

# Court of Claims of Ohio

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EDWARD EUGENE CASE

Case No. 2004-08031

Plaintiff

Judge J. Craig Wright  
Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

GRAFTON CORRECTIONAL  
INSTITUTION

Defendant

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{¶1} Plaintiff brought this action alleging 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 at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16.

{¶2} Plaintiff's negligence claims are based upon two separate incidents. First, plaintiff claims that defendant negligently failed to issue him a lower-bunk restriction upon his transfer from an institution where he had had such a restriction. Plaintiff claims that, as a result, he suffered severe injuries when he fell from the upper bunk in his cell. Second, plaintiff claims that defendant's employee was negligent in transporting him from a medical facility and that he suffered injuries when he fell while exiting an institution van.

{¶3} Plaintiff testified that he had been granted a lower-bunk restriction at the correctional institutions where he had been incarcerated before arriving at GCI in August 1999. According to plaintiff, he was granted restrictions due to injuries that he sustained prior to his being incarcerated. Plaintiff stated that he was granted a temporary lower-bunk restriction when he arrived at GCI, but that it was not renewed or made permanent.

{¶4} Plaintiff further testified that on August 30, 2003, he awoke at approximately 3:00 a.m. to use the restroom. According to plaintiff, he became dizzy as he sat up in preparation for his climb down from the bunk. As he climbed down, plaintiff fell from his bunk and suffered severe injuries to his right knee, left wrist, and face. Plaintiff explained

Case No. 2004-08031	- 2 -	MAGISTRATE DECISION
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that he had experienced dizzy spells prior to his fall and that he believed the medication he was taking for anxiety caused those symptoms. However, plaintiff produced no other evidence or testimony to corroborate that claim.

{¶5} Defendant asserts that plaintiff’s claim concerning his lower-bunk restriction is a medical malpractice claim and that he cannot prevail without expert medical testimony. The court agrees.

{¶6} “Under Ohio law, \*\*\* in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things.” *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 131, citing *Ault v. Hall* (1928), 119 Ohio St. 422 (Additional citations omitted.) “Failure to establish the recognized standards of the medical community has been fatal to the presentation of a prima facie case of malpractice by the plaintiffs.” *Id.* Furthermore, “[p]roof of the recognized standards must necessarily be provided through expert testimony.” *Id.* at 132.

{¶7} Plaintiff testified that he made several attempts to procure a permanent lower-bunk restriction from defendant’s medical staff but that at least two staff doctors examined him and decided not to grant him such a restriction. Plaintiff offered no expert testimony to support his claim that defendant’s staff doctors should have granted him a restriction. Accordingly, the court finds that plaintiff failed to prove that there was a breach of the recognized standard of care by defendant’s medical staff in evaluating plaintiff’s need for a lower-bunk restriction. Accordingly, plaintiff’s first claim must fail.

Case No. 2004-08031	- 3 -	MAGISTRATE DECISION
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{¶8} Plaintiff's second claim arises from injuries that he allegedly sustained on October 14, 2003, during transport in a van from the Lorain Correctional Institution to GCI. Plaintiff stated that at the time of the incident he was wearing a brace on his right leg and was still experiencing pain as a result of the fall from his bunk. According to plaintiff, before entering the van he requested "soft" restraints for the transport, but that the transport officers, Corrections Officer (CO) Gregory Luman and Ms. Cumberland, denied his request. Plaintiff testified that he was secured in the normal fashion for transport, which required handcuffs, leg shackles, and a belly band.

{¶9} Plaintiff testified that when the van arrived at GCI, Luman opened the passenger door and stood to the side. Plaintiff stated that it was raining and that he asked Luman to remove his leg shackles. According to plaintiff, the shackles were just long enough for him to step from inside the van to a metal step attached to the side of the van and then to the ground. Plaintiff stated that the length of the shackles combined with the rain and his decreased mobility made him afraid that he would be unable to safely exit the van. However, Luman denied his request and ordered him to step out of the vehicle. Plaintiff testified that Luman "lightly gripped" the top of his sleeve as he stepped out of the van but that his foot slipped on the wet metal step, that his shackles became entangled, and that he fell to the ground and was injured. Additionally, plaintiff stated that Luman did not respond when he called out for assistance.

{¶10} Luman testified that after the incident, he filed an incident report in which he stated that he unsuccessfully attempted to catch plaintiff when he started to fall. Although Luman testified that plaintiff appeared to be in a rush to exit the vehicle, he could not recall whether it was raining at the time of the incident or whether plaintiff asked him to remove the shackles or requested any other help.

{¶11} In order for plaintiff to prevail upon his claims of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that they breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy*

Case No. 2004-08031	- 4 -	MAGISTRATE DECISION
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*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. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. 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. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, at 702.

{¶12} Based upon the evidence and testimony presented at trial, the court finds that defendant owed plaintiff a duty to make a reasonable effort to ensure his safety during transport. Additionally, the court finds that defendant committed a breach of that duty when Luman failed to exercise the degree of caution and foresight that an ordinarily prudent person would have exercised in a similar situation, and that plaintiff was injured as a result. Accordingly, judgment is recommended in favor of plaintiff.

{¶13} Furthermore, to the extent that plaintiff seeks a determination as to the civil immunity of defendant's employee, the court finds that Gregory Luman was, at all times relevant hereto, acting within the scope of his employment or official responsibilities with defendant, and that he did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, it is recommended that the court issue a determination that Gregory Luman is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction over any civil action that might be taken against him based upon the allegations of plaintiff's complaint.

*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*

Case No. 2004-08031	- 5 -	MAGISTRATE DECISION
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*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*

[Cite as *Case v. Grafton Correctional Inst.*, 2007-Ohio-1881.]

*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).*

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STEVEN A. LARSON  
Magistrate

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MR/cmd

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