

# Court of Claims of Ohio

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JACK NOTT

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-07950

Judge Clark B. Weaver Sr.  
Magistrate Steven A. Larson

## JUDGMENT ENTRY

{¶ 1} On May 11, 2009, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” Plaintiff timely filed his objections and a transcript of the trial. Defendant did not timely respond to plaintiff’s objections.

{¶ 3} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Grafton Correctional Institution pursuant to R.C. 5120.16. As a result of plaintiff’s health problems, including diabetes, defendant authorized him to wear specially cushioned, velcro-fastening shoes for everyday use. However, on August 19, 2003, defendant issued plaintiff orange canvas shoes and a matching jumpsuit to wear on a one-day round trip to the Corrections Medical Center (CMC). According to plaintiff, the canvas shoes were the size he normally wears, but the left shoe was stretched and

worn such that it fit him loosely and repeatedly slipped off his foot as he walked toward the van that was bound for CMC. Plaintiff testified that a corrections officer who escorted him to the van put the shoe back on his foot two or three times but eventually told him to carry the shoe, thus requiring him to walk the remaining distance to the van without a shoe on his left foot.

{¶ 4} According to plaintiff, he stepped on an unknown sharp object while walking to the van and thus sustained a wound on the bottom of his left foot that persisted and ultimately resulted in the foot being amputated on July 19, 2004. Plaintiff alleges that defendant's employees were negligent in providing him with a poorly fitting shoe and then ordering him to walk without the shoe.

{¶ 5} The magistrate found that "plaintiff failed to establish by a preponderance of the evidence both that he injured his foot in the manner alleged and that defendant committed a breach of its duty of care toward him. Furthermore, \* \* \* even if plaintiff were to establish such a breach, he has not demonstrated that it proximately caused the amputation of his foot 11 months later."

{¶ 6} Plaintiff's first, second, third, and seventh objections pertain to the magistrate's finding that plaintiff failed to prove that he injured his foot in the manner alleged. Plaintiff argues that his testimony and the testimony of inmate Johnny McCarter established "how, when and where the injury occurred." The parties agree that plaintiff had a wound on his left foot by August 21, 2003; however, the court finds that the testimony offered by plaintiff and McCarter does not establish the manner in which this wound occurred. Moreover, the magistrate found that "both plaintiff's and McCarter's recollection of the incident was poor and that they lacked credibility." Upon review of the transcript, the court finds that the magistrate's finding is supported by the greater weight of the evidence.

{¶ 7} In his fourth objection, plaintiff argues that the magistrate erred in finding that plaintiff failed to identify any of defendant's employees who were involved in the

alleged incident on August 19, 2003. Plaintiff asserts that he attempted through discovery to discern the identity of such employees, but that defendant could not identify them. Upon review, this objection is not well-taken.

{¶ 8} In his fifth objection, plaintiff argues that the magistrate improperly “implied” that he premised his claim on the fact that defendant required him to wear orange canvas shoes rather than his cushioned shoes. However, the magistrate merely found that to whatever extent plaintiff may rely on such a theory, defendant is entitled to discretionary immunity inasmuch as its decision regarding such shoes was based upon security concerns. This finding was not in error.

{¶ 9} In both his sixth and eighth objections, plaintiff argues, in essence, that the magistrate’s decision is against the manifest weight of the evidence. The court does not agree.

{¶ 10} Upon review of the record, the magistrate’s decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate’s decision and recommendation as its own, including 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.

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CLARK B. WEAVER SR.  
Judge

cc:

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Magistrate Steven A. Larson