[Cite as *Snead v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-3702.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Robert A. Snead,	:	
Plaintiff-Appellant,	:	
v.	:	No. 13AP-157 (Ct. of Cl. No. 2011-10410)
Ohio Department of Rehabilitation and Correction,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on August 27, 2013

Swope and Swope, and *Richard F. Swope*, for appellant.

Michael DeWine, Attorney General, and *Kristin S. Boggs*, for appellee.

APPEAL from the Court of Claims of Ohio

TYACK, J.

{¶ 1} Robert A. Snead is appealing from the judgments awarded by the Court of Claims of Ohio. He assigns seven errors for our consideration:

> ASSIGNMENT OF ERROR NO. 1: THE MAGISTRATE AND THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE NEGLIGENCE IN TRANSPORTING APPELLANT AFTER SURGERY, AS WELL AS DISMISSING ANY MEDICAL CLAIM FOR LACK OF A CIV.R. 10 AFFIDAVIT WITHOUT PREJUDICE.
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> ASSIGNMENT OF ERROR NO. 2: THE TRIAL COURT AND THE MAGISTRATE ERRED IN FAILING TO FIND THERE WAS NO NEED FOR TRAINING, NO NEED TO PROVIDE

SAFETY EQUIPMENT, OR A NEED TO PROPERLY SUPERVISE OR WARN APPELLANT SNEAD OF THE EXCESSIVE WEIGHT OF THE BOXES OR ADVISE APPELLANT TO USE SAFETY EQUIPMENT.

ASSIGNMENT OF ERROR NO. 3: THE TRIAL COURT AND THE MAGISTRATE ERRED IN RULING THAT WHEN BOXES EXCEED THE CUSTOMARY WEIGHT OF FIFTY TO SIXTY POUNDS, FAILURE TO PROVIDE SAFETY EQUIPMENT, ADDITIONAL HELP OR GIVE WARNING OF DANGER, DID NOT CONSTITUTE AN UNREASONABLE RISK RESULTING IN NEGLIGENCE.

ASSIGNMENT OF ERROR NO. 4: THE TRIAL COURT AND THE MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN EXCLUDING THE TESTIMONY OF BENNIE GALUSHA, A TRAINED FABRICATOR, WHO BUILT THE CARTS, WHO EXPRESSED THE OPINION THE DESIGN WAS FAULTY WHICH CONTRIBUTED TO THE NEED FOR TRAINING, SUPERVISION AND WARNING.

ASSIGNMENT OF ERROR NO. 5: THE TRIAL COURT AND MAGISTRATE ERRED AFTER FINDING APPELLEES BREACHED A DUTY OF ORDINARY CARE IN CREATING AN UNREASONABLE OBSCURED HAZARD, THAT APPELLANT DID NOT SUFFER INJURY AS A RESULT OF THE NEGLIGENCE SINCE THE CASE WAS A LIABILITY ONLY TRIAL AND APPELLANT WAS NOT PREPARED TO PRESENT EVIDENCE RELATING TO INJURY.

ASSIGNMENT OF ERROR NO. 6: THE TRIAL COURT AND MAGISTRATE ABUSED THEIR DISCRETION IN PERMITTING A HEALTH CARE ADMINISTRATOR TO TESTIFY TO A WRITTEN POLICY WHICH WAS HEARSAY AND NOT ADMISSIBLE UNDER EVID.R. 802.

ASSIGNMENT OF ERROR NO. 7: THE DECISION OF THE TRIAL COURT AND THE MAGISTRATE IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND IS CONTRARY TO LAW AS TO ALL CAUSES OF ACTION.

{¶ 2} The first assignment of error presents two issues. The first issue is whether Snead was injured as a result of negligence by members of the Ohio Department of Rehabilitation and Correction ("ODRC") while Snead was being transported back to

Madison Correctional Institution ("MCI") in June 2011 following surgery to repair a hernia. Snead and another inmate being transported at the time, swore that the corrections officer driving the transport van was forced to make a quick stop after another driver cut the van off. The corrections officer driving the van provided an affidavit in which he claimed no such quick stop occurred.

{¶ 3} The trial court assumed the quick stop did occur, but found no proof that anyone with ODRC was negligent. The trial court also found no proof that any injury was proximately caused by the alleged quick stop.

{¶ 4} As to the injury issue, Snead was seen by a physician at MCI three days after the transport. The surgical wound was intact. The internal stitches placed in Snead's body to help repair the hernia are designed to dissolve on their own. The physician saw no indication that Snead was harmed. Stated differently, the physician's affidavit indicates that the necessary element of proximate cause of injury which is necessary to establish liability on behalf of ODRC was not proved.

{¶ 5} To the extent that a Civ.R. 10 affidavit is required to proceed in a medical claim, the transport case was not treated as a medical claim. The case was not dismissed but summary judgment was granted on the basis discussed above.

{¶ 6} The first assignment of error is overruled.

{¶ 7} The second, third and fourth assignments of error involved a separate incident alleged by Snead. Snead was employed as a porter at MCI. In that role, he picked up and transported boxes of inmate property. His work was supervised by a corrections officer who accompanied him. In August or September 2010, Snead sought medical attention for a hernia. He claimed that he had suffered the hernia while lifting a particularly heavy box sometime during spring 2010. He claims the pain he felt when lifting the box had been no more than a twinge the next day.

{¶ 8} Hernias are more than a pulled muscle which produces a mere twinge. Hernias involve a separating of the muscles in the lower abdominal area and a noticeable bulging from the site of the muscle separation. If Snead had suffered a hernia as the result of the lifting of one particularly heavy box, he would have known of the hernia from that day until the date the hernia was surgically repaired. His claim of suffering the hernia as the result of moving one particularly heavy box, and then continuing to move

heavy boxes for months thereafter while thinking he had no more than a pulled muscle or torn muscle which would heal, is frankly incredible.

{¶ 9} Further, Snead's claim that ODRC was negligent because it did not teach Snead how to lift a box lacks merit, especially since he had been doing the job of inmate porter for a long period of time before he sought treatment for his hernia. There was no proof of negligence by ODRC with respect to Snead's hernia, including credible proof that the hernia was suffered as the result of lifting one particular box in spring 2010.

{¶ 10} The design of the cart used to transport the boxes was frankly irrelevant. The alleged lack of help or safety equipment does not change the outcome and cure credibility problems of Snead's claims of how the hernia occurred.

{¶ 11} The second, third and fourth assignments of error are overruled.

{¶ 12} The fifth assignment of error involves an allegation of a slip on the ice, unaccompanied by a fall. Snead alleged he was pushing his cart used to transport possessions when he encountered a patch of ice. The ice had frozen as a result of the melting of snow from the eaves of a building at MCI.

{¶ 13} The magistrate and the trial court judge at the Court of Claims of Ohio found that personnel at MCI had been negligent in allowing the ice to accumulate, but found no proof of harm proximately caused by Snead's slip.

{¶ 14} Again, Snead claimed injury which allegedly occurred several weeks before he sought medical attention. Snead had a history of knee problems. There was no credible proof that his physical condition was worsened because he slipped on the ice but caught himself with the help of the cart he was pushing and was able to avoid falling. Proximate cause of some injury was required for the liability phase of the proceeding and Snead failed to demonstrate any harm was proximately caused.

{¶ 15} The fifth assignment of error is overruled.

{¶ 16} The significant delays in Snead's seeking of medical attention were germane to the issues before the trial court. The testimony of the health care administrator was relevant and perhaps even necessary to the trial court's ability to understand the issues. The administrator did not quote MCI's policies, but discussed inmate awareness of the policies as a result of the procedures for orienting inmates to the institution. She had worked for ODRC for over five years, so she was in a position to know both the theory and

the practicality of the policies she helped administer. The trial court did not abuse its discretion in hearing and consulting her testimony.

{¶ 17} The sixth assignment of error is overruled.

{¶ 18} The decisions of the trial court issued after a review of the various magistrate's decisions were in accord with the evidence and the applicable law.

{¶ 19} The seventh assignment of error is overruled.

{¶ 20} All seven assignments of error having been overruled, the judgment of the Court of Claims of Ohio is affirmed.

Judgment affirmed.

KLATT, P.J., and O'GRADY, J., concur.