

[Cite as *McLeod v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-3951.]

YUSUF A. MCLEOD

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2020-00179JD

Magistrate Scott Sheets

DECISION OF THE MAGISTRATE

{¶1} Plaintiff Yusuf McLeod is an inmate in defendant's custody. Plaintiff seeks recovery for injuries he alleges were sustained when he slipped and fell while exiting the shower on March 19, 2018. Trial took place remotely on June 3, 2021. Only plaintiff testified at trial. In addition, a video of plaintiff's fall was admitted into evidence. For the following reasons, the magistrate hereby recommends judgment for defendant.

Findings of Fact

{¶2} The magistrate makes the following factual findings based on the limited evidence presented at trial. Plaintiff is an inmate in defendant's custody. On March 19, 2018, and while housed at defendant's Allen-Oakwood Correctional Institution, plaintiff, while exiting the shower, slipped and fell on water which had accumulated just outside the doorway which served as the shower's entrance and exit. On the day of the incident, plaintiff showered for 45 minutes before exiting. Water often accumulated in this area while inmates showered and plaintiff, who had been housed at Allen for two to three months before his fall, was aware that water accumulated in this area. Plaintiff testified to the above. In addition, exhibit 1, video of the incident, shows plaintiff's fall at approximately 10:29:22 per the video's timecode. Plaintiff testified that the video accurately depicted his fall, which can be seen at the bottom-right of the video.

{¶3} The video also establishes the following facts. As noted, plaintiff slipped and fell just outside the doorway to the shower area. The doorway, which has no door,

opens directly onto a flat and smooth walkway. At the time of plaintiff's fall, the video shows the doorway and walkway were free of obstructions. Further, beyond the presence of the water which caused plaintiff's fall, there was nothing else on the walkway. No other people were present. However, before plaintiff's fall, several unidentified individuals, one of whom emerges from the shower area, walk through the same area without falling. One appears at approximately 10:25:25, one at 10:26:18, and one at 10:27:31 per the video's timecode.

{¶4} Plaintiff sustained a broken wrist from the incident and experienced pain and discomfort as a result. Plaintiff eventually underwent surgery to repair his wrist but continues to experience pain. Plaintiff testified to the above, which was unrefuted. However, plaintiff presented no medical witnesses.

Conclusions of Law

{¶5} Plaintiff bore the burden of proving his claim by a preponderance of the evidence. As stated in *Brothers v. Morrone-O'Keefe Dev. Co., LLC*, 10th Dist. No. 06AP-713, 2007-Ohio-1942, 2007 Ohio App. Lexis 1762, ¶ 49: "[a] preponderance of the evidence is 'the greater weight of the evidence * * * [it] means evidence that is more probable, more persuasive, or of greater probative value.

{¶6} Plaintiff has asserted a negligence claim. To prevail on his claim, plaintiff had to establish that defendant owed him a duty of care, breached that duty, and that defendant's breach proximately caused his injuries. *Cordell v. Ohio Dept. of Rehab. And Corr.*, 10th Dist. No. 08-749, 2009 Ohio 1555, ¶ 6. Moreover, as to inmates in its custody:

the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know. Though prison officials are not insurers of an inmate's safety, they generally owe inmates a duty of reasonable care and protection from harm. Nonetheless, "under the 'open and obvious'

doctrine, an owner or occupier of property owes no duty to warn * * * of open and obvious dangers on the property. * * * The rationale behind the doctrine is that the open and obvious nature of the hazard itself serves as a warning, and that the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.” The “open and obvious doctrine,” where warranted, may be applied in actions against the ODRC with the result that ODRC would owe no duty to an injured inmate. (citations omitted.)

Id. Open and obvious conditions “are those not hidden, concealed from view, or undiscoverable upon ordinary inspection” and “a person does not need to observe a dangerous condition for it to be an open and obvious condition. (citations omitted.) *Id.* at ¶ 10. Attendant circumstances “act as an exception to the open and obvious doctrine.” Attendant circumstances are factors that contribute “to the fall and [are] beyond the control of the injured party.” They consist of distractions that would “reduce the degree of care an ordinary person would exercise at the time.” (citations omitted.) *Id.* at ¶ 18-19. See also *Jenkins v. Ohio Dept. of Rehab & Corr.*, 10th Dist. No. 12AP-787, 2013-Ohio-5106, ¶¶ 10-11; 16. Inmates must also “use reasonable care to ensure their own safety.” *Id.* at ¶ 8. As discussed below, the magistrate finds that the water that caused plaintiff’s fall was open and obvious and that, consequently, defendant owed plaintiff no duty.

Conclusion

{¶7} The court finds that plaintiff failed to prove his claims by a preponderance of the evidence. Instead, plaintiff’s testimony and the video evidence establish that nothing hid, concealed, or made undiscoverable the water which caused plaintiff’s fall. Further, plaintiff did not testify that he was distracted, that his attention was diverted, or that any other attendant circumstance existed on the day of the incident. Plaintiff’s

ability to observe and/or avoid the water was not impeded in any way. The video shows plaintiff exiting the shower alone and without any object or condition appearing to cause his fall other than the water, which plaintiff's testimony established was present. Indeed, plaintiff knew that water had previously accumulated near the doorway which served as the entrance and exit for the shower. Approximately four minutes before and during the time leading up to plaintiff's fall, three other people successfully traversed the same area.

{¶8} For the reasons stated above, the magistrate finds that the water constituted an open and obvious hazard. Therefore, defendant owed no duty to warn plaintiff about the water that caused his fall on March 19, 2018. As plaintiff failed to prove an essential element of his negligence claim, the magistrate recommends judgment in defendant's favor.

{¶9} *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).*

SCOTT SHEETS
Magistrate