

Court of Claims of Ohio

The Ohio Judicial Center
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KELLY J. STEVENS

Plaintiff

v.

RICHLAND CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-07141

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 proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. At approximately 10:45 a.m. on February 24, 2007, plaintiff was working in defendant's kitchen when he was struck on the head and injured by the door of a pressurized steam cooker that had burst open. Plaintiff asserts that defendant did not properly train him to use the cooker.

{¶ 3} In order to prevail upon his claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached its 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. Defendant owed plaintiff the common law duty of reasonable care. *Justice v. Rose* (1957), 102 Ohio App. 482, 485. 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. Such a duty includes the responsibility to exercise reasonable care to protect inmates against those unreasonable risks of physical harm associated with institutional work assignments. *Boyle v. Ohio Dept. of Rehab. & Corr.* (1990), 70 Ohio App.3d 590, 592.

{¶ 4} 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.*

{¶ 5} Plaintiff testified that, at the time of the incident, he was “checking” the cooker because the inmate regularly assigned to do so was not present that day and that all of defendant’s other kitchen staff were in a meeting. According to plaintiff, he turned off the cooker, waited “a little bit,” turned a handle on the cooker a quarter turn and heard steam escaping. Plaintiff stated that when he heard the steam, he stopped turning the handle, but then heard a loud “boom,” at which time the door flew open and hit him in the face. Plaintiff testified that he had not been formally trained to use the cooker, but that he had received “on the job” training from other inmates. Plaintiff testified that he had used the cooker on numerous prior occasions and that also on one of those occasions, December 22, 2006, he was injured. However, plaintiff did not present any evidence or corroborating testimony to establish that he suffered an injury on December 22, 2006, or that he reported the incident to defendant.

{¶ 6} Inmates Michael Caperton, Robert Wardell, and Clifton Smith testified that the cooker was frequently broken; however, none of these witnesses could specify either a date when the cooker was broken or whether they were injured by the cooker.

Additionally, none of them witnessed the incident at issue in this case.

{¶ 7} Correctional Food Service Manager Robert Blanton, former Health and Safety Coordinator James Houser, and Institutional Inspector Kelly Rose all played a part in investigating the incident. Houser testified that he conducted an investigation and submitted an incident report containing his findings. (Defendant's Exhibit A.) Houser searched medical records and incident reports to determine whether there had been any similar incidents but he found no record of a prior accident with the cooker. Houser testified that he then contacted The Hobart Mfg. Co. (Hobart), the company that had supplied defendant with the cooker, to schedule a service call for the cooker. According to Houser, a service representative from Hobart inspected the cooker on March 1, 2007, and found no mechanical problems. Houser stated that he and the representative, along with several other staff members, also reviewed a security video of the incident. Houser testified that the representative issued a report based upon the tape and his inspection wherein he concluded that the incident was the result of "operator error." (Defendant's Exhibit B.) According to Houser, proper operation of the cooker dictates that it be turned off and "depressurized" for at least five minutes prior to opening the doors. Although plaintiff told defendant's staff members that he waited some minutes to depressurize the cooker, Houser testified that the video showed that plaintiff did not wait the requisite amount of time for the cooker to depressurize and that this was the cause of the accident.

{¶ 8} Blanton testified that he also viewed the video of the incident. According to Blanton, the video shows plaintiff waiting less than a minute for the cooker to depressurize before attempting to open the door. Blanton further testified that plaintiff was not "authorized" to use the cooker and was not given an order to use it. Finally, Blanton testified that, to his knowledge, this was the only incident in which an inmate was injured while using the cooker.

{¶ 9} Rose initiated an investigation into the incident as a result of plaintiff's filing a grievance. In conducting his investigation and preparing a report of his findings,

Rose reviewed Houser's report and interviewed Blanton and Mr. Cain, defendant's Health Care Administrator. (Defendant's Exhibit O.) Rose testified that he agreed with the conclusion that the accident occurred due to operator error. Rose also stated that plaintiff was not assigned to remove food from the cooker and was not authorized to be in that area of the kitchen. Finally, Rose opined that plaintiff was attempting to steal the diced chicken that was in the cooker.

{¶ 10} Max Garber was one of the correctional food service coordinators who were working in the kitchen on the day of the incident. Garber testified that there had never been any complaints about the cooker malfunctioning and that he had never witnessed it malfunction. Garber further testified that plaintiff was not authorized to be working with the cooker that day and that he had planned to remove the food with the help of another inmate, not plaintiff.

{¶ 11} Based upon the foregoing, the court finds that plaintiff failed to establish that defendant committed a breach of its duty of care. The court finds that the cooker was operating properly at the time of the incident. The court further finds that plaintiff was not authorized to operate the cooker and that he had not been ordered to open it by defendant's employees when the incident occurred. Plaintiff was acting of his own accord and without the knowledge or consent of defendant's employees when he attempted to open the cooker. The court concludes that plaintiff's injury was caused by his own negligence in attempting to open the cooker before it was depressurized. Accordingly, judgment is recommended 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).

STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson

MR/cmd
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