[Cite as *Hall v. Dept. of Rehab. & Corr.*, 2009-Ohio-4020.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
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ANTHONY HALL

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTIONS

Defendant
Case No. 2008-05702

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.[1]

{¶ 2} 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. At approximately 3:00 p.m. on November 8, 2006, plaintiff slipped and fell near a "birdbath" style sink (birdbath) in a bathroom in "5 dorm" at MCI. Plaintiff was thereupon treated for a broken bone is his left leg. Plaintiff testified that the bathroom was oriented such that there was an open area with a row of birdbaths between walls of showers and toilet stalls.

[1]On May 26, 2009, defendant filed a motion to quash subpoenas served upon Ronald Hendricks, Earl Hargrove, Corrections Officer (CO) Frazier, CO See, Physical Therapist Valentine, and Dr. Ringles. On June 12, 2009, Ronald Hendricks filed a motion to quash the subpoena served upon him. Hendricks and See appeared for trial, therefore the motion to quash those subpoenas is DENIED as moot. For good cause shown, the motion to quash the subpoenas served upon Hargrove, Frazier, Valentine, and Dr. Ringles is GRANTED.

{¶ 3} Plaintiff has alleged that defendant was negligent both in failing to lower the water pressure of the birdbath such that water did not splash onto the floor and in failing to warn him about the wet floor. Defendant argues that it owed no duty of care to plaintiff because the danger posed by the wet bathroom floor was open and obvious.

{¶ 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 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.

{¶ 5} Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends upon whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137. However, an inmate incarcerated in a state correctional facility is not afforded the status of any of the traditional classifications. In the context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab. & Corr*. (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state is not the insurer of inmate safety, however. *Moore*, supra.

{¶ 6} "Where a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises." *Armstrong*, supra, syllabus. This rule is based upon the rationale that the very nature of an open and obvious danger serves as a warning, and that the "owner or occupier (of land) may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves." Id. at 80, quoting *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶ 7} Plaintiff testified that he entered the bathroom at MCI for the purpose of getting a broom to clean his area when he slipped and fell on the wet floor. Plaintiff further testified that although the area around the birdbath was wet, there were no warning signs in the bathroom at the time of his accident. Additionally, plaintiff testified that he did not notice the water on the floor prior to the fall, but that he would have noticed the water had he not been focused on obtaining a broom.

{¶ 8} MCI Maintenance Superintendent Keith Beitzel testified that the birdbath was not malfunctioning at the time of the injury. Beitzel further testified that a work order showed that the birdbath was repaired in October 2006, a month prior to the accident, and that there were no pending work orders for the birdbath in question at the time of the accident.

{¶ 9} Moreover, Beitzel testified that a "wet floor" warning was printed on a mop bucket present in the bathroom at the time of the accident. CO See confirmed that a yellow mop bucket with a wet floor warning printed on it was present when he responded to plaintiff's fall.

{¶ 10} Based upon the evidence presented at trial, particularly plaintiff's admission that he would have noticed the water had he looked at the floor, the court finds that the water causing plaintiff's fall was an open and obvious condition. Therefore, defendant had no duty to warn plaintiff of the wet condition of the floor.

{¶ 11} Moreover, even assuming defendant had a duty to warn plaintiff, the presence of the water bucket warning of the "wet floor" provided sufficient evidence to establish that defendant did not breach that duty. Additionally, plaintiff has failed to show that the birdbath was not functioning properly.

{¶ 12} For the foregoing reasons, the court finds that plaintiff has failed to prove his negligence claim by a preponderance of the evidence. 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).

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STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson

MR/DDE/cmd
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