

# Court of Claims of Ohio

The Ohio Judicial Center  
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JAMES D. O'BANION

Plaintiff

v.

Case No. 2005-05795

Judge Clark B. Weaver Sr.

Magistrate Steven A. Larson

MAGISTRATE DECISION

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

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{¶ 1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court. At all times relevant hereto, plaintiff was an inmate at the Belmont Correctional Institution (BeCI) in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 2} At the start of trial, the parties submitted joint stipulations setting forth the facts of the case as follows:

{¶ 3} “1. Plaintiff was an inmate at the Belmont Correctional Institution on October 11, 2004.

{¶ 4} “2. On October 11, 2004, the water line supplying 1 and 2 House ruptured, which resulted in these areas not having water.

{¶ 5} “3. At approximately the same time of [sic] the water line rupture, floor drains in 1 and 2 housing units became backed up, causing sewage water to flow onto the floors.

{¶ 6} “4. This back-up of sewage water occurred twice on October 11, 2004. Once at 8:00 a.m., and again at 1:20 p.m.

{¶ 7} “5. The sewage water back-up occurred primarily in the inmate restroom and front quiet area.

{¶ 8} “6. Inmates were utilized by prison staff to clean the sewage water back-up. The sewage water was ankle deep in some areas.

{¶ 9} “7. The inmates utilized to clean the sewage water back-up were provided

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with insufficient amounts of protective equipment such as cleaning gloves and rubber boots.

{¶ 10} “8. The cleaning agent provided to inmates by prison staff to sanitize the affected areas of the sewage water back-up was not the proper agent for this particular incident.

{¶ 11} “9. Inmates involved in the sewage water clean-up were not permitted to shower until the following day as running water was not available in the dorm.

{¶ 12} “10. Water was available in dorms not affected by the water line break.

{¶ 13} “11. Plaintiff was a participant in the sewage water clean up.” (Joint Exhibit A.)

{¶ 14} Plaintiff asserts that defendant was negligent both in forcing him to clean raw sewage without proper protective gear and supplies and in subsequently denying him access to a shower. Defendant argues that plaintiff cannot show that defendant’s actions proximately caused any injury to plaintiff and that he thus cannot meet his burden of proof.

{¶ 15} Plaintiff testified that on the day of the incident he was working as a porter in the dormitory and that a corrections officer (CO) directed him to participate in cleanup duty. Plaintiff recounted how sewage backed up through drains in the bathroom floor, the toilets and urinals, the showers, and the kitchenette.

{¶ 16} According to plaintiff, he began cleanup duty in the bathroom at approximately 7:45 a.m. on October 11, 2004. Plaintiff testified that he was directed to use a rubber garbage can to scoop up the sewage and dump it into a laundry cart which was then taken outside by another inmate and dumped in the yard in front of the dormitory. Plaintiff recalled performing this task until approximately 4:30 p.m.

{¶ 17} Plaintiff testified that the sewage had a foul smell and consisted of human fecal matter, toilet paper, and “anything that was flushed down the toilet.” Plaintiff further

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testified that the sewage was ankle-deep most of the time, but that it covered his arms, legs, chest and face by the time the cleanup was finished. Upon completing his assignment, plaintiff asked a CO for permission to take a shower but his request was denied. Plaintiff testified that he was provided with clean clothes, but that he did not put them on as he was still covered in raw sewage. Plaintiff stated that while there was no running water available in “One House,” there were operational showers in four other housing units; however, he was not permitted to take a shower until approximately 2:30 p.m. the following day.

{¶ 18} The court heard testimony from inmates Charles Walker and James Lambert that largely corroborated plaintiff’s testimony. Both Walker and Lambert testified that the sewage was at least ankle-deep in many places, that they also became covered in sewage during the cleanup effort and that although they were given clean clothes, they were not permitted to take showers until the next day.

{¶ 19} Plaintiff testified that the day after the incident he reported to the institutional infirmary where he was screened and vaccinated for Hepatitis A. Plaintiff testified that almost immediately after the cleanup he developed large circular welts over his entire body that required three or four visits to the infirmary. At trial, plaintiff displayed his upper arms to the court, at which point the court observed that plaintiff’s arms were covered in circular scars. Plaintiff claims that these scars were a result of the welts he developed after the sewage cleanup.

{¶ 20} Plaintiff introduced several complaint and grievance forms that he filed with defendant subsequent to the incident. On October 14, 2004, plaintiff filed an “Informal Complaint Resolution” wherein he described the events and circumstances of the sewage backup and complained that he and other inmates were neither given proper cleaning equipment nor allowed to take showers. A handwritten response from Warden Michele Eberlin states, in part: “You should have received a shower. You were seen by medical, waived co-pay, given a tetanus shot and screened for hepatitis. Showers should have

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been given.” (Plaintiff’s Exhibit 2.)

{¶ 21} 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. *Armstrong v. Best Buy 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 upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235. Additionally, “where a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional factors which characterize the particular work performed.” *Boyle v. Dept. of Rehab. & Corr.* (1990), 70 Ohio App.3d 590, 592, citing *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state therefore has a duty to protect inmates from unreasonable risks of harm arising out of the performance of such labor. *Id.*

{¶ 22} The court finds that defendant committed a breach of its duty to plaintiff by subjecting him to an unreasonable risk of harm during the performance of his duties as a porter; to wit, defendant did not provide plaintiff with adequate equipment and protective clothing for the cleanup of raw sewage. In addition, defendant also unreasonably denied plaintiff the opportunity to shower for almost 24 hours after being covered in sewage.

{¶ 23} At trial, defendant argued that plaintiff failed to prove that he suffered any injury as a result of defendant’s breach, and that he failed to prove that any such injury was proximately caused by defendant’s breach. The court disagrees. After the cleanup, plaintiff reported to sick call for tetanus and Hepatitis A vaccinations, and numerous times thereafter to receive treatment for a skin rash. The court finds that these trips to sick call provide evidence of some injury suffered by plaintiff. Additionally, the court finds that being forced to remain covered in raw sewage for an extended period of time to be an injury in-and-of itself. Plaintiff, however, bears the burden of proving the nature and extent of injury

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during the damages portion of the trial.

{¶ 24} Upon consideration of all the testimony and evidence presented at trial, the court concludes that plaintiff has proven his negligence claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of plaintiff in an amount to be determined at a subsequent trial on the issue of damages.

{¶ 25} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. 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 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).*

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STEVEN A. LARSON  
Magistrate

cc:

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