

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

HARVEY DELOSE BURGETT

Case No. 2005-09502

Plaintiff

Judge J. Craig Wright

v.

DECISION

CORRECTIONAL RECEPTION
CENTER

Defendant

{¶1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial to the court on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that when he was received into defendant's custody, he was required to remove an air splint from his left ankle, thereby permanently injuring his ankle and foot.

{¶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 defendant's acts or omissions resulted in a breach of 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.

{¶4} On May 6, 2005, plaintiff was transferred from a county jail to the custody of defendant at the Correctional Reception Center (CRC) in Orient, Ohio. Upon his arrival to CRC, plaintiff went through a screening process whereby his personal property was inventoried and contraband was confiscated. Plaintiff claims that he was wearing an air splint on his left ankle at the time of his arrival at CRC. At trial, plaintiff testified that the air splint was ordered for him by a doctor at another correctional institution as treatment for swelling in his left ankle and foot.

Case No. 2005-09502	- 2 -	DECISION
---------------------	-------	----------

{¶5} Plaintiff alleges that during the screening process, a nurse became concerned about the air splint; telephoned the CRC clinic to inquire whether plaintiff should continue to use the device; and in accordance with the clinic's instructions, ordered plaintiff to remove the device and discard it. Plaintiff was not seen by a doctor at that time.

{¶6} Plaintiff alleges that the condition of his left ankle and foot worsened. Plaintiff was examined by a podiatrist at CRC on June 14 and 27, 2005. During the latter of those two visits, the podiatrist ordered a cane for plaintiff. Plaintiff contends that the injury to his left ankle and foot never improved, and that now he must use the cane to ambulate.

{¶7} Plaintiff also alleges that at the time of his reception to CRC, he was given shoes which were three sizes too large for him and that he did not receive the proper size shoes until August 10, 2005. Although plaintiff's testimony alluded to ill-fitting footwear as exacerbating his injury, the alleged removal of the air splint is the crux of his claim.

{¶8} On August 2, 2005, plaintiff submitted an informal complaint to the medical services department of CRC concerning the loss of his air splint and other issues related to his left ankle and foot. Resolution of the complaint was unfavorable to plaintiff.

{¶9} On August 16, 2005, plaintiff filed a grievance with CRC's institutional inspector, Brian Wellinghoff. In the course of his investigation of the grievance, Wellinghoff obtained pertinent records and interviewed CRC staff. Among the documents Wellinghoff procured was a list of the personal items and contraband possessed by plaintiff at the time of his reception at CRC. (Defendant's Exhibit A.) The document lists three pairs of socks, two packs of Bugler cigarettes, and assorted papers, but no air splint. On this document, the field designated for medical products to be discarded was left blank. Plaintiff's signature appears on the document.

{¶10} Wellinghoff also testified that he interviewed the nurse who examined plaintiff upon his reception at CRC. According to Wellinghoff, the nurse had no recollection either of plaintiff wearing an air splint or of ordering plaintiff to remove any such medical device. A written statement from the nurse to that effect was gathered incident to defendant's

Case No. 2005-09502	- 3 -	DECISION
---------------------	-------	----------

investigation. (Defendant's Exhibit B.)

{¶11} Wellinghoff dismissed plaintiff's grievance on August 25, 2006, after failing to uncover sufficient evidence to support plaintiff's claims. Wellinghoff's findings were reviewed and approved by the warden on August 26, 2005. Plaintiff did not appeal Wellinghoff's decision to the Department of Rehabilitation and Correction's chief inspector.

{¶12} The court finds that the testimony and evidence adduced at trial fail to establish plaintiff's negligence claim by a preponderance of the evidence. Weighing heavily in defendant's favor was the absence of any notation regarding an air splint on the list of personal items and contraband found on plaintiff at the time of his reception at CRC. Also, during the course of trial, there was no medical testimony on behalf of plaintiff regarding his need for an air splint.

{¶13} Plaintiff failed to provide any evidence that would corroborate his testimony that he had an air splint and that it was removed by CRC staff. Despite the alleged severity of his injury, plaintiff testified that he did not see a podiatrist until June 14, 2005, which was more than five weeks after his arrival at CRC on May 6, 2005. Plaintiff did not state whether he requested an appointment before the June date. Plaintiff also waited more than three months after his arrival at CRC to file any sort of complaint with the institution. Moreover, plaintiff's testimony lacked credibility for a variety of reasons, not the least of which was that it was contradictory and, at times, confusing.

{¶14} For the foregoing reasons, the court finds that plaintiff failed to prove that he is entitled to relief. Accordingly, judgment shall be rendered in favor of defendant.



Court of Claims of Ohio

The Ohio Judicial Center
 65 South Front Street, Third Floor
 Columbus, OH 43215
 614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

HARVEY DELOSE BURGETT

Case No. 2005-09502

Plaintiff

Judge J. Craig Wright

v.

JUDGMENT ENTRY

CORRECTIONAL RECEPTION
 CENTER

Defendant

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.

 J. CRAIG WRIGHT
 Judge

cc:

Harvey Delose Burgett, #496-164 P.O. Box 1812 Marion, Ohio 43302		
Douglas R. Folkert Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130		
RCV/LP/cmd		

Filed December 15, 2006
 To S.C. reporter January 22, 2007