

# 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

JOSHUA M. GARRIS, Admr.

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-11124

Judge Joseph T. Clark

## DECISION

{¶ 1} Plaintiff, Administrator of the Estate of Robert Fingerhut, brought this action alleging a claim of wrongful death on behalf of the decedent's heirs and next of kin. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Robert Fingerhut was shot and killed by Nathaniel Jackson who, two days prior to the murder, had been released from defendant's Lorain Correctional Institution (LorCI). Jackson and Donna Roberts, identified as Fingerhut's "common-law wife," were involved in a romantic relationship prior to Jackson's incarceration. Jackson and Roberts communicated frequently by mail and telephone during the one-year period that Jackson was in defendant's custody. Specifically, Jackson sent Roberts 143 letters and Roberts sent Jackson 145 letters. The two also communicated by telephone at least 18 times over the one-year period. There is no dispute that some of the communications included discussions of how Jackson and Roberts planned to murder Fingerhut. Plaintiff alleges that defendant was negligent in failing to follow its own policies for the

monitoring of inmate mail and telephone calls and, thus, in failing to discover the murder conspiracy and to prevent the crime from occurring.<sup>1</sup>

{¶ 3} In order to maintain a wrongful death action on a theory of negligence, a plaintiff must establish: “(1) the existence of a duty owing to plaintiff’s decedent, (2) a breach of that duty, and (3) proximate causation between the breach of duty and the death.” *Littleton v. Good Samaritan Hosp. & Health Ctr.* (1988), 39 Ohio St.3d 86, 92, citing *Bennison v. Stillpass Transit Co.* (1966), 5 Ohio St.2d 122, paragraph one of the syllabus. “However, there is no duty under Ohio law to control the conduct of another person so as to prevent him from causing physical harm to another unless a ‘special relation’ exists between the actor and that person which imposes a duty upon the actor to control the person’s conduct. Such a ‘special relation’ exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled.” *Littleton, supra.* (Internal citations omitted.) There is no dispute in this case that a special relationship existed by reason of defendant’s custody and control of Jackson pursuant to R.C. 5120.16.

{¶ 4} Other than plaintiff’s testimony regarding his appointment as administrator of decedent’s estate, the only other testimony presented at trial was that of Christopher Monyak, Institutional Inspector at LorCI at the time of Jackson’s incarceration. Monyak testified regarding LorCI’s policies and practices with respect to inmate mail and telephone calls. According to Monyak, an Inmate Telephone Monitoring Service (ITMS) recorded all telephone calls between inmates and their outside contacts. However, inasmuch as Monyak was the only LorCI staff member assigned to monitor inmate calls, such calls were not monitored while Monyak was off duty; rather, the calls were recorded and archived for LorCI’s use if needed. Monyak testified that defendant’s ITMS policy (Plaintiff’s Exhibit 2) was implemented to enhance the safety of staff, inmates, and the public.

{¶ 5} With respect to mail, Monyak testified that defendant’s policies required that incoming mail for inmates be opened and inspected for contraband, but that the policy did not require that the content of the mail be read word-for-word unless there was a specific reason for heightened scrutiny. Monyak related that out-going mail was

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<sup>1</sup>Jackson and Roberts were convicted of aggravated robbery, aggravated burglary, and

examined to ensure that it contained a return address and inmate identification number, but that there was no policy requiring that the mail be routinely opened and read. Monyak further testified that he did not work in the mail room at the time of Jackson's incarceration, and that the only time he would have been involved with inmate mail was when a letter or package had been forwarded to him for the purposes of an investigation.

{¶ 6} Upon review of the evidence and testimony presented, the court finds that plaintiff failed to prove that defendant failed to follow its own policies and procedures or that defendant was negligent in failing to discover the murder conspiracy. The only ITMS policy offered into evidence (Plaintiff's Exhibit 2) was very general in nature and largely concerned use of monitoring equipment. The stated purpose of the policy was to "delineate the requirements for appropriate operation of the inmate telephone monitoring systems." (Section II.) The policy applied to "all employees of the Ohio Department of Rehabilitation and Correction who supervise, operate, or assist in the operation of inmate telephone monitoring systems." (Section III.) An ITMS system is defined in the policy as "[a]ny electronic equipment which provides the ability to monitor, record, and catalogue collect calls placed by inmates through the 'Inmate Call Out Program.'" The call out program was defined as "a procedure which enables inmates using coinless public telephones to use 'collect only' calls to friends and/or relatives for the purpose of maintaining ties with their family and home community." (Section IV.) The policy also contained a provision at Section VI(A), entitled "Initial Implementation" which required that the chief inspector "develop, coordinate and/or implement training programs necessary to comply with [the ITMS] policy, as well as any requirements and procedures for approved [ITMS] operation."

{¶ 7} Monyak testified that he was the only staff person assigned to use the ITMS equipment and that he was trained to operate the system after it was installed. Although he did not receive training concerning the type of information to focus upon, or how to detect potential criminal activity, the ITMS policy does not address such treatment or contain any requirements for its implementation. Moreover, in the court's view, such training would not have been necessary for an individual such as Monyak,

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aggravated murder in connection with the death of Robert Fingerhut; both received sentences of death.

who had progressed through the ranks at LorCI to the position of Institutional Inspector. The ITMS policy also does not require that every inmate telephone call be monitored by defendant's staff at the time that it is made; rather, the apparent purpose of the system is to have the calls recorded and available for use should the need arise.

{¶ 8} The court found Monyak to be a competent, credible witness. Monyak testified that he did not hear Jackson and Roberts conspiring to murder Fingerhut at any time during his monitoring of telephone calls during Jackson's incarceration. Monyak related that he had no occasion to listen with particular interest to the telephone conversations because Jackson was not under investigation or otherwise subject to additional scrutiny during his confinement. Indeed, there was no evidence that Jackson's activities, his use of the mail or telephone systems, or his interactions with LorCI staff aroused suspicion at any time.

{¶ 9} The court concludes that plaintiff failed to prove that defendant breached any duty of care owed to plaintiff's decedent. In order to prove the breach of a definable duty, plaintiff must show that the harm that occurred was foreseeable. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. The test for foreseeability is whether a prudent person would have anticipated that an injury was likely to occur as a result of some action or inaction. *Id.*

{¶ 10} The evidence in this case fails to demonstrate that Fingerhut's murder was foreseeable as a result of any action or inaction on the part of defendant. Jackson served a one-year sentence for a non-violent property offense. Although he exchanged a large number of written communications with Roberts, and although there were frequent telephone calls between the two, there was no evidence that the extent of their communications was unusual or that their interactions ever attracted the attention of defendant's staff. In light of the vast amount of mail and telephone calls that defendant's staff must process for the total inmate population on a daily basis it is unreasonable to suggest that every letter be read and every telephone call be monitored in order to protect the staff, inmates, and the public from potential criminal

activity. In short, plaintiff failed to prove his wrongful death claim by a preponderance of the evidence. Accordingly, judgment shall be rendered in favor of defendant.<sup>2</sup>

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### JUDGMENT ENTRY

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.

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<sup>2</sup>At the close of plaintiff's case, defendant moved for dismissal pursuant to Civ.R. 41(B)(2) and the court held its decision on that motion in abeyance. In light of the instant decision, the motion is DENIED as moot.

JOSEPH T. CLARK  
Judge

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