

Court of Claims of Ohio

The Ohio Judicial Center
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PHILLIP MAYLE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-01550

Judge J. Craig Wright
Magistrate Steven A. Larson

JUDGMENT ENTRY

{¶ 1} On January 12, 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).” On February 18, 2009, the court granted plaintiff leave to file objections on or before March 12, 2009. Plaintiff filed his objections on March 11, 2009. Defendant did not file a response.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16. On November 12, 2006, plaintiff walked through the yard from his housing unit toward the GCI infirmary using a concrete path that separates the infirmary and housing units. Due to repair work on a section of the path, defendant had placed plywood boards end-to-end on the adjacent lawn to provide a detour. As plaintiff

crossed the boards, an inmate in front of him stepped on the far end of one board, causing the end nearest plaintiff to rise. Plaintiff tripped on the raised board and fell. Plaintiff alleges that defendant negligently routed the path onto the boards.

{¶ 4} The magistrate found that the boards presented an open and obvious condition and that plaintiff failed to prove his negligence claim by a preponderance of the evidence.

{¶ 5} Plaintiff asserts in his first, third, fourth and eighth objections that the magistrate erred in finding that the boards presented an open and obvious condition. Plaintiff contends that although the boards themselves were open and obvious, their potential movement when walked upon was not. However, the greater weight of the evidence indicates that the hazard posed by the boards was fully appreciable. As the magistrate noted, plaintiff testified that he knew the boards rested loosely on uneven ground and that he had even “slipped” on them once before. It is well-settled that “[t]he ‘open and obvious doctrine,’ where warranted, may be applied in actions against the ODRC with the result that ODRC would owe no duty to an injured inmate.” *Williams v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 04AP-1193, 2005-Ohio-2669, at ¶ 8. Upon review, the court concludes that the magistrate appropriately found the boards to present an open and obvious condition.

{¶ 6} In his fifth objection, plaintiff contends that the magistrate erred in finding that attendant circumstances such as poor lighting, inclement weather, and inmates walking near him did not contribute to his fall so as to bar application of the open and obvious doctrine. As the magistrate noted, however, plaintiff testified that he could see where he was going and that weather was not a factor in his fall, furthermore, the magistrate found that “sufficient lighting existed to make the boards plainly visible.” The court concludes that such finding is supported by a preponderance of the evidence. Accordingly, the objection is not well-taken.

{¶ 7} Plaintiff argues in his second and sixth objections that the magistrate erred in finding that an alternate path to the infirmary was available. Plaintiff relies upon his and other inmates' testimony that the alternate path was in fact not available for general use by inmates. However, the magistrate found that the inmates' testimony in this regard lacked credibility, and as the trier of fact, the magistrate is in the best position to assess the credibility of witnesses and weigh the testimony. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81.

{¶ 8} In his seventh objection, plaintiff argues that the magistrate's decision is against the manifest weight of the evidence. The court does not agree.

{¶ 9} 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.

J. CRAIG WRIGHT
Judge

cc:

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To S.C. reporter April 28, 2009