

[Cite as *Slash v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-449.]

IN THE COURT OF CLAIMS OF OHIO

WILLIE SLASH, III :
Plaintiff : CASE NO. 2001-09192
v. : MAGISTRATE DECISION
DEPARTMENT OF REHABILITATION : Lee Hogan, Magistrate
AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : : :

{¶1} Plaintiff brings this action against defendant alleging negligence. The case was tried to the court on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at Pickaway Correctional Institution (PCI), pursuant to R.C. 5120.16. On October 2, 1999, he was injured while working in the kitchen unloading pallets of milk crates. Plaintiff contends that the crates were inappropriately stacked on the pallet which caused the crates to fall on him when he attempted to lift a stack. Additionally, plaintiff alleges that he had never previously worked in the unloading area; that he received only 15 or 20 seconds of instruction; that the crates were in stacks of four or five and were unloaded two at a time, but that his supervisor, Corrections Officer (CO) Brown, directed him to unload four crates at a time in order for the task to be finished more quickly. Plaintiff testified that the crates would be "locked" together but that they could easily come apart if a stack began to tip. He stated that he

fell when the crates toppled over on him, which resulted in injury to his leg, ankle, neck and back. Plaintiff was taken from the area on a stretcher and received prompt medical attention.

{¶3} In order to prevail upon his claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The law is well settled that prison officials owe inmates a duty of reasonable care. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. This duty includes the obligation to protect inmates in their care from reasonably foreseeable risks. *Id.*

{¶4} In support of his claim, plaintiff offered his own testimony and that of Randy Robinson, who was also an inmate at PCI at the time of the incident. Defendant offered the testimony of James Voiles, Corrections Food Service Coordinator at PCI. There was no testimony given by CO Brown, plaintiff's direct supervisor, inasmuch as she was killed in an automobile accident two months after the incident. There were no eyewitnesses to the incident other than plaintiff. Consequently, the determination of whether defendant breached a duty to plaintiff in this case turns on the credibility of witnesses.

{¶5} In assessing credibility, the court must consider, together with all facts and circumstances surrounding the testimony: the appearance of each witness upon the stand; his manner of testifying; the reasonableness of his testimony; the opportunity that he had to see, hear and know the things about which he testified; his accuracy of memory; his frankness or lack of it; his intelligence, interest, and bias, if any. *Adair v.*

Ohio Dept. of Rehab. & Corr. (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶6} Randy Robinson had little to offer other than to corroborate plaintiff's account of the manner in which the crates were stacked and the fact that they could come apart easily if a stack were to become unstable. Robinson's assigned duty was to stack the crates on the pallets as they were taken off the delivery trucks. The area where he worked was not within sight of the cooler where plaintiff was working. Robinson stated that he would pull stacks of five crates off the truck and slide them onto the pallets. In his estimation, the stacks weighed approximately 100 pounds. He did state that when he attempted to unload two crates at a time his supervisors would instruct him to unload four or five because it was a much quicker way to accomplish the task.

{¶7} Voiles testified regarding the instructions generally given to inmates doing the job to which plaintiff was assigned on the day of the incident. He stated that he had no direct knowledge of what CO Brown might have told plaintiff and that inmates are instructed to lift the crates off the pallet one at a time, to make stacks of four crates on the floor and to push the stacks into the cooler; that the inmates are told to bend their knees when lifting, to keep their backs straight, and to lift with their knees and not their backs. He testified that he never personally heard CO Brown instruct inmates to do otherwise. According to Voiles, the milk crates were approximately 1' x 1' square, and weighed 12.5 pounds; he opined that it would not be practical to attempt to build a stack of five. He also stated that the time plaintiff's accident occurred was considered "crunch time" in the kitchen, because it was shortly before the inmates had to report for count and that

they would be required to continue working another two or three hours if they were not finished before count.

{¶8} Applying the above-noted factors for assessing credibility, the court finds the testimony of Voiles to be more persuasive than that of plaintiff or Robinson. Absent both CO Brown's testimony and any eyewitness other than plaintiff, the court concludes that plaintiff has failed to prove that defendant breached any duty of care owed to him under the circumstances of this case. Even assuming that CO Brown had directed plaintiff to unload more than one or two crates at a time, common sense would dictate that extra caution would be required in order to carry out the instruction. The duty of care owed by defendant was one of reasonable care for the protection of plaintiff from reasonably foreseeable risks of harm. Here, there is simply no evidence that defendant failed to exercise the requisite degree of care or that any risk of falling crates was reasonably foreseeable. Further, there is no evidence to substantiate plaintiff's claim that the crates were improperly stacked before he began to unload them. Accordingly, judgment is recommended in favor of defendant.

LEE HOGAN
Magistrate

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