plaintiff’s knee cap was broken.

{¶3} Plaintiff alleges that Lieutenant Baker was negligent for speeding, for not warning him of her approach, and for operating the Gator on the sidewalk.

{¶4} Lieutenant Baker testified that she was responding to a “man-down” alarm when she struck plaintiff. She explained that a man- down alarm is communicated by radio to corrections officers (COs) and supervisors when an emergency arises, such as when a CO is in need of assistance or where there is a medical emergency. When the man-down alarm is sounded, it is the duty of all

the officers to respond as quickly as possible. Lieutenant Baker maintained that it is not unusual for supervisors to respond to an emergency by driving a Gator on the sidewalk. She testified that she warned inmates that she was coming by yelling for them to get out of the way.

{¶5} Lieutenant Baker asserted that she was driving the Gator between five and ten miles per hour, its top speed. She stated that several inmates were on the sidewalk in front of and behind plaintiff. As she approached the inmates, Baker yelled for them to get out of the way. She said that all inmates avoided the Gator except plaintiff who first moved to his left, causing Lieutenant Baker to swerve to her right, whereupon plaintiff abruptly moved back to his right into her path.

{¶6} 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. In the context of a custodial relationship between the state and its prisoners, the state owes a common law duty of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310. Accordingly, the issue is whether defendant breached its duty of reasonable care under the circumstances of this case.

{¶7} Plaintiff testified that he was aware that officers responded rapidly to a man-down alarm, often driving on the sidewalk. On cross-examination, plaintiff conceded that he first moved in one direction to avoid the Gator but as Lieutenant Baker approached him he reversed direction in an effort to avoid being struck. Plaintiff asserted that he would not intentionally step in front of the Gator because he was then due to be released soon.

{¶8} Based on the evidence presented, the court finds that Lieutenant Baker warned plaintiff of her approach; that plaintiff moved in one direction and then unexpectedly moved in the opposite direction; that Lieutenant Baker maneuvered the Gator in an attempt to avoid hitting plaintiff and that plaintiff unintentionally, yet unexpectedly, moved into the path of the Gator, making the collision unavoidable.

{¶9} Therefore, the court concludes that plaintiff has failed to prove by a preponderance of the evidence that defendant breached its duty of reasonable care under the circumstances. Judgment is recommended in favor of defendant.

{¶10} *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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