

Court of Claims of Ohio

The Ohio Judicial Center
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PATRICK GUILLORY aka TIMOTHY HUNTER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-07850

Judge J. Craig Wright
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 the outset of the proceedings, the court GRANTED plaintiff's June 5, 2008 motion to separate witnesses pursuant to Evid.R. 615.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Marion Correctional Institution (MCI) pursuant to R.C. 5120.16. Plaintiff alleges that he was electrically shocked and burned while using a clothes iron that was negligently maintained by defendant.

{¶ 4} 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 Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates.

McCoy v. Engle (1987), 42 Ohio App.3d 204, 207-208. Reasonable care is defined as the degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. *Woods v. Ohio Dept. of Rehab. & Corr.* (1998), 130 Ohio App.3d 742, 745. However, the state is not an insurer of inmates' safety. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App.3d 107, 112.

{¶ 5} Plaintiff testified that on the morning of November 1, 2006, he entered the "day room" of his dormitory and requested to borrow an iron from Corrections Officer (CO) Scott Johnson. According to plaintiff, the iron that Johnson provided him was missing the original plastic casing on its base, thus exposing the inner circuitry and wiring. Plaintiff stated that as he proceeded to press his clothes, he inadvertently touched the exposed circuitry and was shocked and burned, causing him to lose consciousness and fall to the ground. Plaintiff stated that upon regaining consciousness and receiving medical treatment a few minutes later, he looked at the iron and saw that the exposed circuitry was scorched. Plaintiff testified that he suffers headaches as a result of the incident.

{¶ 6} Inmate Craig Adams testified that he was playing cards in the day room at the time of the incident and that he saw exposed circuitry on the iron that plaintiff was using. Adams further testified that on prior occasions he had witnessed other inmates use the iron and that it was in the same damaged condition. However, Adams admitted that he had never personally used the iron.

{¶ 7} Johnson testified that he was stationed at a desk in the day room at the time of the incident. According to Johnson, a few minutes after he loaned the iron to plaintiff, he heard plaintiff yell and, from the corner of his eye, he saw plaintiff fall while throwing the iron. Johnson stated that he called out plaintiff's name, but that plaintiff did not respond and appeared to be "twitching." Johnson then called for medical assistance and continued to monitor plaintiff. Johnson stated that plaintiff became alert when medical personnel arrived moments later.

{¶ 8} Based upon his observation of the incident, Johnson believed that plaintiff fabricated his account of being shocked and burned by the iron and feigned his injuries. Johnson stated that he believed only a small piece of plastic casing was missing from the base of the iron when he gave it to plaintiff, leaving no circuitry or wiring exposed, but that more of the casing broke off when plaintiff threw the iron either against the wall or onto the floor. According to Johnson, the iron was safe to use when plaintiff received it.

{¶ 9} Deborah Harris, a nurse at MCI, testified that she responded to Johnson's call for assistance and arrived to find plaintiff alert and lying on the floor. Harris stated that she evaluated plaintiff both at the scene and later in the infirmary but found no sign of electric shock or burn. Harris testified that plaintiff complained of a headache, for which she provided him Tylenol. Harris later referred the matter to a physician.

{¶ 10} Lee Campo, who was the health and safety administrator at MCI at the time of the incident, testified that he retrieved the iron soon after the incident and stored it in the health and safety office. The iron was introduced as evidence at trial and identified by both parties, but was not offered as an exhibit. The base of the iron was missing all of its plastic casing, but no circuitry was visible and all exposed wires were coated in plastic.

{¶ 11} Although Campo could not speak to the condition of the iron prior to the incident, he stated that it could not produce an electrical shock or burn in its present condition. Campo credibly established his knowledge of electrical matters by testifying that he worked as an electrician prior to his employment with defendant and related that he had a two-year degree in the trade. During his testimony, Campo demonstrated the safety of the iron by turning it on and touching his fingers to the exposed elements at its base.

{¶ 12} Based upon the foregoing, the court finds that plaintiff failed to demonstrate that defendant committed a breach of its duty of care. The greater weight of the evidence proves that even if the iron were missing all of the original plastic casing

on its base at the time of the incident, there was no exposed circuitry or wiring capable of producing an electric shock or burn as alleged by plaintiff. Although plaintiff stated that he believed that defendant tampered with the iron after the incident to cover the circuitry that he and Adams purportedly saw, the court finds neither plaintiff's nor Adams' testimony to be credible.

{¶ 13} Moreover, the court finds that the evidence did not substantiate plaintiff's claims of being electrically shocked and burned by the iron. Harris stated that her evaluation of plaintiff just after the incident revealed that his vital signs were normal and that he displayed no discolored skin or other symptoms normally associated with the alleged injuries. Harris' assessment corroborated Johnson's testimony that plaintiff appeared to feign his injuries.

{¶ 14} For the foregoing reasons, the court finds that plaintiff has failed to prove his claim of negligence by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant. All pending motions are DENIED as moot.

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

Case No. 2007-07850

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MAGISTRATE DECISION

cc:

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Magistrate Steven A. Larson

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