

[Cite as *Perry v. Dept. of Rehab. & Corr.*, 2019-Ohio-2371.]

WILLIAM M. PERRY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-00214JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant at the Pickaway Correctional Institution, brings this action for negligence. Plaintiff's claim arises out of an incident where he sustained an injury to his hand while operating a drill press for the Ohio Penal Industries (OPI). The issues of liability and damages were bifurcated for trial, and the case proceeded to trial on the issue of liability.

{¶2} At trial, plaintiff testified that on April 10, 2017, he was assigned to work in the OPI shop at the Warren Correctional Institution. Plaintiff explained that prior to entering prison, he held jobs in the food service industry and warehousing, but he had never operated a drill press prior to working in the OPI shop.

{¶3} Regarding the training that he received, plaintiff testified that he participated in two training sessions. The first session consisted of an inmate reading the rules and policies of the shop and a discussion of safety lead by one of defendant's staff members. Plaintiff was then handed paperwork to complete, which consisted of signing documentation demonstrating that he was aware of the shop rules and policies. Plaintiff denied being informed that he should not wear gloves while operating the drill press, although he acknowledged that he was aware that the shop policies state that gloves are not to be worn while operating the machines. Plaintiff testified that the second training session to occur consisted of another inmate demonstrating the operation of the drill press by showing him how to start the machine, how to move the drill up and down,

and how to move the drill bit. Plaintiff asserted that he was advised to avoid excessively using the stop button on the drill press due to a short.

{¶4} Plaintiff testified that several weeks before the accident, he had a conversation with Stephen Malone about hot metal shavings from the drill press burning his hands while he operated the drill press. Plaintiff explained that he wanted something to protect his hands from the hot metal shavings because he had to hold the metal close to the drill. According to plaintiff, Malone responded by issuing him a pair of leather gloves and stated that he could wear them. Plaintiff asserts that his supervisors in the OPI shop saw him using the gloves on multiple occasions while operating the drill press.

{¶5} Plaintiff recalls that on July 6, 2017, he reported to work in the OPI shop. Plaintiff testified that he was assigned to drill holes in a metal tube intended to be part of a custom metal table. Plaintiff recalled that he began working at 8:00 a.m., had a lunch break, and then continued working in the afternoon. Plaintiff stated that Malone was responsible for issuing equipment and tools from the tool room and that after the lunch break, he issued plaintiff a drill bit, a key to the drill press, a protractor, a crescent wrench, and a pair of leather gloves. Plaintiff added that no one told him that he could not use the gloves while operating the machine. Plaintiff acknowledged cotton gloves were available to all inmates to carry objects around the shop.

{¶6} Plaintiff stated that he had been assigned to train an inmate named Guy Perry who was watching him operate the drill press at the time of the accident. Plaintiff estimated that on that day, he drilled 100 holes prior to the accident in this case and drilled perhaps thousands of holes with the drill press before that. According to plaintiff, shortly before the accident occurred, Philip Bush walked by and told him to wear his safety glasses; plaintiff then continued drilling holes. Plaintiff stated that he used his right hand to operate the lever and a vice was used to hold the metal tube in place. Plaintiff explained that he was required to use his left hand to hold onto the back of the

piece that was drilled and that his hand was right next to where the drill bit was contacting the metal. Plaintiff testified that he lowered the drill onto the metal, completed the hole and raised the drill bit. Plaintiff asserted that while raising the drill, his glove snagged on the drill bit and his left hand wrapped around the drill. Plaintiff used his other hand to hit the stop button. Plaintiff states that he then freed his hand and went to tell Malone about the accident. Plaintiff subsequently received medical attention in the infirmary.

{¶7} Plaintiff testified that he later learned that the drill press was missing the safety guard that surrounds the drill bit and is designed to prevent objects from contacting the revolving drill. Plaintiff asserted that he was present in the OPI shop two weeks after the incident when an inmate named Johnny Walker put the safety guard back on the drill press. Nevertheless, plaintiff did not mention in his informal complaint resolution (ICR), which was written two months after the accident, that the safety guard was missing on the day of the incident. Plaintiff acknowledged that he received a response to an ICR that essentially said the accident was his fault for failing to keep his hand away from the moving parts of the drill and that there was video footage supporting that conclusion. Plaintiff stated that he requested to view the video footage, but it was never shown to him.¹

{¶8} Stephen Malone testified that on July 6, 2017, he was employed by defendant at WCI in the OPI shop. Malone stated that his duties included among other things issuing equipment to the inmates. Malone confirmed that he issued plaintiff a pair of leather gloves but advised that the gloves are not to be worn during the operation of the drill press. Malone stated that he is aware of the policy prohibiting gloves while operating the machines in the OPI shop. Malone asserted that he did not instruct plaintiff to wear gloves while operating the drill press and that he was unaware that

¹Plaintiff never filed a motion for an order compelling the production of the video footage.

plaintiff was wearing gloves while operating the drill press. Regarding training, Malone testified that inmates undergo orientation, which consists of an inmate reviewing policies and procedures and a concluding speech by Mr. Bossy. Malone signed plaintiff's orientation paperwork. As far as training on a specific piece of equipment, Malone assigns an inmate to train another inmate on the machines. Malone stated that he was in the tool room issuing equipment after the lunch break when plaintiff informed him about the accident. Malone believed that he was present for photos that were taken six months after the incident.

{¶9} Phillip Bush testified that he has been employed by defendant at WCI for 29 years and that on July 6, 2017, he was the OPI manager, a position he has held for the previous 14 years. According to Bush, the OPI shop is a 33,000-square foot workshop and that the Dayton drill press is one of the diverse types of equipment in the shop. Bush asserted that the supervisor of the shop, Malone, continually monitors the floor by among other things making rounds, checking on tools and chemicals, and checking on shipments. Bush added that there is no requirement that Malone personally watch an inmate perform his duties. Bush explained that it is his responsibility to ensure that Malone is performing his duties. Bush stated that he ensures that inmate training takes place and that training documents are completed, but he does not personally train the inmates.

{¶10} Bush stated that he did not witness the accident involving plaintiff, but asserted that he did walk by plaintiff prior to the accident. Bush recalled that he was in his office when the accident occurred. Bush asserted that he did not know plaintiff was wearing gloves and believed that he would have stopped plaintiff from using gloves if he had seen that he was wearing them while operating the drill press. Bush testified that within minutes of the accident he checked to see if the safety guard was in place and discovered that the machine was in good working order and that the guard was in place. Bush testified that the safety guard is always in place. Bush explained that the guard is

designed to prevent hands from being caught in the drill and that it operates like a telescope that surrounds the drill bit. The guard will retract as it contacts the material to allow the drill bit to drill through the material.

{¶11} Johnny Walker, an inmate at WCI, whose testimony was presented by deposition, testified that on July 6, 2017, he was assigned to work as a maintenance mechanic at the OPI shop. Walker stated that his duties included daily servicing, repairing, and inspecting the machines in the shop. Walker explained that after completing daily inspections, he signs a paper stating that the equipment is operational for the day or he places an out-of-service sign on any malfunctioning equipment until it is fixed. Walker testified that he performed his duties as he normally does on July 6, 2017.

{¶12} Walker testified that the drill press plaintiff was operating on July 6, 2017, has an orange guard that lowers to cover the drill bit. Walker stated that the orange guard is bolted to the drill press and cannot be removed unless the carriage part is first removed. Walker testified that the guard protects the operator from contacting the drill and from being hit by hot metal shavings that are thrown from the drill.

{¶13} Regarding the operation of the drill press, Walker explained that the drill operator needs to align the drill with the intended hole before drilling a hole into the metal. To do so, while the press is off, the operator will raise the guard and tighten a screw to hold the guard up; the operator can then align the hole and the drill bit. After this is accomplished, the screw holding the guard is loosened and the guard is extended back over the drill bit. Then the operator turns on the drill press and completes the hole. After the hole is completed, the operator turns off the drill press, raises the drill, and repeats the above steps to complete another hole.

{¶14} Walker stated that he was in the shop when plaintiff was injured, but he did not see how it happened. Walker believed that plaintiff was injured due to misusing the machine. Walker testified that he spoke with plaintiff about the incident immediately

after it happened, and according to Walker, plaintiff told him that Bush was walking around and that he turned his head in his direction, sticking his hand in the drill. Walker stated that he inspected the drill press after the accident and before anyone had touched the machine. Walker recalled that there was blood on the metal base. Walker explained that the drill press was operational but the guard should have been extended all the way down. Regarding the use of gloves, Walker stated that gloves are not to be used, but while using the drill press, inmates occasionally use leather gloves to hold the steel, which he described as sharp. Walker added that it can be safely done if the operator of the drill press keeps his hand away from the drill. Walker did not know whether the drill press manual allowed such a practice.

{¶15} “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.

{¶16} “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.

{¶17} 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 July 6, 2017, plaintiff was assigned to operate a drill press at the OPI shop at WCI. Among other things, Malone issued plaintiff a drill bit and leather gloves. Plaintiff was training another inmate at the time of the accident and no one else witnessed the accident. The accident occurred after the lunch break and before Malone had completed issuing tools to the inmates in the shop. Plaintiff was familiar with the drill press and had already drilled many similar holes that day. Plaintiff was holding a piece of metal while wearing leather gloves, and after drilling a hole, he began to raise the drill, but his hand contacted the drill causing an injury.

{¶18} The magistrate finds that plaintiff received appropriate training to use the drill press. Plaintiff participated in an initial orientation where the shop rules were discussed and where safety on the machines was discussed. Plaintiff signed documentation acknowledging that he participated in the orientation. Plaintiff's next step in training occurred on a more individual basis where he was shown how to operate the drill press. It was not established that defendant failed to train plaintiff on any particular aspect of the drill press or that the training that he received was somehow inadequate. Indeed, it appears that plaintiff successfully operated the drill press on more than 1,000 occasions prior to his accident.

{¶19} The magistrate finds that plaintiff was properly supervised at the time of the accident. Plaintiff argues that lack of supervision caused the accident; however, defendant is not an insurer of inmate safety and is only required to exercise reasonable care and protection from unreasonable risks. Bush walked by plaintiff briefly before the

accident, demonstrating that plaintiff was not operating the drill press without any supervision. Additionally, Malone was working in the shop distributing tools at the time of the accident. Furthermore, plaintiff was trained on the use of the drill press and by his own testimony, had drilled thousands of holes using the drill press. Additionally, plaintiff believed he was competent to operate the drill press and defendant apparently agreed, demonstrating such agreement by assigning an inmate to learn by watching plaintiff.

{¶20} Plaintiff argues that the orange guard on the drill press had been removed and that if the safety guard had been in place, he would not have been injured. However, Walker credibly testified that the orange guard was in place at the time of the accident. Walker inspected the machine before it had been altered or cleaned immediately after the accident and discovered that the guard was in place. Furthermore, Walker explained how the guard functioned and noted that the guard was bolted to the machine and could not be removed without first removing other parts of the drill press. Likewise, Bush and Malone both credibly testified that the guard was in place at the time of the accident and that machines are not operated without appropriate safety equipment. In short, plaintiff's testimony that the safety guard was not on the drill on April 10, 2017 is not credible.

{¶21} The magistrate finds that the sole proximate cause of the accident was plaintiff's failure to keep his hand away from the drill bit. Plaintiff acknowledged that he was holding the metal with his left hand and that his left hand was in direct proximity to where the drill bit was contacting the metal. By holding the metal piece close to where the drill bit was contacting the metal, plaintiff placed his own health and safety at risk. No doubt plaintiff knew that he should not allow his hand to contact the drill bit.

{¶22} Plaintiff argues that defendant was negligent in issuing him leather gloves and allowing him to use the leather gloves while he operated the drill press. The undisputed evidence established that shop rules prohibited the use of gloves while

operating the drill press. Plaintiff acknowledged reviewing the shop rules during orientation. Additionally, plaintiff's duties included handling metal objects and the gloves were issued to protect his hands from injury while doing so. Nevertheless, it appears that plaintiff used the leather gloves while operating the drill press on more than one occasion. The magistrate recognizes that Walker testified that inmates often safely use leather gloves to hold the metal while drilling. Regardless, the magistrate finds that the proximate cause of the accident was not that plaintiff was wearing leather gloves; rather, the proximate cause was plaintiff's own failure to keep his hand away from the drill bit. However, assuming defendant was negligent in issuing leather gloves to plaintiff or allowing plaintiff to use leather gloves while operating the drill press, any such negligence is outweighed by plaintiff's own negligence in failing to keep his hands away from the drill bit.

{¶23} Based upon the forgoing, the magistrate recommends that judgment be entered in favor of defendant.

{¶24} *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