

# Court of Claims of Ohio

The Ohio Judicial Center  
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DAVID WORTHINGTON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-01383

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, plaintiff was an inmate in the custody and control of defendant at the North Central Correctional Institution (NCCI) pursuant to R.C. 5120.16. On January 25, 2007, plaintiff was working as a clerk for Correction Sergeant Yolanda Harris. Plaintiff testified that he was sitting at a desk in Harris' office using a typewriter when a well-mounted shelving unit<sup>1</sup> fell and struck his head and right shoulder. According to plaintiff, after the unit hit him he returned to his cell for "count" and then went to "medical." Plaintiff alleges that defendant negligently constructed, inspected, and installed the shelving unit.

{¶ 3} 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 it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson*

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<sup>1</sup>Defendant's Exhibits H and I are pictures of a similar shelving unit.

(1981), 67 Ohio St.2d 282; *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. 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 he observed another inmate install the shelving unit approximately one week before it fell. According to plaintiff, the unit was attached to the wall using four “tap-cons,” or screws for use in concrete. Plaintiff testified that potted plants, order forms, catalogs, log books, and three-inch binders were placed on the unit. Plaintiff further testified that he inspected the unit immediately after it fell off the wall. According to plaintiff, the back of the unit was still attached to the wall, and he could see that it had been attached to the main part of the unit using brads spaced every four inches around the outside edge. Plaintiff also stated that he has done carpentry work in the past and that the back of the unit looked “wrong” inasmuch as it was constructed of 1/4-inch lauan instead of the customary 3/4-inch plywood. Plaintiff testified that he did not think that the unit was constructed or installed properly.

{¶ 6} Robert Minks has worked at NCCI since 1995 and was the maintenance supervisor when plaintiff was injured. Minks testified that the carpentry shop is one of seven or eight NCCI “shop” areas that he supervises. According to Minks, shelving units are designed by inmates and shop supervisors and then constructed and installed by inmates. Minks testified that the type of unit that fell on plaintiff is common and that the normal construction for such a unit is for the back to be constructed of 3/4-inch plywood which is then attached to the main part of the unit using 1 1/4-inch brads spaced every two inches around the back of the unit. However, Minks did not personally inspect the unit that later fell on plaintiff, and he stated that there are no “standard specs” that are followed when constructing the units. Finally, Minks opined that the unit fell either because it was overloaded or someone was hanging on it.

{¶ 7} Greg Cousey was a carpenter who had worked at NCCI for five years and directly supervised the inmates that worked in the NCCI carpentry shop. Cousey testified that he designed the type of shelving unit that fell on plaintiff and that an inmate in the shop assembled it. Cousey stated that when inmates are working in the shop, he “makes rounds” to check on their progress and that he inspects the projects when they are finished. Cousey did not recall inspecting the unit that fell on plaintiff before it was installed, but he did inspect it “some time” after the incident. According to Cousey, the back of the unit was attached using wood glue and one inch brads but that it had separated from the main part of the unit. Cousey opined that the brads and glue “gave way” either because someone tugged or hung on the unit, or it was overloaded. Cousey stated that the units are only designed to hold paper, but he admitted that no instructions or guidelines are given to the individuals who receive the units.

{¶ 8} Based upon the foregoing, the court finds that defendant failed to exercise reasonable care in the construction of the shelving unit that fell on plaintiff. Specifically, the court finds plaintiff’s testimony regarding the construction of the shelving unit to be more credible and reliable than that of Minks and Cousey. Based upon plaintiff’s testimony, it is apparent that the back of the unit was improperly attached to the main

part of the unit and that, as a result, it fell off the wall and struck plaintiff. Accordingly, judgment is recommended in favor of plaintiff in an amount to be determined following a second proceeding on the issue of 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  
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