

[Cite as *Evans v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-3455.]

WILLIAM H. EVANS, JR

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00732JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence. Plaintiff alleges that he found a foreign object in the food he was served at the Ross Correctional Institution (RCI). In reversing this court's decision dismissing plaintiff's complaint pursuant to Civ.R. 12(B)(6), the 10th District Court of Appeals determined that plaintiff's complaint sufficiently alleged that plaintiff was harmed such that the case would survive a motion to dismiss pursuant to Civ.R. 12(B)(6); the case was remanded for further proceedings. *Evans v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 15AP-463, 2015-Ohio-3492, ¶ 17. Following the remand, the case was stayed at plaintiff's request while plaintiff pursued a mandamus action against a judge of this court. *State ex rel. Evans v. McGrath*, 10th Dist. Franklin No. 16AP-238, 2016-Ohio-8348. After that action concluded, the case proceeded to trial before the undersigned magistrate on the issues of liability and damages.

{¶2} At trial, plaintiff testified that sometime in 2014, he was in the dining hall at RCI eating the lunch meal with four other inmates. Plaintiff stated that the meal was a noodle casserole with peas, carrots, beef, and either turkey or chicken. Plaintiff recalled that he took a bite, felt something that seemed like gristle, removed it from his mouth, and set it on the food tray. Plaintiff acknowledged that he did not swallow the object, but he was unsure whether he unknowingly consumed other unknown objects. Plaintiff took the object back to his cell where he washed it; plaintiff did not report to any

corrections officer that he discovered an object in his meal. According to plaintiff, the object seemed to have an esophagus or some unknown body part; however, on cross-examination, plaintiff conceded that he does not know what the object was. Plaintiff never sought medical attention regarding this incident. No other witnesses testified and no other evidence was submitted for decision.

{¶3} Following the trial, plaintiff filed two documents with the court. However, the proceedings concluded on the day of the trial and plaintiff's documents filed thereafter will not be considered.

{¶4} "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.

{¶5} Upon review of the evidence, the magistrate concludes that plaintiff failed to prove his claim by a preponderance of the evidence. While the magistrate has no reason to doubt that plaintiff discovered an object in his food, plaintiff failed to establish that the object was foreign to the meal he was consuming. Given the evidence, it is equally likely that the object was indeed part of the noodles, peas, carrots, beef, chicken, or turkey. In short, there is no credible evidence identifying the object plaintiff found in his meal. Additionally, plaintiff failed to establish how the object ultimately was placed in his meal. The magistrate can only speculate as to how the object ended up in plaintiff's meal. Furthermore, there is no evidence of actual damages resulting from finding an object in his food; indeed, plaintiff never sought medical care for any injury following this event. Likewise, plaintiff did not report ever being injured as a result of this event. *Wolfe v. Great Atlantic & Pacific Tea Co.*, 143 Ohio St. 643, 56 N.E.2d 230 (1944), (holding that plaintiffs had suffered a physical injury where they became ill and vomited after eating canned peaches that contained worms).

{¶6} Plaintiff argued that the 10th District Court of Appeals already determined that plaintiff suffered harm and that he need not present any evidence of such harm.

However, as was made clear to plaintiff by the Ohio Supreme Court, “the court of appeals had held only that Evans’s complaint sufficiently alleged the elements of a negligence claim and could withstand a motion to dismiss under Civ.R. 12(B)(6) (“failure to state a claim upon which relief can be granted”). It did not, as Evans contends, determine that Evans had *proved* negligence such that Judge McGrath was required to hold a damages-only hearing.” *State ex rel. Evans v. McGrath*, 153 Ohio St.3d 287, 2018-Ohio-3018, ¶ 5.

{¶7} Finally, plaintiff argues that res judicata or the law of the case require a finding that he was harmed. However, there has been no final determination in this matter, and as stated by the Ohio Supreme Court above, the 10th District Court of Appeals only held that plaintiff’s complaint sufficiently alleged a claim of negligence such that it would survive a motion to dismiss pursuant to Civ.R. 12(B)(6). In short, plaintiff failed to prove his claim of negligence by a preponderance of evidence.

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

{¶9} *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