[Cite as *Little v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-3084.]

TRAYVON LITTLE Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2020-00552JD Magistrate Robert Van Schoyck DECISION OF THE MAGISTRATE

{¶1} Plaintiff is an inmate in the custody and control of defendant and was housed at Lebanon Correctional Institution (LeCI) at all times relevant. He brought this action alleging that defendant was negligent in assigning him to an upper range cell despite him being medically designated as needing to be on a bottom range due to his multiple sclerosis, and that, as a result, he fell and was injured while descending the stairs on June 11, 2020. The case proceeded to trial before the magistrate. For the reasons stated below, judgment is recommended in favor of plaintiff.

Summary of Testimony

{¶2} Plaintiff testified that he was diagnosed with multiple sclerosis in 2019 and that prison medical staff consequently ordered that he be restricted to bottom range and bottom bunk housing assignments. He testified that on May 29, 2020, upon release from a temporary assignment to "the hole", he was moved to a cell on a third-floor range. He stated that he told the corrections officer who escorted him there that he had a bottom range medical restriction, but the officer informed him that if he did not go to his assigned cell, he would be considered to be refusing to lock. Plaintiff testified that refusing to lock is an infraction that can result in punishment, such as returning to the hole. Plaintiff complied and went to his new cell, he stated.

{¶3} Plaintiff testified that on June 11, 2020, after the 11:30 a.m. inmate count cleared, he left his cell and went down the stairs but missed a step, causing him to fall

and twist his left ankle. According to plaintiff, a corrections officer called for prison medical staff to come help him off the stairs and take him to the infirmary. Plaintiff recalled that the medical staff determined he "hyper inverted" his ankle, which they covered in medical wrap. He also recalled that he was given crutches that day. He explained that after later receiving a cane and being moved to a bottom range cell, he did not seek any further medical attention. He testified that as a result of his injury he cannot walk without a cane or stand for more than five minutes at a time. He further testified that, due to his condition, he believes he will be unable to work a job when he is released from prison.

{¶4} During cross-examination, plaintiff testified that he did not file a grievance regarding being assigned to an upper range cell prior to the accident because he thought that prison staff would retaliate against him and put him back in the hole. Plaintiff admitted on cross-examination that after the accident he has occasionally showered on the second range, despite having been reassigned to a bottom range cell. However, he explained that he only does so when the showers on the bottom range are full, for if he does not go to the second range he would not get a shower that day. He also occasionally goes upstairs to use the telephone, he acknowledged.

{¶5} Plaintiff called as a witness Jemonte McNeal, who was his cellmate at the time of the accident. McNeal testified that on June 11, 2020, after the inmates in the unit were released to go to the chow hall for lunch, he was going downstairs when he heard a commotion and saw plaintiff had fallen on the stairs, although he did not actually see the fall. McNeal also testified that plaintiff did not walk with a cane prior to the fall. Like plaintiff, he portrayed "the hole" as a place to be avoided.

{¶6} Defendant called LeCI Institutional Inspector Jody Sparks as a witness. Sparks had been the Institutional Inspector at LeCI for a little over a year at the time of trial, though he has worked for defendant since 1997. He testified that he has access to all inmate records at LeCI and that when he checked for any records related to plaintiff's

alleged fall, he found a medical record from an examination in which medical staff noted that plaintiff tripped and fell down four stairs. (Defendant's Exhibit A.)

{¶7} Sparks testified that, according to this medical record, plaintiff came to be seen in the infirmary by submitting a Health Service Request form that enabled him to visit during nurse sick call hours, meaning that he was not transported or sent to the infirmary at the request of a corrections officer like he described. Sparks further testified that, in his experience, if plaintiff had indeed fallen down the stairs and there had been a big commotion, a corrections officer would have arranged for plaintiff to be transported to the infirmary by wheelchair right away as opposed to plaintiff having to submit a Health Service Request form. Sparks averred that there was no evidence in the institution's records that plaintiff was transported to the infirmary in a wheelchair. Sparks also identified Defendant's Exhibit B, consisting of communications plaintiff had with prison staff subsequent to the alleged fall at issue in this case. In sum, Sparks could not corroborate the allegation that plaintiff fell on June 11, 2020.

{¶8} When asked how an inmate with a bottom range restriction may seek redress when assigned to an upper range, Sparks testified that the inmate could notify the corrections officer escorting him to the new cell, and if that fails to correct the problem the inmate can notify the unit manager or other staff who have the authority to change the cell assignment. During his investigation, Sparks stated, he reviewed video footage of plaintiff using the stairs in order to use the phone and showers despite him now having a bottom range cell assignment.

{¶9} During cross-examination, Sparks testified that if medical staff responded to a call and picked plaintiff up off the stairs, it should have been documented, but that plaintiff had no control over such documentation or the lack thereof. Sparks also clarified that if an inmate has a medical restriction for a bottom range cell assignment, it does not mean the inmate is not allowed to use the upstairs showers or phone, and he

acknowledged that inmates with bottom range restrictions do not have priority for the showers on their range.

{¶10} Defendant also called LeCI Healthcare Administrator Dana Ullery as a witness. Ullery, who oversees the medical department at LeCI, stated that she reviewed plaintiff's medical file and verified that he had bottom range and bottom bunk restrictions. She testified that if medical staff had been called to plaintiff's unit on the day in question there should have been a record of it and plaintiff would not have needed to fill out a Health Service Request form to receive medical attention. Ullery described the contents of the medical record documenting plaintiff's visit to the infirmary on June 11, 2020, including the noted symptoms and observations, but Ullery stated that none of the symptoms exhibited by plaintiff were outside of his control; in other words, he could have been faking his symptoms. Ullery testified that although the medical record stated plaintiff would be scheduled for a follow-up appointment in four days, she found no record of that appointment taking place.

{¶11} Defendant next called Jennifer Chain, R.N. as a witness. Chain is the nurse at LeCI who saw plaintiff during his visit to the infirmary on the day in question. Chain testified that she did not specifically remember the visit or specifically remember plaintiff's injury, but she recognized the medical record admitted as Defendant's Exhibit A as one she created and she described its contents. Chain could not recall how plaintiff came to be seen by her but she stated that the medical record indicated he came there for a nurse sick call appointment rather than being transported there on an emergent basis.

{¶12} Reviewing the medical record, Chain stated that she always fills out a form like this when she sees a patient. According to Chain, in the subjective part of the form she notes what the inmate says happened, and in this instance that included plaintiff reporting he fell down four stairs and injured his ankle, and that he was experiencing throbbing pain in the ankle which he rated as an 8 on a scale of 1 to 10. Chain explained that she also notes vital signs and objective assessments, including in this instance that

plaintiff could wiggle his toes and that there was no major discoloration or swelling, but he did flinch and was guarded in a passive range of motion assessment. Chain explained that swelling or bruising could indicate a broken or sprained ankle, and an inability to wiggle toes or feel sensation could indicate nerve damage, but there were no documented physical symptoms with plaintiff's ankle other than him flinching when she tried to move his foot. She stated on cross-examination, though, that an ankle can be twisted even if it is not swollen or red. As Chain documented, she applied an elastic bandage to the ankle for compression, gave plaintiff a pair of crutches with instructions for use, recommended isometric exercises for him, told him to rest the ankle, told him the signs and symptoms to watch for that might need further medical attention, and wrote that he would be scheduled for a follow-up appointment in four days. Chain's notes also confirmed that plaintiff indeed had a medical restriction that should have limited him to a bottom range cell assignment.

{¶13} On cross-examination, Chain testified that if an inmate requests a nurse sick call visit, the inmate's handwritten Health Service Request form would be scanned into his chart. She also testified that nurse sick call visits usually do not occur on the same day that the Health Service Request form is submitted but are supposed to occur within 48 hours. As she described, nurses collect the submitted Health Service Request forms every morning and schedule the visits using a triage system.

Legal Standard

{¶14} To prevail on a claim for negligence, plaintiff must prove by a preponderance of the evidence that "(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, and (3) the breach of the duty proximately caused the plaintiff's injury." *Jenkins v. Ohio Dept. of Rehab & Corr.,* 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 6. "While the state is not an insurer of the safety of inmates, the state generally owes a duty of reasonable care and protection from harm to inmates under its custody." *Price v. Dept. of Rehab. & Corr.,* 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9.

"Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know." *McElfresh v. Ohio Dept. of Rehab. & Corr.,* 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16. "Prison inmates must also exercise reasonable care to ensure their own safety." *Taylor v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15.

Findings of Fact

{¶15} The magistrate finds as follows. Plaintiff was previously designated by defendant's medical professionals as needing to be restricted to bottom range housing due to his multiple sclerosis. Despite this, on May 29, 2020, plaintiff was assigned to a cell on an upper range. He informed the corrections officer who escorted him there that he was restricted to the bottom range, but the officer told him that if he did not go to his assigned cell he would be considered to be refusing to lock—an infraction. Plaintiff complied with the cell assignment. After moving into his new cell, plaintiff did not request to change cells either through filing a grievance or contacting prison management through the kite system or other means of communication.

{¶16} On June 11, 2020, plaintiff fell and twisted his left ankle as he was descending the stairs. Although defendant contends that plaintiff did not fall and was only seen in the infirmary upon his own request, plaintiff's testimony about the fall was corroborated by McNeal, the date and time recorded in Nurse Chain's examination of plaintiff are consistent with plaintiff's version of events and not consistent with the timeframe of requesting and obtaining a nurse sick call appointment, and defendant did not produce a copy of any Health Service Request form. Nurse Chain testified that if plaintiff had submitted a Health Service Request form, a copy in plaintiff's handwriting would be in his medical records, but defendant did not submit the paperwork as evidence

and its witnesses who reviewed plaintiff's records apparently did not find any pertinent records other than the one from his examination by Chain.

{¶17} Plaintiff's pain, flinching, and guarding of the ankle during Chain's examination were consistent with him having suffered some twisting of the ankle, but his symptoms were not consistent with a more significant sprain, a break, or nerve damage. Chain applied an elastic bandage for compression, gave plaintiff crutches, and instructed him to rest his ankle. A follow-up appointment was supposed to occur four days later. Although defendant's witnesses who reviewed plaintiff's medical records testified there was no record of this or any further medical attention for plaintiff's ankle, it appears he did have some further attention at least to the extent that the medical department later issued him a cane to replace the crutches. After that time, however, plaintiff did not seek or receive further medical care regarding his ankle.

Analysis

{¶18} Defendant owed plaintiff a duty to exercise reasonable care to prevent him from being injured by a dangerous condition it had notice of. It was reasonably foreseeable that an inmate with a medical bottom range restriction would be injured on the stairs if forced to descend them—indeed, that is why the restriction was in place. Accordingly, assigning plaintiff to an upper range cell and not correcting the assignment when plaintiff informed the corrections officer created a dangerous condition for plaintiff. Therefore, defendant breached its duty of care toward plaintiff.

{¶19} The next issues are whether defendant's breach proximately caused plaintiff's injury and, relatedly, the extent to which plaintiff may have contributed to his injury. Defendant's negligence was a proximate cause of plaintiff's injury. He would not have had to negotiate the stairs if he had been assigned to a lower range. However, "'[t]here may be more than one proximate cause of an injury.'" *Taylor*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, at ¶ 22, quoting *Taylor v. Webster*, 12 Ohio St.2d 53, 57, 231 N.E.2d 870 (1967).

{¶20} In *Taylor*, an inmate with a bottom bunk restriction was improperly assigned to a top bunk, from which he fell. The inmate informed one or more employees of the error but did not file a grievance about it prior to the fall. The Tenth District Court of Appeals held that there was evidence that negligence on the part of both the inmate and the prison were proximate causes of the injury. *Id*. at ¶ 24.

{¶21} In this case, plaintiff's inaction after being moved to an improper housing assignment was also a proximate cause of his injury. While plaintiff more likely than not brought his lower range restriction to the attention of the corrections officer who escorted him to the upper range cell assignment—and while it is understandable that he elected to enter that cell rather than return to the hole after the officer warned him he would be considered refusing to lock if he did not do so—in the time between the inappropriate cell assignment and his fall 13 days later he did not file a grievance, submit a kite, or otherwise inform anyone that he needed to be moved to a lower range cell. Taking into account that plaintiff initially informed the corrections officer about his lower range restriction, that plaintiff subsequently did not take any action to correct the error, and the amount of time between the erroneous cell assignment and injury, the magistrate finds that plaintiff is twenty percent responsible for his injury. Defendant is eighty percent responsible.

{¶22} Generally, "the appropriate measure of damages in a tort action is the amount which will compensate and make the plaintiff whole." *N. Coast Premier Soccer, LLC v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-589, 2013-Ohio-1677, ¶ 17. There is no evidence that plaintiff had to pay for the medical treatment that defendant's employees rendered, nor is there evidence of past lost wages. Plaintiff testified that as a result of his injury, he can no longer stand for more than five minutes and will not be able to work a job when he is released from prison, but plaintiff has not established that the injury to his ankle is permanent or long-term, much less that he will be unable to work when he is released from prison. *See Hall v. Kreider Mfg., Inc.*, 10th Dist. Franklin No. 03AP-272, 2003-Ohio-6661, ¶ 7 ("In order to show future loss of earnings in a personal

injury case, the plaintiff's evidence must demonstrate with reasonable certainty that his injury or condition prevents him from attaining his pre-injury wage.") Subjective, internal injuries which are elusive in nature and not observable, require expert testimony to establish causation. *Argie v. Three Little Pigs, Ltd.*, 10th Dist. Franklin No. 11AP-437, 2012-Ohio-667, ¶ 15. Since the long-term harm claimed by plaintiff is beyond the scope of common knowledge, plaintiff failed to establish the same due to the lack of expert testimony. Moreover, the fact that plaintiff did not seek further medical treatment for his ankle is inconsistent with his argument that he suffered a severely debilitating, long-term injury from the fall. Plaintiff is thus limited to damages for some temporary pain and suffering which he understandably sustained because of the accident.

{¶23} There is "no specific yardstick, or mathematical rule [that] exists for determining pain and suffering." *Hohn v. Ohio Dept. of Mental Retardation & Dev. Disabilities*, 10th Dist. Franklin No. 93AP-106, 1993 Ohio App. LEXIS 6023, 10 (Dec. 14, 1993). "'Rather, the finder of fact makes a "human evaluation" of all the facts and circumstances involved.'" *McCombs v. Ohio Dept. of Dev. Disabilities*, 2022-Ohio-1035, 187 N.E.3d 610, ¶ 29 (10th Dist.), quoting *Kelly v. Northeastern Ohio Univ. College*, 10th Dist. Franklin No. 07AP-975, 2008-Ohio-4893, ¶ 8. The magistrate finds that plaintiff suffered a twisted ankle that—without objective evidence or expert testimony indicating otherwise—probably resolved within a few weeks at most. As a result, fair compensation for plaintiff's pain and suffering amounts to $2,000. This amount must be reduced by the extent of plaintiff's comparable fault: 20%. R.C. 2315.35. Plaintiff is thus entitled to damages of $1,600.

{¶24} Based upon the foregoing, the magistrate recommends that the court enter judgment in favor of plaintiff in the amount of $1,600. Lastly, plaintiff's July 1, 2022 motion to proceed to final judgment is DENIED as moot.

{¶25} *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).

ROBERT VAN SCHOYCK
Magistrate

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