

[Cite as *Lloyd v. Dept. of Rehab. & Corr.*, 2018-Ohio-4820.]

DAMON LLOYD

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00844JD

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence arising from a February 19, 2014 accident in which he was injured while adjusting a window in his dormitory at the Chillicothe Correctional Institution (CCI). The issues of liability and damages were bifurcated and the case proceeded to trial before the undersigned magistrate on the issue of liability on October 21, 2015. The magistrate recommended judgment for defendant. The court adopted the magistrate's decision and rendered judgment accordingly.

{¶2} Plaintiff appealed and the Tenth District Court of Appeals issued a decision on May 23, 2017, reversing the judgment and remanding the case for further proceedings. *Lloyd v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-2942, 91 N.E.3d 134 (10th Dist.). On remand, the parties agreed to file briefs setting forth their arguments on the issue of liability, whereupon the case was resubmitted for decision on that issue based upon the record of the October 21, 2015 trial. On December 22, 2017, the magistrate issued a decision recommending judgment for plaintiff on the issue of liability. The court adopted the magistrate's decision and rendered judgment accordingly. Thereafter, the case proceeded to trial before the magistrate on the issue of damages.

{¶3} As background, it is noted that during the liability phase of the proceedings it was established that the window plaintiff was adjusting at the time of the accident was

an older-style window with a counterweight system that no longer worked, meaning that the window would not stay in a raised position on its own. *Lloyd v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2014-00844, 2017-Ohio-9396, ¶ 4. Plaintiff had been using some nylon strings and metal hooks as a makeshift means of keeping the window raised, which was a common practice among inmates in the dormitory. *Id.* When he attempted to adjust the height to which the window was raised on this particular day, a failure with the string and hook system caused the window to fall and injure his fingers. *Id.*

{¶4} At the damages phase of trial, plaintiff elaborated on his injuries, explaining that the window was heavy and nearly halfway raised when a string broke and the window suddenly crashed down onto the fingers of his right hand, which were beneath the window because he had been using the windowsill as a work surface to tie a string and hook together. Plaintiff explained that the window made a long, deep cut in his right index finger and a hook impaled his right middle finger, becoming embedded there.

{¶5} Plaintiff recalled screaming and grabbing a towel to wrap up the fingers and then going to get help. Plaintiff stated that a corrections officer immediately called the infirmary and had another inmate get him an ice pack. A nurse then came to the dormitory on a golf cart and transported him to the infirmary, plaintiff recounted. Plaintiff stated that his fingers were throbbing and bleeding, and he was afraid that he would lose the index finger. Roughly 45 minutes after he got to the infirmary, plaintiff stated, officers prepared him to be transported by van to Adena Regional Medical Center (Adena) in Chillicothe, placing him in an orange jumpsuit and applying leg irons, a belly chain, and handcuffs, although they allowed him to keep his right hand free so that he could elevate it to relieve the pressure. Plaintiff testified that he did not get any pain medication and he was scared and felt a “little woozy” from the pain.

{¶6} According to plaintiff, the drive to Adena took about 20 minutes, and when he arrived he felt lightheaded and was still in pain and worried. The index finger,

plaintiff stated, was “blowed open,” cut to the bone lengthwise from the tip down to the second knuckle, and bled more than the middle finger, which still had the hook embedded in it. Plaintiff testified that a room was secured for him, where he waited with an ice pack and a rag over the index and middle fingers, applying pressure to stem the bleeding, and he still had no pain medication, nor was he given any water. The fingers throbbed with pain, plaintiff said. By his estimate, the level of pain was a 9 or 10 on a scale of 1 to 10, and he grew more upset the longer he had to wait. Plaintiff stated that about an hour or hour and a half after he got to Adena, x-rays were taken, and he introduced copies of the x-rays, one of which depicts the embedded hook. (Plaintiff’s Damages Exhibit 1.) Plaintiff stated that it was another hour or hour and a half until a firefighter furnished a set of bolt cutters to sever one end of the hook, at which point a nurse extracted the remainder. Next, plaintiff stated, more x-rays were taken and then he received stitches in his index and middle fingers, he was given a splint, and he was discharged back to CCI, having spent about 4 hours at Adena.

{¶7} Upon returning to CCI, plaintiff related, he received a medical examination and was released to his dormitory. The medical department issued a Medical Restriction Statement at that time excusing him from his prison work assignment on the grounds keeping crew for seven days, plaintiff stated. (Plaintiff’s Damages Exhibit 4.) Plaintiff recalled elevating his right hand to keep the swelling down and having difficulty sleeping that night and the next because the pain and swelling were so bad.

{¶8} Plaintiff testified that he went to the infirmary a few times over the course of about 7 to 10 days following the accident so the medical staff could clean and apply ointment to the wounds and rebandage them. At his last visit, plaintiff stated, the medical staff removed the stitches and splint, cleaned the wounds, and gave him Epsom salt, cream, and bandages for him to take care of the wounds on his own. Plaintiff recalled that it took at least 20 days for the skin to heal over, but the wounds remained tender and he had to keep them bandaged for some time thereafter. Plaintiff

stated that in addition to being medically excused from his prison work assignment for one week, his boss placed him on light duty for another two weeks, and once that time was up he was able resume his normal work responsibilities. According to plaintiff, who stated that he earned approximately \$18 a month, his pay was docked for the week that he missed work.

{¶9} Plaintiff explained that although he visits the infirmary regularly due to having high blood pressure, he was never advised that he needed any follow-up care for the fingers, nor, apparently, did he seek any further care or treatment. Moreover, plaintiff admitted that he has full use of his fingers today. Nevertheless, plaintiff stated that he continues to have some problems with the fingers which he attributes to the accident. As plaintiff described, the index finger is “twisted” and at times, particularly during the winter, that finger experiences intermittent numbness, a cold sensation, or a shocking sensation which he feels might result from nerve damage. Plaintiff stated that he takes over-the-counter doses of Tylenol and Naprosyn occasionally, but he acknowledged that he has other health conditions for which he takes those medications too. Plaintiff, who stated that he worked in construction before entering defendant’s custody on a murder conviction, also acknowledged sustaining hand injuries both before and after the one at issue in this case. About one year after the accident, plaintiff stated, he put his right hand through a windowpane at CCI while attempting to shoo away a pigeon perched on the opposite side, resulting in cuts on the palm and wrist that had to be stitched up at Adena.

{¶10} David Peters, R.N. testified that he has been a nurse for nearly 25 years and holds a bachelor’s degree in nursing from Ohio University. Peters, who stated that he has been employed with defendant at CCI for 17 years, testified that he saw plaintiff in the infirmary for his injuries at about 10:00 a.m. on the day of the accident and that he prepared a corresponding Medical Exam Report. (Plaintiff’s Damages Exhibit 5, p. 30.) As Peters then wrote, upon assessing the patient he observed a long laceration on the

right index finger and a metallic foreign object embedded in the right middle finger, running alongside the bone, and he noted moderate bleeding. From what Peters could recall, plaintiff had arrived at the infirmary with a blood-stained towel wrapped around his fingers. Peters testified that he did not feel it was appropriate for him to try to remove the embedded object, so he referred the matter to a physician in the infirmary, Dr. Rama, who also opted against removing it himself and instead elected to send plaintiff to the emergency room at Adena. Peters stated that he wrapped the fingers in gauze and made the arrangements to have plaintiff transported to Adena.

{¶11} As far as Peters could remember, he did not provide any direct patient care after plaintiff was transported to Adena, but he had some recollection of seeing plaintiff in the infirmary within a few days afterward, getting the dressings on his wounds changed. Peters identified an Interdisciplinary Progress Note made by Dusty Dailey, R.N. at CCI at 4:00 p.m. on the day of the accident, documenting among other things that plaintiff had returned from Adena, his vital signs were measured, he was educated on keeping the wounds dry and covered, he was medically excused from work for seven days, and he was to start a course of antibiotics. (Plaintiff's Damages Exhibit 5, p. 36.)

{¶12} Peters identified another Interdisciplinary Progress Note made on February 20, 2014, one day after the accident, by a Dr. Akhtar who worked at CCI at the time. (Plaintiff's Damages Exhibit 5, p. 36, 35.) As Peters explained, Dr. Akhtar noted lacerations of the right index and middle fingers, as well as bruising at the tip of the index finger, and that sutures were in place. And, Peters explained, Dr. Akhtar noted that plaintiff was able to move the fingers and hand, and that the plan going forward was to continue daily dressing of the wounds with bacitracin ointment.

{¶13} In another Interdisciplinary Progress Note dated February 25, 2014, Peters testified, Dr. Akhtar documented another visit with plaintiff concerning the finger injuries. (Plaintiff's Damages Exhibit 5, p. 35.) Among other things, Dr. Akhtar noted that plaintiff

had no pain and that he observed a one-centimeter area of redness, and he wrote that he planned for the sutures to be removed the next day.

{¶14} Lastly, Peters identified an April 14, 2014 Interdisciplinary Progress Note prepared by Dr. Akhtar in which it was noted that plaintiff reported he “feels good” and that Dr. Akhtar found there to be “normal healing” and “healed lacerations” of the right index and middle fingers. (Plaintiff’s Damages Exhibit 5, p. 34.)

{¶15} “To set forth a claim for negligence a plaintiff must prove four elements: (1) the existence of a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Stefansky v. Cantina Laredo*, 2016-Ohio-7008, 72 N.E.3d 97, ¶ 23 (10th Dist.). “It is axiomatic that every plaintiff bears the burden of proving the nature and extent of his damages in order to be entitled to compensation.” *Jayashree Restaurants, LLC v. DDR PTC Outparcel LLC*, 10th Dist. Franklin No. 16AP-186, 2016-Ohio-5498, ¶ 13, quoting *Akro-Plastics v. Drake Indus.*, 115 Ohio App.3d 221, 226, 685 N.E.2d 246 (11th Dist.1996). “As a general rule, the appropriate measure of damages in a tort action is the amount which will compensate and make the plaintiff whole.” *N. Coast Premier Soccer, LLC v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-589, 2013-Ohio-1677, ¶ 17. “[D]amages must be shown with reasonable certainty and may not be based upon mere speculation or conjecture * * *.” *Rakich v. Anthem Blue Cross & Blue Shield*, 172 Ohio App.3d 523, 2007-Ohio-3739, 875 N.E.2d 993, ¶ 20 (10th Dist.).

{¶16} Upon review of the evidence offered at trial, the magistrate makes the following findings. Plaintiff experienced extreme pain when the large, heavy window crashed down upon and injured two of his fingers. Plaintiff sustained a severe laceration of his right index finger, cut down to the bone from near the tip to the second knuckle. Plaintiff was also left with a metal hook embedded deep alongside the bone down the length of his right middle finger and protruding out. Beyond the pain and shock from these injuries, the fear of potentially losing a finger caused plaintiff much

distress and anxiety initially, at least until he was treated at Adena. The injuries continued to be extremely painful throughout the day of the accident and into the next, and despite applying ice and keeping the right hand elevated, he also endured painful swelling. The pain was so great that he had difficulty sleeping for two nights. At no time did plaintiff receive any medication to relieve the pain.

{¶17} Plaintiff had to receive stitches, wear a splint, and go to the infirmary several days in a row so that he could get his wounds cleaned, treated with antibiotic ointment, and rebandaged. Plaintiff was seen at least twice that first week by Dr. Akhtar, who observed some bruising and redness, but noted that plaintiff could move the fingers, and on February 25, 2014, six days after the accident, he documented that plaintiff was not in pain at the time of the appointment. The stitches were removed approximately one week after the accident, but plaintiff still had to apply ointment and dress his wounds for some time afterward. As plaintiff described, after about 20 days the skin healed over and he was able to resume his normal activities, but the wounds remained tender. Nearly two months later, Dr. Akhtar followed up with plaintiff for the last time and documented that the wounds were healing normally. There is no evidence that plaintiff sought out any additional care or treatment for the injuries thereafter.

{¶18} It is probable under the circumstances that plaintiff had some sensitivity or occasional pain while the wounds healed for several weeks. However, the long-term or permanent symptoms that plaintiff described fall into the category of a more complicated internal medical issue which is more difficult for a layperson to understand in the absence of supporting testimony from a medical expert. See *Harris v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-466, 2013-Ohio-5714, ¶ 16 (“Generally, where an issue involves a question of scientific inquiry that is not within the knowledge of a layperson, expert testimony is required.”); *Corwin v. St. Anthony Med. Ctr.*, 80 Ohio App.3d 836, 840-841, 610 N.E.2d 1155 (10th Dist.1992) (“Where the permanency of an injury is obvious, such as the loss of an arm, leg or other member, the jury may draw its

own conclusions as to the measure of damages; however, where an injury is not obvious, there must be expert evidence as to the damage sustained, the probability of future pain and suffering or the permanency of the injury.”). It is even more speculative to causally tie those long-term symptoms to this accident when considering plaintiff’s other hand injuries. While there is no reason not to believe plaintiff’s description of those symptoms, the evidence presented simply does not provide the necessary degree of certainty to prove that they were caused by this accident.

{¶19} It is noted that plaintiff’s medical expenses were covered by the state of Ohio and he did not establish an entitlement to recover for any future medical expenses. It was shown, however, that plaintiff lost one week’s wages, which, based upon his monthly earnings of \$18, shall be valued at \$4.50.

{¶20} In setting a monetary value for plaintiff’s past pain and suffering, it is somewhat instructive to review damage valuations in other cases. In *Israfil v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2013-00720, 2017-Ohio-4458, an inmate’s damages for past pain and suffering were set at \$3,750 for a finger that was wounded—to a lesser degree than plaintiff’s—and became infected after being caught between a wheelchair and a door, and also for some minor back and neck pain. In *Morgan v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2010-05986 (May 25, 2012), damages were set at \$15,000 for an inmate who suffered a severe laceration of a finger from a deli slicer and had substantial pain for several weeks, as well as permanent disfigurement of the finger and moderate future pain because of the fingernail regularly falling off. In *Seymour v. Ohio Dept. of Rehab. & Corr.*, 131 Ohio Misc.2d 13, 2005-Ohio-2125, 828 N.E.2d 724 (Ct. of Cl.), damages for past and future pain and suffering were set at \$25,000 for an inmate who lost two fingertips in a vegetable slicer.

{¶21} Based upon the foregoing, the magistrate finds that plaintiff is entitled to damages in the amount of \$8,750 for past pain and suffering, and \$4.50 for lost wages.

It is also recommended that plaintiff be awarded the \$25 filing fee cost. Accordingly, it is recommended that judgment be entered for plaintiff in the total amount of \$8,779.50.

{¶22} 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).

ROBERT VAN SCHOYCK
Magistrate