

[Cite as *Traynor v. Dept. of Rehab. & Corr.*, 2018-Ohio-3656.]

KYLE TRAYNOR

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00756JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence arising from an accident in which his hand was cut while slicing onions for his work assignment in the kitchen of the Warren Correctional Institution (WCI). The issues of liability and damages were not bifurcated and the case proceeded to trial on both issues.

{¶2} At trial, plaintiff testified that sometime in the middle of August 2016, Carla Moody assigned him the task of slicing onions on what he called the meat slicer. Plaintiff related that he had sliced about two pounds of onions when the slicer jerked and his hand hit the blade. Plaintiff stated that he was subsequently escorted to the infirmary where he received Steri-Strips for his injury. Plaintiff did not offer any exhibits or call any witnesses to testify. After concluding his testimony, plaintiff rested his case.

{¶3} Carla Moody testified that she is employed by Aramark as a warehouse coordinator for food service at WCI. Moody stated that Aramark pays her wages, that Aramark trained her for the job, that Aramark schedules her shifts, and that Aramark disciplines its employees. Moody related that in August 2016, she was the warehouse supervisor and that her duties included, among other things, moving food from the freezer to the prep cooler to be used in food preparation. Moody explained that all the food is in the freezer initially and is then moved to the prep cooler one or two days prior to its use. Moody added that her job required her to interact with inmates.

{¶4} Moody recalled that plaintiff was injured in September 2016. Moody testified that on September 26, 2016, she approached corrections officer Sims and informed him what blades were needed for food preparation that day; Sims later retrieved the equipment from storage where all the blades were kept while not in use. Moody did not recall rust on any of the blades that were retrieved, but she added that if there would have been rust on a blade, she would have informed her supervisor, Dorris Jones. Moody stated that plaintiff's assignment was to chop onions on the slicer that was used for slicing vegetables. According to Moody, plaintiff was late for his work assignment and at least initially did not want to cut onions. Moody testified that within a matter of seconds of plaintiff commencing to chop onions, he yelled that he had cut his finger. Moody added that she did not see plaintiff cut himself. Moody testified that she was not aware of anyone cutting themselves on the slicer prior to this and that plaintiff never reported being uncomfortable using the slicer or that something was wrong with the slicer. Moody subsequently completed an incident report regarding the event (Defendant's Exhibit A).

{¶5} Dorris Jones testified that she is employed by Aramark at WCI as a food service director and was in the same position in September 2016. Jones stated that her duties included, among other things, overseeing inspections of the kitchen. Jones explained that multiple inspections or audits of the kitchen occur throughout the year: (1) Aramark coordinates an annual audit where the equipment, including the slicer, is inspected; (2) the health department performs semiannual inspections, which include inspecting the slicer; (3) Department of Rehabilitation and Correction (DRC) performs a monthly inspection that includes the equipment; and (4) she performs a monthly audit of the equipment. Jones asserted that she has never received a report of a problem with one of the slicers. Jones added that inmates may also report problems with the slicers, but no inmate ever reported any such problem.

{¶6} Joe Murphy testified that he is the health care administrator at Belmont Correctional Institution (BeCI) and that he is responsible for the medical operations and maintaining medical records of inmates at BeCI. Murphy authenticated plaintiff's medical records (Defendant's Exhibit B). The medical records establish that plaintiff was treated for an injury to his hand on September 26, 2016. The wound was cleaned and plaintiff received Steri-Strips, bandages, and a tetanus shot. Plaintiff was next seen the following day; the bandages were changed and no sign of infection was noted. Plaintiff was then seen on October 3 and 5, 2016, and the dressing was changed both times. During a check up on October 17, 2016, it was noted that plaintiff was healing well, there were no complaints, and he was back to work.

{¶7} "To prevail in a negligence action, a plaintiff must demonstrate that (1) the defendant owed a duty of care to the plaintiff, (2) the defendant breached that duty, and (3) the defendant's breach proximately caused the plaintiff to be injured." *Lang v. Holly Hill Motel, Inc.*, 122 Ohio St.3d 120, 2009-Ohio-2495, 909 N.E.2d 120, ¶ 10.

{¶8} "In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks." *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. "The state's duty of reasonable care does not render it an insurer of inmate safety." *Allen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-619, 2015-Ohio-383, ¶ 17. "Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know." *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16. "Where an inmate also performs labor for the state, the state's duty must be defined in the context of those additional factors which characterize the particular work performed." *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-

1186, 2010-Ohio-4737, ¶ 18. “The inmate also bears a responsibility ‘to use reasonable care to ensure his own safety.’” *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-941, 2011-Ohio-3314, ¶ 20, quoting *Macklin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-293, 2002-Ohio-5069, ¶ 21.

{¶9} Upon review of the evidence the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate further finds that on September 26, 2016, plaintiff cut his hand on a slicer while cutting onions. Plaintiff received medical treatment following the incident.

{¶10} Plaintiff did not present the court with evidence that defendant breached any duty it owed to him. It was not established that defendant failed to properly train him on how to use the slicer. Indeed, there was no suggestion from plaintiff’s testimony that he was not properly trained. It was not established that defendant knew or should have known that the slicer would jerk resulting in a cut to plaintiff’s hand. While plaintiff testified that the slicer jerked while he was using it, that alone does not establish that the machine malfunctioned or that defendant knew or should have known of such a malfunction. The testimony established that regular inspections and audits were conducted of the kitchen equipment and no defects or malfunctions were noted. Furthermore, the evidence established that there were no reports from either staff members or from inmates regarding any alleged malfunction or defect with one of the slicers.

{¶11} Finally, even if the evidence had shown that the slicer malfunctioned and injured plaintiff, the kitchen was operated by Aramark at that time. There was no showing that Aramark was an agent of defendant. See *Wright v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-153, 2014-Ohio-4359. While DRC conducted routine inspections of the kitchen, there is no evidence that an inspection uncovered a defect with the slicer or that an Aramark employee reported any problem with the slicer

prior to the accident. Finally, there is no evidence that DRC otherwise should have known of any such problem.

{¶12} Based on the foregoing, the magistrate finds that plaintiff failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶13} 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).

GARY PETERSON
Magistrate