

[Cite as *Fraley v. Dept. of Rehab. & Corr.*, 2018-Ohio-2288.]

DUANE FRALEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00709JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, formerly an inmate in the custody and control of defendant, 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 trial, plaintiff, who at all times relevant to this case was incarcerated at the Pickaway Correctional Institution (PCI), testified that as of June 14, 2016, he had been assigned to PCI for approximately two and a half years. Plaintiff testified that on June 14, 2016, the inmates in the D1 housing unit where he was assigned were released from the unit and allowed to go to chow. Plaintiff had only been assigned to the D1 housing unit for approximately two or three months prior to June 14, 2016. Plaintiff explained that D1 houses approximately 200 inmates and that housing unit D2, which also houses approximately 200 inmates, was released at the same time. Plaintiff further explained that as the inmates exit the housing unit, they are required to walk on the sidewalk between the yellow lines as they proceed to chow and that the sidewalk during such times is very crowded. According to plaintiff, it is typical that inmates will rush to chow and bump or push one another during the process.

{¶3} Plaintiff testified that on June 14, 2016, after his unit was allowed to go to chow, he proceeded along the designated area, walking past a stairwell and railing; a path that plaintiff had used on many previous occasions. The unit is composed of an upper dorm and a lower dorm accessible by two stairwells; one that ascends and one

that descends to below ground level. The handrail is on the sidewalk separating the descending stairwell from the sidewalk. Plaintiff asserted that he was having trouble with his foot and paused by the end of the railing close to a concrete abutment for the descending stairwell to give his foot a break. Plaintiff estimated that he traveled approximately 50 feet when he stopped to rest his foot. Initially plaintiff testified that he was bumped, tried to catch himself on the “structure,” and regained consciousness while he was lying at the bottom of the stairwell. (Plaintiff’s Exhibit 2). However, plaintiff admitted that in a deposition he stated that he did not specifically remember someone bumping into him. Plaintiff further admitted that he did not remember any bumping or pushing prior to falling in the stairwell. Plaintiff added that he does not recall any part of his body coming into contact with the handrail by the stairwell and that he does not recall the handrail breaking. Ultimately, plaintiff acknowledged that he does not know how or why he fell.

{¶4} Regarding the handrail, plaintiff explained that it was in poor condition. Plaintiff believed the handrail was attached to the vertical concrete abutment that was crumbling on the stairwell and that the piping was in poor shape. Plaintiff explained that there were complaints regarding the crumbling concrete and flooding of the stairwells from water that would back up in the dorms, but plaintiff did not detail any complaint specifically made to any identifiable PCI staff member. Plaintiff added that there was no caution tape on the handrail on June 14, 2016. According to plaintiff, the corrections officers previously sat on the handrails, but they all stopped doing so because the handrails were defective. Plaintiff testified that he along with several other inmates wrote a letter to Ohio Attorney General Mike DeWine regarding living conditions at PCI, but plaintiff did not testify regarding any complaints that he made to staff members at PCI regarding a defective railing. Additionally, plaintiff admitted that he was not aware of any incidents or problems with the handrails prior to this incident. After the incident, plaintiff received medical attention for injuries that he sustained.

{¶5} Kenneth Battle testified that as of the date of the trial, he had worked for five years as a corrections officer at PCI and that he was working in such a position on June 14, 2016. Battle recalled that on June 14, 2016, several inmates informed him that plaintiff had fallen down the stairwell, which is where Battle found plaintiff who was lying at the bottom of the stairwell with his arms extended above his head and the handrail was on top of his body. Battle asserted that plaintiff was conscious and assented to remain still after he instructed him to do so. Battle reported that he did not notice any blood or scrapes on plaintiff's extremities, but he admitted that he did not perform any type of physical examination. Battle testified that with the help of another inmate, they removed the handrail.

{¶6} Regarding the stairwell, Battle stated that it was previously taped off due to ongoing work on the crumbling concrete. Battle added, however, that prior to this incident he was not aware of whether the handrail was unsafe. According to Battle, the tape was to prevent anyone from descending the stairwell. Battle could not recall exactly how the tape was hung on the handrail, but agreed that inmates are not allowed to sit on any of the handrails.

{¶7} Tadd Sickles testified that he was employed at PCI as a lieutenant on June 14, 2016. Sickles stated that he responded to the incident and that Battle was already there when he arrived. Sickles observed that caution tape was hanging down to the ground. Sickles explained that the stairwell was previously closed for repairs and that the caution tape had been there for a few weeks prior to this incident. Sickles asserted that when he arrived, he saw plaintiff lying at the bottom of the stairwell. Sickles did not notice any bleeding. Sickles testified that plaintiff was conscious and talking. According to Sickles, he never received any reports that the handrail was unsafe prior to this incident. Sickles stated that he does not recall any warning that officers should not sit on the handrails because they are unsafe, but he added that officers should not sit on any of the handrails.

{¶8} Larry Parker testified that he has been employed by defendant for more than 28 years but had only been at PCI as the maintenance superintendent for 16 months on June 14, 2016. Parker stated that he arrived on the scene of the incident shortly after it had occurred. According to Parker, when he arrived, the handrail had been removed and that the flange that threads the handrail and fastens it to the ground, was still in the ground. Parker asserted that caution tape connected the yellow handrail by the sidewalk to the black handrail that descended with the stairs prior to the incident. Parker explained that the caution tape was to block access to the stairwell and that there was no tape across the handrail by the sidewalk. Parker testified that the safety officer, who performs monthly inspections, previously brought it to his attention that the stairwell had some crumbling concrete that needed to be repaired; as a result, the stairwell was closed and caution tape was placed to block the entrance to the stairwell. Parker stated that the handrail was freestanding and was not attached to the crumbling concrete on the stairwell abutment that is visible in the photographs. (Plaintiff's Exhibits 1 and 4).

{¶9} Parker testified that he was unaware of any problems with the handrails at D or C unit and that both units had the same type of freestanding handrails. Parker stated that any employee may submit a work order to maintenance staff for any issue that needs to be repaired and that the dorm officers typically perform inspections of their dorms. The work orders are stored in a computerized database. Parker asserted that he checked the database, which includes work orders for the previous several years, and did not find any work orders relating to handrails. Parker testified that no one brought it to his attention that any of the handrails were possibly defective.

{¶10} Justin Swanson testified that he has been employed at PCI since 2009 and that on June 14, 2016, he was assigned as a maintenance repair worker. Swanson stated that when he arrived after the incident, someone had already removed the handrail. Swanson did not examine the handrail or attempt to determine why it broke.

Swanson testified that the handrail appeared to have broken off and a portion of the piping was still sticking up out of the ground. Swanson added that he could not tell why the handrail broke and did not believe someone bumping the handrail would cause it to break.

{¶11} Plaintiff also submitted the depositions of inmates Christopher Kenny, Todd Smith, and George Jones, all of whom were incarcerated at PCI on June 14, 2016.¹ Kenny testified that he did not see plaintiff fall, but later learned that plaintiff had fallen down a stairwell. Kenny stated that sometimes there was caution tape on the stairwell to prevent people from going down the stairs, but on the date of the incident, there was no tape. Smith testified that he did not see plaintiff fall but did see him shortly after he had fallen. Smith could not recall any caution tape being on the railing. Smith testified that he learned from other people that the railing was loose or wobbly and that it had been that way for the entire two-year period that he had been at PCI. Smith admitted that he never complained to PCI staff members about the railing and did not know if anyone else complained about it to PCI staff members. Jones testified that he did not see plaintiff fall but walked past the medical staff attending to plaintiff after the fact. Jones stated that he did not know if the railing was defective or if there was caution tape on the railing.

{¶12} “To recover on a negligence claim, a plaintiff must prove by a preponderance of the evidence (1) that a defendant owed the plaintiff a duty, (2) that a defendant breached that duty, and (3) that the breach of the duty proximately caused a plaintiff’s injury.” *Ford v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 05AP-357, 2006-Ohio-2531, ¶ 10.

{¶13} “Typically under Ohio law, premises liability is dependent upon the injured person’s status as an invitee, licensee, or a trespasser. * * * However, with respect to custodial relationships between the state and its inmates, the state has a duty to

¹The objections made in the depositions are overruled.

exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know.” *Cordell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-749, 2009-Ohio-1555, ¶ 6; see also *Moore v. Ohio Dept. of Rehab. & Corr.*, 89 Ohio App.3d 107, 112 (10th Dist.1993).

{¶14} “Notice may be actual or constructive, the distinction being the manner in which the notice is obtained rather than the amount of information obtained.” *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606, 2012-Ohio-1017, ¶ 9. “Actual notice is notice obtained by actual communication to a party.” *Powers v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 03AP-504, 2003-Ohio-6566, ¶ 10. “Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice.” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14. “To support an inference of constructive notice, a plaintiff may submit evidence that the condition existed for such a length of time that the owner or its agent’s failure to warn against it or remove it resulted from their failure to exercise ordinary care.” *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 12, citing *Presley v. Norwood*, 36 Ohio St.2d 29, 31-32 (1973); see also *Hill v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-265, 2012-Ohio-5304, ¶ 13.

{¶15} Upon review of the evidence, the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate further finds that on June 14, 2016, plaintiff and the inmates of both D1 and D2 units were released from their dormitories and allowed to proceed to chow. Plaintiff continued along the designated path and walked past a stairwell and a handrail that separated the stairwell from the sidewalk. The stairwell had caution tape running across the entrance to the stairs preventing anyone from descending the stairs. Toward the end of the handrail on the opposite side of the entrance to the stairs where a concrete abutment extends for a second stairwell that ascends to the upper portion of the dormitory, plaintiff stopped to

rest his foot. Plaintiff does not recall what happened next but regained consciousness as he was lying on the landing at the bottom of the stairwell. Plaintiff believes he was bumped by inmates rushing to chow and fell to the bottom of the stairwell.

{¶16} The magistrate finds that the crumbling concrete did not contribute to the handrail breaking. It is true that the concrete stairwell was crumbling and otherwise in a state of disrepair; however, plaintiff mistakenly believed that the handrail was connected to the concrete abutment that was crumbling. Indeed, plaintiff testified that the handrail must have been connected to the crumbling concrete. Rather, the handrail was considered freestanding and was fastened to the ground, not connected to the crumbling concrete depicted in the photographs. Additionally, it was not shown that the crumbling concrete contributed to the handrail breaking. Indeed, the photographs taken following the incident show a portion of the broken handrail sticking up vertically out of the sidewalk. Furthermore, Parker credibly testified that the stairwell was closed for repairs due to the crumbling concrete of the stairwell and that caution tape connected the handrail on the sidewalk with the handrail descending the stairwell to block access to the stairwell. In short, it was not shown that the crumbling concrete of the stairwell contributed to the handrail breaking.

{¶17} Additionally, plaintiff did not establish that defendant had notice, actual or constructive, that the handrail was defective or posed a hazard to inmates. Plaintiff did not present the court with any work orders or reports demonstrating that the handrails were defective nor with any evidence that similar handrails at PCI were defective. Additionally, plaintiff acknowledged that he never reported any concerns that he had regarding the handrails to staff at PCI. Plaintiff further acknowledged that he was not aware of any incidents or problems with the handrails prior to June 14, 2016. Furthermore, no one employed at PCI testified that they were aware that the handrail where plaintiff fell was defective or posed a hazard to inmates prior to this incident.

{¶18} Plaintiff argues that this case is similar to one where an inmate slipped on a defective bleacher plank in the institution recreation yard. *Camp v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2014-00992 (Aug. 1, 2016). After a trial on the issue of liability, the magistrate determined that defendant had constructive notice of the defective condition of the bleachers. *Id.* In *Camp*, the magistrate determined that a plank was unstable and that such a condition existed for at least a year preceding Camp's slip and fall. *Id.* It was further determined that although defendant's employees made rounds, those rounds only included a cursory visual review that never included looking under the bleachers where the bracing was missing from the plank. *Id.* Here, plaintiff did not present evidence that defendant failed to conduct rounds or inspections. Rather, the evidence established that monthly health and safety inspections did occur and that corrections officers performed periodic inspections as well. However, whether those inspections included examining handrails or did not include examining handrails was not established. In short, the magistrate would have to guess as to the nature and scope of those inspections and whether the handrails were or were not inspected.

{¶19} Also in *Camp*, plaintiff presented evidence that another inmate had his own encounter with the defective plank one year before he fell. In this case, it was not established that any other inmate encountered a similar issue with any of the handrails at PCI. While plaintiff testified that everyone knew that the handrail was defective, such vague testimony does not establish what the defect was or a clear length of time that the condition existed such that defendant's "failure to warn against it or remove it resulted from [its] failure to exercise ordinary care." *Jenkins* at ¶ 12. Plaintiff also argues that corrections officers and inmates were warned to not sit on the handrails, but it was established that no one was allowed to sit on the handrails independent of any safety issue. At best, plaintiff presents the testimony of one inmate who described the handrail as "wobbly" or "loose" based on what he learned from other inmates. Such testimony lacks credibility as it is not based on the inmate's personal interactions with

the handrail. Moreover, it was not established how a “loose” or “wobbly” handrail contributed to the handrail breaking.

{¶20} In short, plaintiff failed to establish how or why the handrail broke, how or why plaintiff ended up on the landing of the stairwell, that the handrail was defective, that defendant had notice, actual or constructive, of the defective handrail, and that the alleged defect proximately caused plaintiff’s fall.

{¶21} Based upon the foregoing, the magistrate recommends that judgment be entered in favor of defendant.

{¶22} 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).

GARY PETERSON
Magistrate