

# Court of Claims of Ohio

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JEFFREY B. SHEPHERD

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2007-06446

Judge Clark B. Weaver Sr.  
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 defendants at the Noble Correctional Institution (NCI). On June 24, 2006, plaintiff was assigned to work in the NCI kitchen on “trash duty” but was eventually called upon to aid in food preparation. While helping other inmates prepare “chili mac,” plaintiff slipped and fell. In an attempt to brace himself for the fall, plaintiff thrust his right arm behind him and into a large tub of hot chili and sustained severe burns as a result.

{¶ 3} Plaintiff asserts that defendants failed to properly supervise the food preparation and failed to provide a safe working environment. Defendants argue that the NCI kitchen was safe and that plaintiff’s injury was the result of his own failure to follow proper preparation and safety procedures for making chili mac.

{¶ 4} Plaintiff testified that on the morning of the incident, the kitchen was short-staffed and that at approximately 10:00 a.m he was assigned to aid in food preparation. Plaintiff testified that chili mac was being prepared for the day's lunch, and that he was familiar with its preparation from prior kitchen duty. According to plaintiff, chili mac is comprised of chili and macaroni noodles that are prepared separately and then combined and served. Plaintiff testified that "tilt skillets" are used to cook the noodles. (Plaintiff's Exhibit 2.) He stated that after the noodles are cooked, they are dumped into 30-gallon tubs and transported to another area of the kitchen where the chili is prepared in large steam kettles. (Plaintiff's Exhibit 3.) Plaintiff testified that the normal procedure called for the four steam kettles to be filled halfway with the chili during cooking and then noodles added until the kettles are full. The noodles and chili are then stirred together and the resulting chili mac is scooped into pans for distribution.

{¶ 5} Plaintiff stated that on the day in question, only two of the kettles were operational and that he and the other inmates had to fill the two kettles to the top with chili. Plaintiff testified that when the chili was finished cooking, a valve was opened on the bottom of the kettles to drain half of the chili into 30-gallon tubs sitting on the floor and then noodles were added to the kettles. According to plaintiff, after the mixture in the kettles had been stirred together and served, the remaining chili from the tubs was dumped into the kettles to be mixed with the rest of the noodles. Plaintiff testified that on June 24, 2006, he had prepared the noodles and was beginning to stir them into the chili when he slipped, and as he fell he put his arm into one of the 30-gallon tubs.

{¶ 6} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendants 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. Defendants 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.

{¶ 7} 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; however, once it becomes aware of a dangerous condition in the prison, it is required to take the degree of reasonable care necessary to protect the prisoner from harm. *Id.* “[W]here a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional facts which characterize the particular work performed.” *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208. The state therefore has a duty to protect inmates from unreasonable risks of harm arising out of the performance of such labor. *Id.*

{¶ 8} Bruce Geese is employed at NCI as a Correctional Food Service Manager 2 and is in charge of the NCI kitchen. Geese testified that when inmates prepare chili mac in the manner described by plaintiff, they are supposed to place lids on the tubs of chili and then place the tubs onto carts and move them out of the way. According to Geese, lids are readily available and should always be used to cover hot food. Geese further testified that the kitchen floor is often slippery as food spills are inevitable in a working kitchen. With regard to safety equipment, Geese testified that special rubber boots that buckle on over shoes are available for inmates to use, but that most inmates do not like to use them. Finally, Geese testified that some basic safety training is given to the inmates prior to working in the kitchen, but that most of the training occurs “on the job.”

{¶ 9} Andrea McLeish testified that she was working as a Food Service Coordinator in the NCI kitchen on the day plaintiff was injured. She witnessed plaintiff fall and she filed an accident report. She stated in her report that plaintiff slipped and his right arm “went into a tub of hot spaghetti sauce.” (Plaintiff’s Exhibit 4.) McLeish

testified that for safety purposes, inmates are instructed to clean up spills and other messes as they are working and that rubber boots are always available for the inmates to wear during food preparation. Plaintiff testified that there were never any lids or carts available. Additionally, plaintiff stated that while there was frequently food on the floor there was little time to clean it up. Plaintiff testified that he was not made aware that rubber boots were available until after he fell. Finally, plaintiff recalled signing a form entitled "Acknowledgment of Safety Practices" but he testified that he never received any formal safety training. Rather, plaintiff was told that if he did not sign the form, he would lose his job in the kitchen.

{¶ 10} Inmates William Beatty, Shawn James, and James Patterson corroborated plaintiff's testimony. All three inmates testified that it was not unusual for there to be tubs of food on the floor during food preparation and that carts and lids were rarely available. Additionally, all three inmates testified that food was often spilled during preparation which made the floor slippery. The inmates testified that they were never informed that rubber boots were available. Finally, the inmates testified that while they did receive on-the-job training from other inmates while working in the kitchen, they were never formally trained in the use of kitchen equipment or safety procedures.

{¶ 11} Based upon the foregoing, the court finds that while plaintiff may have been given brief safety instructions, he was never informed of the availability of rubber boots and that he received the majority of his training "on the job" from other inmates. The court also finds that inmates working in the NCI kitchen frequently placed tubs of hot food on the floor and that lids for the tubs and carts upon which to place the tubs were not readily available. The court finds that defendants knew or should have known of this practice and that such practice created a foreseeable and unreasonable risk of harm to plaintiff. The court concludes that defendants committed a breach of the duty of care owed to plaintiff by allowing him to prepare chili mac in an unsafe and dangerous

manner, and by failing to properly instruct him in safety features, including the availability of rubber boots.

{¶ 12} Although the court finds that defendants' negligence was the proximate cause of plaintiff's injury, the court also finds that plaintiff failed to use reasonable care to ensure his own safety. The court finds that plaintiff knew or should have known that tubs of hot chili were located in the area where he was working and that the presence of the tubs combined with the slippery condition of the floor presented a hazardous condition. Plaintiff failed to take adequate steps to protect himself from such hazards. However, the court concludes that defendants' negligence was greater than that of plaintiff and that the degree of fault attributable to defendant is 60 percent. See R.C. 2315.33. Accordingly, it is recommended that judgment be rendered in favor of plaintiff with a 40 percent reduction in any award for damages.

*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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MR/cmd  
Filed April 27, 2009  
To S.C. reporter May 20, 2009