

[Cite as *Slavik v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-5722.]

Court of Claims of Ohio

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RUSSELL E. SLAVIK

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

[Cite as *Slavik v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-5722.]

Case No. 2006-04121

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MAGISTRATE DECISION

Case No. 2006-04121

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial 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 the Marion Correctional Institution (MCI) pursuant to R.C. 5120.16. It is undisputed that at approximately 9:00 a.m. on September 29, 2005, plaintiff was working in the MCI “hog barn” when he hit his head on a board and was injured. Plaintiff was initially treated in the MCI infirmary, but later went into shock and was transported to the Ohio State University Medical Center (OSUMC) for treatment.

{¶ 3} Plaintiff asserts that defendant did not provide a safe work environment, that he was injured as a result, and that defendant’s employees failed to treat him properly in the infirmary, resulting in further injury.

{¶ 4} In order for plaintiff to prevail upon his claims of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant’s acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235.

{¶ 5} Plaintiff testified that he had worked in the hog barn for several months before his injury. According to plaintiff, on the morning of the incident, he was attempting to move hogs out of a pen when one of them ran into him, knocked him back, and caused him to hit his head on a board. Plaintiff recalled that he experienced some dizziness and that blood had trickled down the side of his face. Plaintiff stated that after he turned to look at the board on which he hit his head, he noticed nails sticking out of it. Plaintiff testified that he immediately informed the Corrections Officer on duty and was taken to the infirmary. At the infirmary, a nurse examined plaintiff, cleaned and dressed his wound, administered a tetanus shot, and gave him Tylenol for pain. The nurse noted that plaintiff suffered from a “superficial wound” to the left side of his head. (Joint Exhibit A.) According to plaintiff, while he was waiting to be escorted from the infirmary to his cell, his head started to bleed again and a nurse gave him an

ice pack to put on the wound. Plaintiff testified that shortly thereafter he lost consciousness and went into shock. Plaintiff was then transported to Marion General Hospital and ultimately to OSUMC via helicopter.

{¶ 6} When plaintiff was injured, Robert Nauman was the MCI correctional farm coordinator; he had supervised the hog barn for approximately three and a half years. Nauman testified that plaintiff had worked at the barn for four or five months prior to the incident. Nauman related that after being notified by another inmate of plaintiff's injury, he checked on plaintiff and noticed a bump on the side of his head. Nauman escorted plaintiff to his office to fill out an accident report. In the report under "Injured Person's Description of How the Accident Occurred," Nauman wrote "forgot the board was there"; plaintiff signed the statement. (Defendant's Exhibit B.) Finally, Nauman testified that after the incident, he checked the board where plaintiff injured his head and noticed a nail sticking out approximately an eighth of an inch from the board, and that he and other staff checked all the boards in the barn and "knocked down" any protruding nails.

{¶ 7} At the time of the incident, Thomas Diven served as the institutional investigator at MCI and conducted an investigation of the incident. Diven testified that during the course of his investigation he interviewed plaintiff and other inmates working in the hog barn on the day in question, including inmate Greathouse. In a statement given to Diven shortly after the incident, Greathouse stated that he saw the incident and that plaintiff "backed into the board. He was not watching where he was going, I seen the blood and went and got Boss Bob [Nauman]. They took [plaintiff] in and I stayed out and worked." (Defendant's Exhibit C.) On October 5, 2005, Diven interviewed plaintiff about the incident and noted in his report that plaintiff was chasing a hog and "did not see the beam and hit his head." Plaintiff signed the statement. (Defendant's Exhibit D.)

{¶ 8} Regarding plaintiff's claim that defendant did not provide him with a safe work environment, Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; in the context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners

from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. Furthermore, “where a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional factors which characterize the particular work performed.” *Boyle v. Dept. of Rehab. & Corr.* (1990), 70 Ohio App.3d 590, 592, citing *McCoy*, supra. The state therefore has a duty to protect inmates from unreasonable risks of harm arising out of the performance of such labor. *Id.*

{¶ 9} The initial question for the court is whether defendant knew or should have known of a potentially dangerous condition in the MCI hog barn. It is plaintiff’s burden to demonstrate that defendant had notice of the dangerous condition when he was injured. *Powers v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-504, 2003-Ohio-6566, ¶10. Where the trier of fact finds from competent evidence that information was personally communicated to or received by the party the notice is actual. Constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶ 10} Based upon the evidence and testimony presented at trial, the court finds that plaintiff has failed to prove that defendant had either actual or constructive notice of a potentially dangerous hazard in the MCI hog barn. Accordingly, defendant is not liable for plaintiff’s injury.

{¶ 11} Furthermore, in order to establish liability regarding his claim that his injury was not properly treated in the MCI infirmary, plaintiff must produce evidence to establish both the relevant standard of care and proximate cause. See *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127. The appropriate standard of care must be proven by expert testimony as to the ordinary skill, care, and diligence a medical professional in the same medical specialty would exercise in similar circumstances. *Id.* In this case, plaintiff

failed to provide expert medical testimony to support his allegation that he was treated improperly by the medical staff in the MCI infirmary. Accordingly, that claim must fail.

{¶ 12} For the foregoing reasons, it is recommended that judgment be rendered in favor of defendant.

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).

STEVEN A. LARSON
Magistrate

Case No. 2006-04121

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MAGISTRATE DECISION

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Magistrate Steven A. Larson

MR/cmd
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