

[Cite as *Jackson v. Dept. of Rehab. & Corr.*, 2019-Ohio-1065.]

RUFUS JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2015-00136JD

Judge Patrick M. McGrath  
Magistrate Holly True Shaver

JUDGMENT ENTRY

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{¶1} Plaintiff's complaint asserts a claim for negligence, stemming from an accident during which a piece of HVAC ductwork fell from a cart and struck plaintiff rendering him unconscious. At all times relevant to the facts set forth herein, defendant housed plaintiff as an inmate at the Marion Correctional Institution (MCI). After the magistrate issued an order bifurcating the case, the parties tried the case to the magistrate on the issue of liability only. On September 7, 2018, the magistrate issued a decision recommending judgment for defendant on plaintiff's negligence claim after finding that any negligence of the HVAC contractor, the K Company, could not be imputed to defendant and that defendant did not breach any duty to plaintiff. After obtaining an extension, plaintiff filed objections and a transcript on October 25, 2018.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." Civ.R. 53(D)(4)(b) provides, "[w]hether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Where no objections are filed, Civ.R. 53(D)(4)(c) provides, "the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." As to the trial court's duty when considering objections, Civ.R. 53(D)(4)(d) provides, in pertinent part:

**Action on objections.** If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. (emphasis added).

Objections "shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). In reviewing objections, the court does not act as an appellate court but rather "must conduct a de novo review of the facts and conclusions in the magistrate's decision." *Ramsey v. Ramsey*, 10th Dist. No. 13AP-840, 2014-Ohio-1921, 2014 Ohio App. Lexis 1868, ¶¶ 16-17 (internal citations omitted). Defendant asserts four objections to the magistrate's decision.

{¶3} Before addressing plaintiff's objections, the court will briefly outline the relevant facts. The Department of Administrative Services (DAS) contracted with the K Company, an approved vendor of HVAC work through the National Joint Powers Alliance (NJPA), to perform work at MCI. On March 28, 2014, two workers from the K Company, Steve Fox and Donald Heberlein, were at MCI to install ductwork. Defendant provided an escort, Corrections Officer David Hildebrand, whose role was limited to providing security for Mr. Fox and Mr. Heberlein as they worked. No one on behalf of defendant instructed the K Company or its employees on how to perform any aspect of the HVAC work.

{¶4} Carts were used to transport the workers' tools and the ductwork itself through the facility. Mr. Heberlein testified that he and Fox would mark the ductwork pieces they needed, which then would be loaded by inmates. At the time the ductwork fell and injured plaintiff, Mr. Fox and Mr. Heberlein each pushed a cart while an unidentified inmate pushed a third cart containing six large pieces of ductwork, which measured approximately four feet in length and which were arranged upright as depicted in Ex. 1. Nothing secured the ductwork to the cart. Mr. Fox testified that transporting the ductwork in this way was, in his experience, safe because a flange

around each end of the ductwork made it stable to transport vertically. Mr. Heberlein testified, via deposition, that, “[n]ever in my \* \* \* 25 years of installing ductwork have we ever secured any material to a cart, not once in my career.” He further testified that he’s “never” had ductwork fall during transport and hit anyone and that “square flat material does not need secured to carts, it rides on a cart very well.”

{¶5} Mr. Heberlein testified to a verbal agreement with defendant that inmates would load the material onto the cart and deliver the cart to where he and Mr. Fox were performing work. Plaintiff did not present evidence as to the person or persons with whom this agreement was made, when it was made, whether the person or persons who made this agreement had authority to do so or any other specifics regarding the agreement’s parameters. Unidentified inmates loaded the ductwork, which ultimately fell and injured plaintiff, with little to no supervision from the K Company employees or anyone else. However, Mr. Heberlein did testify as follows:

- Q. Okay. So no one from K Company supervised the inmates handling this stuff, is that right?
- A. It depends. The first load we were there. The truck came. The material was unloaded. The inmates helped us unload the material and they put it on the cart. I was there for the first load.

{¶6} Exhibit B, titled optional use contract for repair and maintenance and applicable to the K Company’s work at MCI, sets forth general obligations of contractors who, like the K Company, agree to provide services pursuant to DAS’s contract with NJPA. It provides that the contractor, the K Company, shall provide all “work, materials \* \* \* transportation, supervision, labor, and equipment needed to complete each work order” and “shall maintain safety.” (Ex. B, bates stamped DRC\_000184). With these facts in mind, the court now turns to plaintiff’s objections.

### **Objection No. 1**

{¶7} Plaintiff's first objection asserts, "[t]he Magistrate erred in finding at page 8 of her Decision, in the last paragraph, that the K Company employees were responsible for directing the inmate worker on how to load and move the cart." As set forth above, the K Company had the responsibility, per its contract with defendant, to provide everything necessary for the completion of its HVAC work at MCI including the responsibility to supply labor and materials and to "maintain safety." The evidence at trial established that neither defendant nor any of its employees directed the K Company as to how to perform any aspect of its work.

{¶8} Plaintiff asserts there was no evidence that "K Company employees would load or supervise the delivery of the ductwork." This argument ignores both the contractual duty of the K Company as well as the evidence adduced at trial establishing that K Company employees were solely responsible for directing all aspects of the HVAC work which, the court finds, includes the loading and transport of materials necessary for that work. In fact, the K Company employees were the only individuals with knowledge regarding the ductwork and the best way to transport it. Both Mr. Fox and Mr. Heberlein testified that the manner in which the ductwork was loaded on the cart and transported through MCI was not only safe but also consistent with the way they normally transported such material. Mr. Heberlein even testified to being present and/or supervising "the first load." The failure of K Company employees to supervise inmate helpers on the day of the accident does not equate to a lack of responsibility to do so.

{¶9} For these reasons, the court OVERRULES plaintiff's first objection.

## **Objection No. 2**

{¶10} Plaintiff's second objection asserts, "[t]he Magistrate erred in failing to find that the Defendant's employees are responsible to exercise reasonable care to protect the health, safety and welfare of inmates in their care." To some degree, plaintiff asserts the same argument as that which he offers in support of his first objection, that defendant, not the K Company or its employees, bore responsibility for supervising the inmate helpers loading and/or pushing the carts. Plaintiff points to CO Hildebrand's testimony regarding his role being limited to providing security for the K Company employees and asserts that the failure to supervise the inmate or inmate(s) loading and pushing the carts violated the duty of reasonable care owed to inmates. Consistent with its ruling on plaintiff's first objection, the court again finds that the K Company bore responsibility for all aspects of its HVAC work including the loading and transporting of materials necessary for that work.

{¶11} The magistrate accurately set forth the duty defendant owes to inmates, a duty of reasonable care and protection from harm. However, as the magistrate also recognized, defendant is not liable for the negligence of independent contractors or their employees over whom it has no control. Further, the court agrees with the magistrate's determination that "the preponderance of the evidence shows that defendant did not retain control of, or the right to control, the mode and manner of doing the HVAC work." In fact, the record contains no evidence that defendant had any control over the mode and manner of how the K Company performed the HVAC work.

{¶12} As such, the court finds that defendant did not breach the duty of reasonable care owed to plaintiff and is not responsible for any breach of duty by the K Company or its employees. Plaintiff's second objection is, therefore, **OVERRULED**.

### **Objection No. 3**

{¶13} Plaintiff's third objection asserts, "[t]he Magistrate erred in not applying the doctrine of res ipsa to the established facts in this case." The Ohio Supreme Court has described this doctrine as permitting but not requiring a trier of fact to draw an inference

of negligence based on circumstantial evidence. *Estate of Hall v. Akron Gen. Med. Ctr.*, 125 Ohio St.3d 300, 2010-Ohio-1011, ¶ 16. As stated in *Hall*:

A plaintiff must establish two elements for the doctrine of *res ipsa loquitur* to apply: “(1) [t]hat the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant; and (2) that the injury occurred under such circumstances that in the ordinary course of events it would not have occurred if ordinary care had been observed.” (internal cites omitted).

Here, plaintiff failed to establish that defendant had exclusive control of the falling ductwork. Instead, the evidence established that the K Company acted as an independent contractor who solely controlled the HVAC work. Mr. Fox and/or Mr. Heberlein performed the work without input from defendant as to how to perform it. Mr. Heberlein testified he and Mr. Fox selected the pieces for transport which were then loaded by unidentified inmates.

{¶14} The court finds plaintiff failed to establish the first element necessary for the application of *res ipsa* and, therefore, OVERRULES plaintiff’s third objection.

#### **Objection No. 4**

{¶15} Plaintiff’s fourth objection asserts, “[t]he Magistrate’s Decision is contrary to law and against the manifest weight of the evidence.” This objection attacks the magistrate’s decision as a whole and reasserts the same arguments the court has already rejected relative to plaintiff’s other objections. Further, the manifest weight standard, though applicable to civil cases, is normally applied to appellate review of verdicts. Manifest weight challenges require the challenging party “to demonstrate that the evidence could lead to only one conclusion and that conclusion is contrary to judgment.” *Galay v. ODOT*, 10th Dist. No. 05AP-383, 2006-Ohio-4113, 2006 Ohio App. Lexis 4049, ¶ 14. Where a judgment is supported by some competent, credible evidence, it is not against the manifest weight of the evidence. *Id.* However, when

reviewing objections to a magistrate's decision, the trial court does not sit as a court of appeals. Rather, as indicated, the court's duty is to conduct an independent, *de-novo* review as to the objected matters and to determine whether the magistrate properly determined the facts and appropriately applied the law.

{¶16} Based on its *de novo* review of the record, the court finds the magistrate properly determined the facts and appropriately applied the law. The evidence at trial established that the K Company acted as an independent contractor and that it bore sole responsibility for completing the HVAC work including the loading and transporting of materials necessary for that work. As such, negligence, if any, in loading or transporting materials or in supervising the same cannot be imputed to defendant. Applying a manifest-weight standard, which is much more deferential to the underlying decision, does not change the result. Plaintiff fails to demonstrate that the evidence in the case could lead to only one conclusion and the court finds that the evidence, as recited throughout this decision, is competent and credible and supports the magistrate's decision. The court **OVERRULES** plaintiff's fourth objection.

#### **Lack of Notice and/or Negligence**

{¶17} The magistrate also found that defendant lacked notice that material had previously fallen from the cart and, therefore, did not breach any duty of care toward defendant. Plaintiff did not object to this aspect of the magistrate's decision and the court finds the evidence supports the magistrate's finding.

#### **Conclusion**

{¶18} The court finds the magistrate properly determined the facts and appropriately applied the law and **OVERRULES** plaintiff's objections. Therefore, the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor

of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

Filed February 4, 2019  
Sent to S.C. Reporter 3/26/19