[Cite as *Hairston v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-4143.]

Court of Claims of Ohio
The Ohio Judicial Center
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Columbus, OH 43215
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RICHARD L. HAIRSTON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-01441

Judge Joseph T. Clark
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On May 16, 2007, defendant filed a motion for summary judgment. Plaintiff did not file a response. On June 27, 2007, an oral hearing was held at the Chillicothe Correctional Institution on defendant's motion.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant at the Pickaway Correctional Institution (PCI) pursuant to R.C. 5120.16. Plaintiff alleges that on January 4, 2004, he injured his left knee while playing

basketball when he slipped and fell in a pool of water on the floor of the PCI gymnasium. According to plaintiff, the pool of water accumulated due to a leak in the gymnasium roof.

{¶5} Plaintiff claims that defendant was negligent in allowing the water to accumulate and in failing to warn him of its presence. Defendant argues that it owed no duty of care to plaintiff because the danger posed by the pool of water was open and obvious.

{¶6} 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.

{¶7} Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends on whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137. However, an inmate incarcerated in a state penal institution is not afforded the status of any of the traditional classifications. In the context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab & Corr*. (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state is not the insurer of inmate safety, however. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 699, at 702.

{¶8} "Where a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises." *Armstrong*, supra, syllabus. This rule is based upon the rationale that the very nature of an open and obvious danger serves as a warning, and that the "owner or occupier (of land) may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect

themselves." Id. at 80, quoting *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶9} In support of its motion, defendant filed the transcript of plaintiff's April 11, 2007, deposition. At the deposition, plaintiff testified that he had been aware of leaks in the gymnasium roof for approximately two years before he slipped and fell on January 4, 2004. (Deposition of Plaintiff, Page 37.) Plaintiff also stated that because water accumulated on the basketball court that day, other inmates periodically mopped it up during the basketball game. (Id. at 30-31.) Plaintiff further testified that of the "two or three leak spots," the specific pool of water that caused his fall was "the main one" and was "the one where [other inmates] concentrated the most with the mop at." (Id. at 32.)

{¶10} At the oral hearing, plaintiff acknowledged that the pool of water was easily observable on the day of his fall and that he was well-aware of its existence. Plaintiff argued, though, that the obviousness of the danger does not extinguish defendant's liability, but serves only to reduce his recovery under a comparative negligence theory. The Supreme Court of Ohio has held, however, that where the open and obvious doctrine is applicable, it "acts as a complete bar to any negligence claims." *Armstrong*, supra, at 80.

{¶11} Based upon plaintiff's deposition testimony and his argument at the oral hearing, the court finds that the pool of water was an open and obvious hazard and that plaintiff was well-aware of its presence. Accordingly, defendant did not owe plaintiff a duty to warn him of a potential hazard.

{¶12} Based upon the foregoing, it is recommended that defendant's motion for summary judgment be granted and 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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MATTHEW C. RAMBO
Magistrate

cc:

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RCV/cmd	

Filed July 19, 2007
To S.C. reporter August 15, 2007