

IN THE COURT OF CLAIMS OF OHIO

ALI GILL

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2021-00048JD

Judge Patrick E. Sheeran
Magistrate Gary Peterson

DECISION

{¶1} Plaintiff, who at all relevant times was an inmate in the custody and control of Defendant, brought this action alleging that Defendant was negligent in the maintenance of its sidewalks, which caused Plaintiff to trip and fall. The case was tried before a Magistrate. On July 15, 2022, the Magistrate issued a Decision, in which he recommended judgment in favor of Defendant.

{¶2} On July 26, 2022, Plaintiff filed Objections to the Magistrate’s Decision. On August 4, 2022, Defendant filed a Response to Plaintiff’s Objections to the Magistrate’s Decision. Plaintiff’s Objections are now before the Court for consideration. For the reasons set forth below, the Court will overrule Plaintiff’s Objections.

Standard of Review

{¶3} “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision * * *.” Civ.R. 53(D)(3)(b)(i). Objections “shall be specific and state with particularity all grounds for objection.” Civ.R. 53(D)(3)(b)(ii). “An objection to a factual finding, whether or not specifically designated as a finding of fact * * *, shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding * * *.” Civ.R. 53(D)(3)(b)(iii).

{¶4} The court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and

appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and conclusions in the magistrate’s decision.” *Ramsey v. Ramsey*, 10th Dist. Franklin No. 13AP-840, 2014-Ohio-1921, ¶ 16-17. However, “[i]f an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate’s factual findings and limit its review to the magistrate’s legal conclusions.” *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 13. “Whether or not objections are timely filed, a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification.” Civ.R. 53(D)(4)(b).

Factual Background and Procedural History

{¶5} Plaintiff did not file a transcript of the trial before the Magistrate. The Court therefore accepts the facts as found by the Magistrate and limits its review to the Magistrate’s legal conclusions. *Triplett* at ¶ 13. For the sake of readability, the Court will briefly relate the facts as found by the Magistrate.

{¶6} On September 20, 2020, Plaintiff was in the recreation yard at Grafton Correctional Institution (GCI). He was wearing a face mask as required by prison regulations due to the COVID-19 pandemic. He testified that, as he left the yard, his cane got caught on some unlevel rocks that were about four inches higher than the surrounding elevation of the walkway. Plaintiff claimed that his face mask obstructed his vision, which he described as impaired in one eye and blind in the other eye. He also claimed that the spot where he tripped was obstructed by grass. But he admitted that he fell on concrete and not on the grass. Plaintiff did not complain to Defendant about the condition of the walkway prior to this incident. Plaintiff lost consciousness after he fell and was transported to a local hospital for treatment.

{¶7} Plaintiff reported to hospital staff that he was walking in the yard and his leg gave out causing him to fall backwards and hit his head. Plaintiff returned to GCI after about five hours. On September 21, 2020, Plaintiff reported to Jena Cottrell, a nurse practitioner at GCI, that he fell because his hip and knee gave out.

{¶8} Carl Taylor and Harry Barr are both inmates at GCI. They both testified that the walkways at GCI need repair, but they did not see Plaintiff fall. Both Taylor and Barr reported that the walkway around the pavilion was replaced in late 2021 or early 2022.

{¶9} James Snowden, a nurse at GCI, responded to Plaintiff's fall. When he arrived, Plaintiff was lying on his back on the walkway between the basketball court and the yard—not by the pavilion as Plaintiff claimed. Plaintiff was unconscious but woke up as Snowden was checking his vitals. Plaintiff's blood pressure was high, his respirations were even, and his heartrate was a little high but otherwise strong. After 20 minutes, Plaintiff began to move, but his blood pressure remained elevated.

{¶10} Myron Costin, the building superintendent at GCI, testified that he and his team perform snow removal on all walkways during the winter and mow the lawn during the summer. He testified that he was never made aware of any heaving of the sidewalk or other defect in the recreation area where Plaintiff fell. Costin explained that if one of the vehicles used for snow removal hit an upheaval of greater than two inches, then it would cause the vehicle to come to a stop, and that no such event ever occurred. The sidewalk in the recreation area was later replaced using covid relief money and that area was converted into an outdoor workout area.

{¶11} Plaintiff had previously fallen in 2019 due to an incident involving his blood pressure. His blood pressure was also high during the 2020 fall. Based on this evidence and Plaintiff's admission to two separate medical professionals that he fell because his hip and knee or leg gave out, the Magistrate found that Plaintiff did not fall due to tripping on an uneven sidewalk. Instead, Plaintiff more likely fell because his knee or hip gave out while he was walking. Accordingly, the Magistrate recommended that judgment be entered in favor of Defendant.

Plaintiff's First Objection

{¶12} Plaintiff objects to the refusal of the Magistrate to permit him to have the assistance of a translator during the remote trial. Plaintiff claims that English is his second language, and he has difficulties understanding it. He asserts that during the pretrial conference and at the beginning of the trial, he advised the Magistrate that English is his second language and requested that the prison law clerk who helped him prepare all of

his filings sit in on the trial and assist him in communicating with the Court. The Magistrate refused his request, and Plaintiff was thus hampered in his ability to present his case.

{¶13} In its response, Defendant claims that Plaintiff did not request an interpreter at either the pretrial conference or the trial. Defendant also asserts that Plaintiff demonstrated the ability to understand and communicate in English.

{¶14} Plaintiff did not file a transcript of the trial before the Magistrate. In the absence of a transcript, the Court must presume the procedural regularity and validity of the trial. See *Knapp v. Edwards Labs*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) (“When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings, and affirm.”); see also *Yaklevich v. Dinneen*, 10th Dist. Franklin No. 20AP-322 and 20AP-324, 2021-Ohio-4531. Because Plaintiff did not submit a transcript or an affidavit of evidence, the Court presumes the regularity and validity of the trial procedures, including that Plaintiff was not denied a translator.¹ Accordingly, the Court OVERRULES Plaintiff’s first objection.

Plaintiff’s Second Objection

{¶15} Plaintiff next objects that the Magistrate’s findings of fact are unreasonable in light of the evidence. Plaintiff specifically objects to the Magistrate’s findings that James Snowden and Myron Costin were credible witnesses. Plaintiff also objects to the Magistrate’s belief of the testimony of Costin that the snowplow would have stopped if it hit such an obstruction over the testimony of Harry Barr and Carl Taylor—his fellow inmates—that the pavement was in need of repair. However, the Magistrate’s interpretation of testimony and weighing of credibility amount to findings of fact, which the Court cannot review without a transcript of the hearing. Civ.R. 53(D)(3)(b)(iii); *Triplett*, 2013-Ohio-2743, at ¶ 13; see also *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80,

¹ Furthermore, though the Court is not required to review the recording of the trial in the absence of a transcript, due to the serious nature of Plaintiff’s objection, the Court watched the discussion of preliminary matters and the beginning of the trial. Plaintiff requested that someone help him read some writing, when necessary, due to his bad eyesight. But he did not request a translator or say anything about having difficulty speaking English. The Court did not watch the remainder of the trial.

461 N.E.2d 1273 (1984) (“the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony”). Therefore, the Court OVERRULES Plaintiff’s second objection.

Plaintiff’s Third Objection

{¶16} Plaintiff objects that the Magistrate erred in failing to enforce subpoenas, specifically the subpoena for Doctor Janice Douglas, his primary care physician, and a subpoena for his medical records. Plaintiff argues that “the refusal [to enforce the subpoena] left Plaintiff unable to counter the false testimony of James Snowden who claimed that ‘Plaintiff told him his leg gave out’ and that Plaintiff did not fall where he actually fell.” (Objections, p. 5.) In its response, Defendant argues that the subpoena for Dr. Douglas was not proper because Plaintiff failed to tender witness fees, and Plaintiff chose not to call Dr. Douglas as a witness during the trial. Defendant also relates that Plaintiff was provided access to his medical records prior to trial and his medical records were entered into evidence at trial.

{¶17} Without a transcript, the Court is unable to review whether Plaintiff attempted to call Dr. Douglas as a witness. According to the docket, Plaintiff requested that a subpoena be issued to Dr. Douglas, and the subpoena was issued. However, the instructions to the sheriff for serving the subpoena noted that no witness fee check was enclosed. It is unclear from what the Court can review of the record whether Dr. Douglas demanded the witness fee or if he would have been willing to testify without it. See Civ.R. 45(C) (The witness fee shall be tendered without demand if the witness resides outside the county in which the court is located.). Nevertheless, without a transcript, the Court does not know whether Plaintiff attempted to call Dr. Douglas as a witness for the trial. As noted above, in the absence of a transcript, the Court presumes the regularity and validity of the trial procedures. See *Knapp*, 61 Ohio St.2d at 199, 400 N.E.2d 384.

{¶18} As to Plaintiff’s medical records, the Magistrate ordered Defendant in the Order after the pretrial conference to let Plaintiff review his medical records to prepare for the trial. (Order of the Magistrate, April 20, 2022.) Plaintiff does not assert in his Objections that Defendant refused to let him review his medical records in accordance

with the Magistrate's Order. Additionally, from what the Court can review of the trial record, it appears that 414 pages of Plaintiff's medical records, spanning multiple years, were admitted into evidence as Defendant's Exhibit D. Plaintiff does not explain in his Objections how the medical records submitted at trial were deficient or different from what he requested. For all of these reasons, the Court **OVERRULES** Plaintiff's third objection.

Plaintiff's Fourth Objection

{¶19} Plaintiff's fourth objection is that the Magistrate's legal conclusion that Plaintiff did not prove his case by a preponderance of the evidence is not supported by the evidence. Plaintiff argues that the "reliance by the Magistrate upon factual findings that were unsupported by the record further renders the ultimate legal conclusion and establishes that such conclusion is clearly erroneous and must be rejected." He specifically argues that Plaintiff has demonstrated a pattern of neglecting the walkways of GCI, which has resulted in multiple injuries to prisoners over the years leading to litigation and settlements.

{¶20} The Magistrate used the correct legal standard to evaluate Plaintiff's claim. In order to prove his case, Plaintiff had to establish that Defendant knew or should have known of a dangerous condition and failed to exercise reasonable care to prevent prisoners from being injured by it. The Magistrate correctly applied that standard to his factual findings. Additionally, though Plaintiff frames this objection as an objection to legal conclusions, he primarily argues against the factual findings underpinning the Magistrate's conclusion. As noted above, the Court cannot review the Magistrate's factual findings without a transcript. For these reasons, the Court **OVERRULES** Plaintiff's fourth objection.

Conclusion

{¶21} Plaintiff did not file a transcript of the trial before the Magistrate in support of his Objections. Accordingly, the Court limited its review to the Magistrate's legal conclusions. As explained above, the Court finds that the Magistrate appropriately applied the law in this case. Therefore, Plaintiff's objections shall be overruled. The Court

shall adopt the Magistrate's Decision and recommendation as its own, including the findings of fact and conclusions of law. Judgment shall be rendered in favor of Defendant.

PATRICK E. SHEERAN
Judge

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JUDGMENT ENTRY

{¶22} Plaintiff did not file a transcript of the trial before the Magistrate in support of his Objections. Accordingly, the Court limited its review to the Magistrate’s legal conclusions. Upon an independent review of Magistrate’s Decision and Plaintiff’s Objections, the Court finds that the Magistrate appropriately applied the law to the factual findings. Therefore, Plaintiff’s Objections are OVERRULED, and the Court adopts the Magistrate’s Decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of Defendant. Court costs are assessed against Plaintiff. The Clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK E. SHEERAN
Judge