

[Cite as *Kidd v. Warren Correctional Inst.*, 2008-Ohio-5732.]

# Court of Claims of Ohio

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SHANNON KIDD

Plaintiff

v.

WARREN CORRECTIONAL  
INSTITUTION

Defendant

[Cite as *Kidd v. Warren Correctional Inst.*, 2008-Ohio-5732.]

Case No. 2005-08221

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MAGISTRATE DECISION

Case No. 2005-08221

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 the Department of Rehabilitation and Correction at the Warren Correctional Institution (WCI) pursuant to R.C. 5120.16. On July 5, 2005, plaintiff was waiting in line in the institution dining hall when a “menu board” that had been placed on the top of a “tray rack” fell and struck plaintiff near his left eye. Plaintiff claims that defendant was negligent in the manner in which the menu board was placed and that defendant’s negligence proximately caused his injury. Defendant has denied liability.

{¶ 3} In order for plaintiff to prevail upon his claim 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. Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends upon whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315. However, an inmate incarcerated in a state penal institution is not afforded the status of any of the traditional classifications. 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 in its custody from being injured by dangerous conditions about which the state is aware. *Moore v. Ohio Dept. of Rehab. and Corr.* (1993), 89 Ohio App.3d 107, 112. However, plaintiff bears the burden of proof to demonstrate that defendant was on notice or aware of any dangerous condition.

{¶ 4} The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice 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.

{¶ 5} Plaintiff testified that during his seven years of incarceration at WCI, the menu board had been located in several different areas of the dining hall and that, prior to the incident, the menu board had been placed on the tray rack. According to plaintiff, he was removing a tray from the rack when the menu board fell and struck him. Plaintiff testified that he did not observe the menu board fall and that he at first believed that he had been struck by another inmate. The corrections officers (COs) who were on duty in the dining hall offered to escort plaintiff to the institution medical center; however, plaintiff declined medical treatment until he had finished his meal.

{¶ 6} Dale East, defendant's Safety and Health Coordinator, testified that he was responsible for performing safety inspections in the dining hall and kitchen to ensure compliance with departmental standards. East described the menu board as a "dry-erase board" that measured three feet by four feet and weighed approximately seven pounds. East explained that the menu board was bound in an aluminum frame and equipped with two hangers which were used to attach the board to a wall in the dining hall. East testified that he had never seen the menu board on the tray rack and that he was unaware of any prior incidents involving the menu board.

{¶ 7} Defendant presented the testimony of CO Randy Whalen who was assigned to the dining hall on the day of the incident. Whalen testified that he had prepared the menu board that morning; that he was present in the dining hall when the incident occurred; and that he observed the menu board fall and strike plaintiff. Whalen further testified that he had observed the menu board fall from the tray rack on previous occasions.

{¶ 8} The testimony established that defendant's employees had placed the menu board in several locations during the time that plaintiff was incarcerated. Although East testified that the menu board was secured to a wall with screws when he inspected the dining room, Whalen corroborated plaintiff's testimony that the menu board fell from the tray rack.

{¶ 9} Based upon the testimony of plaintiff and Whalen, the court finds that defendant had actual notice that placing the menu board on the tray rack created a risk of harm to inmates who used the dining hall. Indeed, Whalen testified that, on more than one occasion, he himself had almost been struck by the menu board when it fell from the tray rack. Furthermore, the court finds that the risk of harm created by placing the menu board on the tray rack was an unreasonable risk under the circumstances.

{¶ 10} “Where an act is one which a reasonable man would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or the particular manner in which it is done.” Restatement of Torts 2d. (1965), § 291; *Benlehr v. Shell Oil Co.* (1978), 62 Ohio App.2d 1, 9.

{¶ 11} The court finds that the risk of harm in allowing the menu board to be placed on the tray rack outweighed the utility of posting the menu in such a manner. In light of Whalen’s testimony that he had observed the menu board fall on several occasions, the court finds that the risk of harm was foreseeable.

{¶ 12} Based upon the foregoing, the court finds that defendant committed a breach of the duty of care owed to plaintiff and that the breach was the proximate cause of plaintiff’s injury. Accordingly, judgment is recommended in favor of plaintiff.

*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).*

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STEVEN A. LARSON  
Magistrate

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AMR/CJT/cmd  
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