[Cite as *Gill v. Grafton Correctional Inst.*, 2009-Ohio-3701.]

Court of Claims of Ohio
The Ohio Judicial Center
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Columbus, OH 43215
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ALI GILL

Plaintiff

v.

GRAFTON CORRECTIONAL INSTITUTION

Defendant
Case No. 2005-09847

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case was tried 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. On March 15, 2004, at approximately 3:00 a.m. plaintiff awoke to use the restroom. Upon alighting from his bed, plaintiff tripped and fell and was rendered unconscious. Plaintiff asserts that defendant negligently housed him in a dormitory-style unit in contravention of his various medical restrictions.

{¶ 3} Plaintiff testified that he is blind in his right eye and has had four surgeries on his left eye. As a result, he carries a permanent "non-smoking" restriction that prevents him from being placed in housing units where smoking is permitted because the smoke "bothers" his eyes. Plaintiff submitted a medical restriction form dated December 7, 2000, that states he "is to be placed in a non-smoking pod, when one is available"; it is further labeled "permanent." (Plaintiff's Exhibit 5.) Plaintiff further

testified that he has been granted accommodations under the Americans with Disabilities Act (ADA) because of his poor vision. Those accommodations include being permitted to possess special magnifiers to aid in reading and being provided with a special badge that designates him as visually impaired. (Defendant's Exhibit C.)

{¶ 4} Plaintiff testified that, prior to the fall, he had been in the Special Management Unit (SMU) for disciplinary reasons. Plaintiff stated that before being placed in the SMU, he had resided in a cell in "A Unit," a well-lit, non-smoking housing unit. Plaintiff testified that on March 10, 2004, upon his release from the SMU, he was placed in "D2" a dormitory-style housing unit where bunk beds are arranged in rows in a large, open room. Plaintiff stated that smoking is permitted in D2, that the lights are shut off after the evening "count" at approximately 9:30 p.m., and that the "night lights" are not bright enough for him to see where he is going. According to plaintiff, he filed several informal complaints and attempted to talk to several staff members about his housing situation but was told that nothing could be done until a bed was available in another housing unit. Plaintiff testified that on the night he fell, he woke up, got out of his bed, took a "few steps," tripped on a garbage can, and then fell striking his face. Plaintiff's next recollection was waking up in the hospital. However, plaintiff also testified that the garbage can was always in the same place and that he did not ask for help from another inmate or staff member when he awoke.

{¶ 5} 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; *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Defendant owed plaintiff the common law duty of reasonable care. *Justice v. Rose* (1957), 102 Ohio App. 482. Reasonable care is that which would be utilized by an ordinarily prudent person under similar circumstances. *Murphy v. Ohio*

Dept. of Rehab. & Corr., Franklin App. No. 02AP-132, 2002-Ohio-5170, ¶ 13. A duty arises when a risk is reasonably foreseeable. *Menifee*, supra, at 75.

{¶ 6} While the court is cognizant of a "special relationship" between an inmate and his custodian, no higher standard of care is derived from the relationship. *Clemets v. Heston* (1985), 20 Ohio App.3d 132. The state is not an insurer of the safety of its prisoners. Id.

{¶ 7} Inmates Robert Lee Campbell and Martin Timperio testified that they were familiar with plaintiff and his vision difficulties. Campbell testified that he was in D2 when plaintiff fell, although plaintiff's bunk was at "the far end" from his own. Campbell testified that he saw plaintiff using a cane and wearing sunglasses. Finally, Campbell stated that he did not see plaintiff fall, but that he did see him bleeding from the forehead after the fall. Timperio testified that he has known plaintiff for "four or five years" and is aware of his poor eyesight. Timperio stated that on the day of plaintiff's fall he was on a top bunk near plaintiff and he observed him wake up, take a few steps, fall, and "make a clatter." Timperio also observed plaintiff bleeding from the forehead and lips.

{¶ 8} Michelle Viets, RN, Healthcare Administrator for defendant, testified regarding plaintiff's medical records. Viets stated that plaintiff's vision had been evaluated several times before his fall. The first examination occurred on November 11, 2002. At that time, the vision in plaintiff's right eye was diagnosed as "normal" and his left eye was diagnosed with "questionable functional vision loss." (Defendant's Exhibit A.) Plaintiff's vision was examined again on March 2, 2004. At that examination, the diagnosis was "no explanation for decreased visual acuity right eye," "suspect malingering." (Defendant's Exhibit B.) Viets further testified that the "when available" designation on plaintiff's non-smoking medical restriction meant that the restriction was not medically necessary and that the inmate had simply made a request for a non-smoking housing assignment. Viets also opined that plaintiff's medical record did not reflect any medical need for a non-smoking restriction. Furthermore, Viets testified that

although plaintiff carried a "permanent" medical restriction, the policy in place at the time of the accident was that such restrictions were no longer issued and that inmates were issued temporary restrictions that were reviewed by a physician on a regular basis. However, Viets also testified that plaintiff's restriction would have been honored, had there been a bed available in a non-smoking housing unit when he was released from the SMU.

{¶ 9} Based upon the foregoing, the court finds that defendant did not owe plaintiff a duty to ensure his placement in either a non-smoking or a well-lit housing unit and that it was not unreasonable for defendant to place plaintiff in the D2 housing unit. The restriction that plaintiff carried is clearly marked as "when available." Moreover, the ADA accommodations plaintiff carries do not specify that plaintiff is to be placed in a well-lit housing unit. Furthermore, the court finds that plaintiff did not act reasonably to ensure his own safety. Plaintiff was aware of his alleged vision impairment and the location of the garbage can near his bunk, yet he made no attempt to get assistance to use the restroom or to relocate the can.

{¶ 10} Additionally, the court finds that plaintiff's complaints regarding the housing available to him arguably raise issues concerning the conditions of his confinement. Inmate complaints regarding the conditions of confinement and retaliation are treated as claims arising under 42 U.S.C. 1983. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 1994-Ohio-37; *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. It is well-settled that such claims are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170.

{¶ 11} Based upon the foregoing, it is recommended that judgment be rendered in favor of defendant.

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 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 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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Magistrate Steven A. Larson

MR/cmd
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