[Cite as *Woodbridge v. Dept. of Rehab. & Corr.*, 2018-Ohio-5451.]

HARRY WOODBRIDGE Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2017-00453JD Magistrate Gary Peterson DECISION OF THE MAGISTRATE

{¶1} Plaintiff is an inmate in the custody and control of defendant, the Ohio Department of Rehabilitation and Correction (ODRC), at the Marion Correctional Institution (MCI). Plaintiff brings this action claiming that ODRC violated Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 et seq., by failing to accommodate his disability, resulting in his injury. The complaint also asserts that ODRC was negligent by not providing plaintiff with the necessary bathroom accommodations. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At trial, plaintiff, who was born in June of 1945, testified that he previously had surgery on his neck and shoulder that resulted in half his neck being removed, although that surgery was performed prior to 2008. Plaintiff maintained that he no longer has proper muscle control at his shoulder and cannot fully raise his right arm. Plaintiff added that he suffers from varicose veins and osteoarthritis in his right knee, right hip, and his knuckles. Plaintiff also suffers from hyperthyroidism. While plaintiff currently walks with the aid of a rolling walker, at the time of his fall that gives rise to this lawsuit, he ambulated with the aid of a cane.

{¶3} Regarding his assigned institutions for his incarceration, plaintiff related that upon his entry into the custody of ODRC, he was first assigned to the Ross Correctional Institution (RCI), but shortly thereafter received a medical transfer to the Toledo

Correctional Institution where he was assigned to an ADA cell. Plaintiff reported that he had difficulty walking at RCI due to the size of the campus. Plaintiff stated that he subsequently received a security classification review that resulted in the lowering of his security level and was thereafter transferred to the Hocking Correctional Institution (Hocking). Plaintiff relates that Hocking closed and that he was again transferred to RCI. Plaintiff testified that the medical team at RCI requested that plaintiff be transferred out of RCI and that he was therefore transferred to MCI. Upon his arrival at MCI on October 24, 2016, plaintiff underwent a routine medical examination. Plaintiff stated that when he arrived at MCI, he was initially informed that he would be placed in dorm seven, but due to a paperwork issue, he was sent to the medical infirmary, where he stayed overnight, and eventually was assigned to dorm six.

{¶4} With respect to dorm six at MCI, plaintiff testified that the restrooms were substandard and that the dorm was very cold. Plaintiff recalled that there was water constantly on the floor and that the toilets and pipes continuously leaked. Plaintiff stated that a large fan was placed in the entryway to the restroom to dry up the water, but water nevertheless persisted on the floors. Plaintiff described the bathroom as consisting of five or more toilets and two urinal troughs. Each urinal had a pipe that extended down from the ceiling to the urinal; the pipe had a handle that could be turned to flush water into the urinal. Plaintiff stated that the pipe to the second urinal trough, the one furthest from the entryway of the restroom, was not fastened or clamped to the wall. Plaintiff added that the showers were also in the same restroom adding to the condensation in the restroom.

{¶5} After arriving at MCI, plaintiff wrote at least two kites to two different unit managers requesting that he be moved to the ADA dorm also known as dorm seven. Plaintiff testified that to his knowledge, the ADA dorm was the only dorm with bathroom facilities designed to accommodate disabled persons. Plaintiff added that he has a bottom bunk and bottom range restriction with respect to his housing assignment. After

writing the kites, plaintiff learned that he was placed on the wait list for dorm seven and would need to wait for a bed to become available to move.

{¶6} Plaintiff testified that on January 4, 2017, he proceeded to the restroom in dorm six. Plaintiff recalls that an inmate was already using the urinal trough that he prefers and that he proceeded to the trough furthest from the entrance to relieve himself. Plaintiff acknowledged that he chose not to use the toilet at that time. Plaintiff testified that after he relieved himself, he attempted to turn the handle of the pipe to flush the urinal but the pipe jerked, knocking him off balance. As he lost his balance, plaintiff grabbed the pipe, which was not fastened to the wall, and fell to the floor, sustaining injuries.

{¶7} Steven Harford testified that he is employed at MCI as the safety and health coordinator and has held that same position since 2016. Harford recalled that he became aware that plaintiff had fallen in the bathroom about two or three days after it occurred. Harford admitted that prior to plaintiff's fall, he had conversations with other staff members about plaintiff's potential placement in the ADA dorm.

{¶8} Harford explained that dorm seven is a handicapped dorm and has an ADA approved restroom. Harford stated that placing inmates in dorm seven is an attempt to accommodate inmates, depending on their disability. Harford asserted that dorm seven is a coveted dorm and that the day room is larger than other dorms and is airconditioned.

{¶9} Harford stated that plaintiff had a cane restriction, meaning that he had received medical approval to use a cane, but plaintiff did not have any ADA accommodation restriction. According to Harford, many inmates ambulate with the aid of a cane but are not in dorm seven. Harford explained that he is not authorized to review plaintiff's medical records and that he is only allowed to review the restriction page provided by the health care administrator. Harford stated that if an inmate does

not have a restriction and wishes to enter dorm seven, that inmate is placed on a waiting list to enter the dorm.

{¶10} Harford testified that when someone makes an ADA accommodation request, there is a form that needs to be completed and approved by a physician. Harford could not recall whether he informed plaintiff that he needed a physician's approval to receive an ADA restriction.

{¶11} Teresa Edoja testified that she is employed at MCI as a corrections specialist and her duties include, among other things, managing the oak unit, which includes dorm six. Edoja acknowledged that in the weeks preceding plaintiff's fall, plaintiff expressed his desire to transfer to dorm seven, which is in a different unit. Edoja stated that she sent an email to James Ferguson and Harford requesting that plaintiff be moved to dorm seven to accommodate his "ADA needs." Plaintiff's Exhibit 16. Edoja explained that she did not have the authority to unilaterally transfer plaintiff to another dorm and that such action would need to be approved by Ferguson.

{¶12} Wendi Griffith testified that she has been employed at MCI for 25 years and that she is currently a correctional counselor/sergeant for buckeye unit, which includes dorm seven. Griffith stated that dorm seven also is considered the dorm for ADA accommodations. Griffith acknowledged that she received communication regarding plaintiff moving to dorm seven. Griffith explained that once she received approval from plaintiff's unit manager, she placed plaintiff's name on a wait list for a bottom bunk in dorm seven. Griffith provided that bottom bunks rarely become available in dorm seven. Griffith stated that if plaintiff had an ADA restriction, then he would have been moved; Griffith added that only Harford or the medical unit can request that someone be moved due to an ADA restriction. Griffith did not believe that plaintiff requested ADA accommodations.

{¶13} Lisa Oswald testified that she has been employed as a corrections officer at MCI since January 1, 2012, and that before that, she worked for about 11 years as a

corrections officer at North Central Correctional Complex. Oswald stated that she was assigned to the oak unit at MCI, which included dorm six. Oswald identified several work order requests for repairs to the dorm six bathroom. Many of the work orders relate to leaking fixtures or condensation in the bathroom. Oswald acknowledged that water accumulated on the floor in the bathroom and that orange safety cones warning of wet floors are frequently placed in the bathroom. Oswald also stated that there is a fan in the entryway that is used to dry out the bathroom. Oswald added that the floors are mopped every hour by inmate porters. Oswald wrote in an incident report following plaintiff's fall that plaintiff had previously requested to go to the ADA dorm, which she believed was better equipped for his needs.

{¶14} Anthony Lucki testified that he is employed at MCI as a sergeant and has been so employed for the previous six years. Lucki testified that prior to plaintiff falling, they discussed moving plaintiff to dorm seven. Lucki reported that he contacted Griffith and Furgeson and asked that plaintiff be placed on the wait list for dorm seven.

{¶15} Keith Beitzel testified that he has been employed at MCI as a building construction superintendent for the previous two years. Beitzel reviewed the work orders that are admitted as Plaintiff's Exhibits 8-15, and explained that they are standard work orders for routine repairs. Beitzel stated that all the work orders are for MCI dorm six, but he did not know who was assigned to do the work. Beitzel added that the dates written about midway down the documents on the right side represent the dates the work was completed.

{¶16} Nicholas Lacourse testified that he is currently an inmate at the Richland Correctional Institution, but in 2017, he was assigned to MCI. Lacourse stated that at the time of plaintiff's fall, he was assigned to dorm F but had previously been assigned to dorm six. According to Lacourse, one of the urinals in the restroom of dorm six was "messed up" and "broken" the whole time he was in dorm six. Lacrouse, however, was

unable to describe how the urinal was broken or detail the effect of such a condition. Further, Lacrouse did not know which urinal was broken.

{¶17} Lance Brandyberry testified by way of deposition that he is an inmate at MCI and was assigned to dorm six in January 2017. Regarding the bathroom, Brandyberry asserted that the floor is constantly wet from moisture. Brandyberry recalled that it was necessary to use a squeegee on the ceiling, the walls, and the floor due to the moisture. Brandyberry added that fans were used to dry the bathroom. Brandyberry acknowledged that porters were assigned to mop the bathroom to keep it dry and that they did a "pretty good job" of keeping it dry. Brandyberry added that there were no grab bars in the restroom. Brandyberry, who acknowledged that he was familiar with plaintiff, stated that plaintiff appeared to be fine given his age. Brandyberry added that dorm six was full of rowdy, younger inmates.

ADA

{¶18} "To prove a violation of Title II of the ADA, a plaintiff must establish that: (1) he or she is a qualified individual with a disability; (2) the defendant is subject to the ADA; and (3) the plaintiff was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities or was otherwise discriminated against by the defendant, by reason of the plaintiff's disability." *Wolfe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-346, 2011-Ohio-6825, ¶ 16, citing *Franks v. Ohio Dept. of Rehab. & Corr.*, 195 Ohio App. 3d 114, 2011-Ohio-2048 (10th Dist.); *see also Pennsylvania Dept. of Corr. v. Yeskey*, 524 U.S. 206, 209-10 (1998) (Title II of the ADA applies to state prisons and prisoners, and prisons cannot use an inmate's disability as a reason to bar that inmate from participating in or receiving the benefits of recreation, medical services, or education and vocational programs.). A defendant discriminates against a qualified individual with a disability if it denies him or her a reasonable accommodation. *Wolfe* at ¶ 16.

{¶19} In order to avail himself of the protections of Title II of the ADA, plaintiff must be a qualified individual with a disability. "Under the ADA, a 'qualified individual with a disability' is 'an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.' Further, a 'disability' is 'a physical or mental impairment that substantially limits one or more major life activities' of the individual. 'Major life activities include, 'caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.'" (Citation omitted.) *Franks* at ¶ 19, quoting 42 U.S.C. 12131(2), 42 U.S.C. 12102(1)(A), 42 U.S.C. 12102(2)(A).

{¶20} Further, "[s]everal factors should be considered in determining whether an impairment 'substantially limits' a major life activity: (1) the nature and severity of the impairment, (2) the duration or expected duration of the impairment, and (3) the permanent or long term impact, or the expected permanent or long term impact of, or resulting from, the impairment." *Jurczak v. J & R Schugel Trucking Co.*, 10th Dist. Franklin No. 03AP-451, 2003-Ohio-7039, ¶ 23.

{¶21} Plaintiff failed to prove by a preponderance of the evidence that he is a qualified individual with a disability. While plaintiff identified several medical issues from which he suffers, he did not prove that he has a physical impairment that substantially limits one or more major life activities. "Not every physical or mental impairment constitutes a 'disability' within the meaning of the ADA, even though the person may have an impairment that involves one or more of his major life activities." *Sheridan v. Jackson Twp. Div. of Fire*, 10th Dist. Franklin No. 08AP-771, 2009-Ohio-1267, ¶ 6. Rather, plaintiff failed to identify how any of his medical issues impact his

life activities, let alone how his medical issues substantially limit one or more major life activities. It appears that plaintiff believes that his struggles walking and/or standing constitute a disability under the ADA. However, "[m]ere difficulty in standing or walking is not sufficient to establish a substantial limitation on the major life activity of walking. *See Brown v. BKW Drywall Supply, Inc*. (S.D.Ohio 2004), 305 F.Supp.2d 814, 825. Even moderate difficulty in walking may not establish a substantial impairment. *See Satterly v. Borden Chem., Inc*. (C.A.6., 2001), 24 Fed.Appx. 471, 472 (holding that difficulty walking, or having to walk at a slower pace than others failed to establish a substantial impairment)." *Id*. at ¶ 8. Additionally, it was not established how plaintiff's claimed difficulty in raising his arm substantially impacted one or more major life activities. In short, plaintiff failed to prove that any of his medical issues substantially limit one or more major life activities.

{¶22} Moreover, plaintiff was required to present evidence that he was denied the opportunity to participate in or benefit from a service, program, or activity or was otherwise discriminated against by defendant by reason of his disability. Plaintiff's complaint is that he was not housed in the ADA dorm; plaintiff has not identified a service, program, or activity that he was denied the opportunity to participate in or benefit from or provided evidence that he was otherwise discriminated against because of his disability. Plaintiff in reality is dissatisfied with what he considers to be his substandard housing assignment. *See Shaw v. TDCJ-CID*, 540 F.Supp.2d 834, 837 (S.D. Texas 2008) (inmate, who was blind, claimed that defendant violated the ADA when he slipped in the shower, but such a claim was at most, a claim that prison officials were negligent and merely concerned what he perceived to be substandard conditions of the showers). Furthermore, there is no dispute that plaintiff did not have a medical restriction requiring his placement in the ADA dorm. Additionally, there is no dispute that plaintiff did not obtain a physician's approval, as is required by defendant's

policies, restricting his housing assignment to the ADA dorm. In short, plaintiff has not proven his claim under the ADA.

NEGLIGENCE

{¶23} "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. "Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being." *Ensman v. Ohio Dept. of Rehab. & Corr*., 10th Dist. Franklin No. 06AP-592, 2006-Ohio-6788, ¶ 5.

{¶24} Plaintiff failed to prove by a preponderance of the evidence that defendant breached any duty it owed to him with respect to his claim for negligence. It was established that fans were placed in the dorm restroom to provide added ventilation and porters were required to mop the floors every hour. Inmate Brandyberry testified that the porters did a good job keeping the floors dry. The maintenance records provided by plaintiff do not establish that that water was constantly on the floor presenting a hazard to plaintiff. Furthermore, the proximate cause of the accident does not appear to be related to water on the floor. Rather, plaintiff testified that as he attempted to turn the water on, the pipe leading to the urinal jerked, causing him to lose his balance. There is no dispute that the pipe is not a grab bar and there is no evidence that defendant was aware that the pipe could malfunction, causing an inmate to lose his balance. In short, plaintiff failed to prove his claim for negligence.

{¶25} Based upon the forgoing, the magistrate concludes that plaintiff failed to prove his claims by a preponderance of the evidence. It is recommended that judgment be entered in favor of defendant.

{¶26} *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

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Sent to S.C. Reporter 1/14/19