

[Cite as *Gordon v. Dept. of Rehab. & Corr.*, 2019-Ohio-4588.]

WILLIAM GORDON

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-01159JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence arising out of an incident where he was injured while operating a floor buffer at the Noble Correctional Institution (NCI). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At trial plaintiff testified that on February 20, 2018, he was assigned to operate the floor buffer in his dormitory at NCI. Plaintiff explained that he was assigned as a porter in the dormitory where he previously swept and mopped the floors, but Sergeant Moore spoke with him about buffing the floors. Plaintiff stated that Sergeant Moore told him that as an incentive, he would have access to a television for his personal use. As a result, on or about February 5, 2018, plaintiff was assigned to buff the floors. Plaintiff asserted that it was the first time in his life that he had ever used a floor buffer.

{¶3} Regarding the training he received, plaintiff recalled an initial orientation where he and 15 or 20 other inmates were presented with training documents to initial and sign. Plaintiff testified that an inmate led the session and merely instructed the other inmates where to sign and initial on the documents. (Plaintiff's Exhibit 1). Plaintiff stated that he later received training on the buffer from a different inmate who showed him how to start the buffer and then demonstrated how to use the buffer by performing multiple passes with the buffer. Plaintiff believed that he should have received more detailed training on how to start and stop the buffer and the safety features, but he

admitted that he never asked anyone for additional training. Plaintiff detailed that after being assigned to buff the floors, he operated the buffer daily throughout the week excluding weekends. Plaintiff stated that to operate the buffer, the lever by the handle is squeezed; to stop the buffer, the handle is released. Plaintiff recalled that there were two buffers. One buffer had rubber grips on the handles and one did not have rubber grips on the handles. Plaintiff explained that he preferred the buffer that did not have rubber grips as it was easier to hold because the rubber grips on the other buffer were damaged, which caused his hands to slide off the handles.

{¶4} Plaintiff testified that on February 20, 2018, at approximately 7:00 a.m., a corrections officer provided him with a buffer to use while buffing the floors of the day room in the dormitory at NCI. Plaintiff stated that the floor was made of concrete and that he was holding a Styrofoam cup filled with coffee while controlling the buffer with his other hand. Plaintiff added that he had previously seen other inmates operate the buffer in such a manner. Plaintiff testified that as he started to use the buffer, the buffer was operating normally, but at some point, it “started to get away” from him. Plaintiff explained that he tried to correct the buffer, but his hand slipped off the handle and the buffer hit him in the foot causing him to lose his balance and fall. As he fell, plaintiff hit his head on the handle. Plaintiff estimated that he had been buffing the floor for only a couple of minutes when the accident occurred.

{¶5} Plaintiff testified that he believed corrections officers saw him operate the buffer while using one hand; plaintiff added that he believed corrections officers have seen other inmates similarly operate the buffers with one hand. Plaintiff stated that the sergeant was stationed at a desk that was located behind him and that the corrections officers were behind the officer’s desk, which overlooked the day room. Plaintiff asserted that he was able to see them from where he was buffing the floors. Plaintiff denied ever being told by anyone at NCI that he needed to use two hands while operating the buffer. Plaintiff also denied ever being informed that he should not hold a cup of coffee while operating the buffer.

{¶6} Russell Powers testified that he is employed as a corrections officer at NCI, assigned to the A2 housing dormitory and that he was in that same position on February 20, 2018. Powers recalled that plaintiff was a porter assigned to clean the dormitory. Powers explained that a sergeant classifies an inmate as a porter and then the dorm officer assigns the inmate to whatever positions are available, although the sergeant also has the authority to assign an inmate to a particular job. Powers further explained that a more experienced inmate will show the newly assigned inmates how to perform their particular job assignments by having that inmate shadow the more experienced inmate. Powers stated that if an inmate does not feel comfortable with a particular job assignment, the inmate would not be placed in that job. According to Powers, plaintiff was assigned the job of buffing floors because he stated that he had buffed floors at a previous institution. Powers testified that plaintiff never requested additional training.

{¶7} Powers was unable to recall how plaintiff obtained the buffer on February 20, 2018. Nevertheless, Powers explained that the buffers are stored in the closet, and he often retrieves the buffer, glances at the buffer, and gives it to the inmate. Powers clarified that when the closet is unlocked, the inmates are allowed to obtain their own equipment. Powers did not recall if the buffer plaintiff was using had grips on the handles, but he stated that if he had noticed something wrong with the buffer, he would have removed the machine from service. According to Powers, there are two buffers in the unit. Powers added that the corrections officers, who do not use the equipment, rely on the inmates to inform them regarding any potential problems with the buffers. Powers acknowledged that while safety inspections do regularly occur, the inspections are typically limited to fire safety and do not include inspecting the buffing equipment.

{¶8} Powers recalled that on February 20, 2018, plaintiff was assigned to buff the floors in the day room. Powers remained in the officers' area by the computers doing some sort of paperwork. Powers does not recall speaking with plaintiff but does recall him buffing the floors. Powers became aware of the accident because plaintiff was

brought to his desk with a cut to the bridge of his nose by his eyelids. According to Powers, plaintiff stated that he tripped and fell while using the buffer.

{¶9} Powers stated that he subsequently inspected the area where he noticed a cup of coffee on the buffer. Powers completed an inmate accident report and noted that the accident was caused by improper starting or stopping. Powers believed that plaintiff lost control of the buffer while using it.

{¶10} Powers testified that he has observed inmates operating the buffer with one hand, but he maintained that he responds by telling inmates to use two hands while operating the buffer. Powers stated that in his 14 years as a corrections officer he has never heard of or seen an inmate injured while using a buffer.

{¶11} Jerry Rush testified that he is employed at NCI as a corrections officer and has been so employed for the previous 12 years. Rush stated that on February 20, 2018, he was assigned to the A2 housing unit where he had been assigned for the previous four years. Rush explained that inmates are typically classified by the sergeant and assigned to a particular job by the dorm officer. Rush added that inmates are allowed some influence in their job assignment and if they are uncomfortable performing a particular job, they are allowed to take a new job.

{¶12} Rush recalled asking plaintiff if he could operate a buffer and that plaintiff replied by stating that he had previously been assigned to use a buffer. Rush stated that another inmate who had been assigned to operate the buffer showed plaintiff how to use the buffer. Rush added that “job shadowing” may continue for as long as is necessary until the inmate is ready to operate the buffer. Rush testified that plaintiff never stated that he felt uncomfortable operating the buffer and never requested additional training.

{¶13} Rush could not recall if he opened the door to the closet on February 20, 2018, but he explained that once the door is opened, the inmates are allowed to obtain their own equipment. Rush added that when he unlocks the closet door, he looks at the equipment and if he notices a problem, he would submit a work order to repair the

equipment. Rush stated that there are two buffers and that the buffer plaintiff was using on February 20, 2018, was only about a year old. Rush, however, acknowledged that he was not entirely sure how old it was. Rush maintained that if he would have seen that the buffer was missing rubber grips, he would have completed a work order.

{¶14} Rush recalled that on the morning of February 20, 2018, he was in the sergeant's office working on bed moves. Rush explained that in the office, if he stands up, he can see the inmates in the day room. Rush stated that he walked out of the office, saw some blood on the floor along with a cup of coffee, and followed the trail of blood where he found plaintiff at his bed. According to Rush, plaintiff informed him that he tripped and hit his head on the handle. Rush denied seeing inmates use the buffer with one hand and added that if he had seen inmates using one hand to operate the buffer, he would tell them to use two hands to keep the machine balanced and stabilized. Rush stated that he has never heard of or seen anyone else injured by a buffer.

{¶15} Tiffany Moore testified that she is employed at NCI as a corrections officer but that on February 20, 2018, she was a temporary sergeant in A2 and had been so for approximately one month. Moore recalled that plaintiff was already classified as a porter at that time. Moore did not recall if the hand grips were missing from the buffer. Moore stated that if a machine was not operating properly, then she would complete a work order. Moore denied ever seeing inmates operate the buffer with one hand and added that if she had, she would instruct the inmate to use two hands.

{¶16} Moore stated that Rush informed her about the accident. After the accident occurred, Moore recalled seeing blood, coffee, and the buffer. Moore explained that the sergeant's office faces the day room and that if she was looking out to the day room, she would be able to see where plaintiff was buffing. Moore did not speak with plaintiff following the accident and was unable to recall previously speaking with plaintiff about loaning him a television for his personal use. According to Moore, plaintiff never stated that he was not trained and never asked for additional training.

{¶17} The parties also submitted the deposition of Terry Stewart, an inmate at NCI. Stewart recalled that plaintiff was assigned to buff the day room floor and that when he started the machine, it jerked, spun him around, and he hit his head. Stewart added that he had previously used the buffer and that it was missing the hand grips and had been for as long as he could recall. Stewart did not believe the absence of the hand grips impacted the operator's ability to control the buffer. Stewart stated that the buffer was otherwise fine. Stewart clarified that when the machine first starts, if the floor is dry, which is occasionally the case, the buffer will jerk and that the operator is required to apply pressure to the buffer to control it. Stewart did not know if plaintiff had sprayed the floor prior to buffing, but he was able to recall that plaintiff was holding a cup of coffee when he started using the buffer. Stewart stated that he witnessed other inmates occasionally use the buffer while holding it with one hand and that he has also occasionally operated the buffer with one hand.

{¶18} Stewart testified that he was trained by an inmate who had operated the buffer for 30 years and that inmates routinely trained other inmates on the use of the buffer. Stewart stated that he felt comfortable operating the buffer after learning how to start and stop the machine, move it from side to side, and knowing that the floor should be mopped and sprayed prior to using the buffer.

{¶19} "To recover on a negligence claim, a plaintiff must prove by a preponderance of the evidence (1) that a defendant owed the plaintiff a duty, (2) that a defendant breached that duty, and (3) that the breach of the duty proximately caused a plaintiff's injury." *Ford v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 05AP-357, 2006-Ohio-2531, ¶ 10. "While the state is not an insurer of the safety of inmates, the state generally owes a duty of reasonable care and protection from harm to inmates under its custody." *Price v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9. "Prisoners, however, are also required to use reasonable care to ensure their own safety." *Nott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-842, 2010-Ohio-1588, ¶ 8. "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. A duty arises when a risk is reasonably foreseeable. *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). Such a duty includes the responsibility to exercise reasonable care to protect inmates against those unreasonable risks of physical harm associated with institutional work assignments. *Boyle v. Ohio Dept. of Rehab. & Corr.*, 70 Ohio App.3d 590, 592 (10th Dist.1990). “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

{¶20} Upon review of the evidence, the magistrate finds that plaintiff proved his claim of negligence by a preponderance of the evidence. The magistrate further finds that on February 20, 2018, plaintiff was assigned to buff floors in the day room of his dormitory at NCI. The buffer was missing the rubber handle grips and had been missing the grips for at least several months. It was established that the corrections officers generally relied upon the inmates to inform them of any problems with the buffers and that regular inspections of the machines did not occur. The buffer was either given to plaintiff by a corrections officer who looked over the machine prior to giving it to plaintiff or a corrections officer unlocked the closet door and allowed plaintiff to access the buffer in order to complete his assigned task. Either way, defendant knew or should have known that the buffer was missing the rubber handle grips. Nevertheless, other than the missing handle grips, the buffer operated normally.

{¶21} Plaintiff began operating the buffer while holding a cup of coffee with one hand. There is no doubt that there are two handles on the buffer; one for each hand. Nevertheless, plaintiff chose to operate the buffer with one hand. The buffer jerked, which is a normal occurrence when the buffer contacts the dry floor or the buffer first begins operating, and plaintiff lost control of the buffer. Additionally, it was established that the operator of the buffer is required to put pressure on the buffer to control it. Nevertheless, the buffer knocked him off balance and plaintiff hit his head on the metal handle as he fell to the ground. Plaintiff suffered a cut on the bridge of his nose.

{¶22} The magistrate finds that the training plaintiff received was sufficient. Plaintiff participated in an orientation where he signed and initialed training documents. Plaintiff also shadowed a more experienced inmate prior to using the buffer. The more experienced inmate showed plaintiff how to turn the machine on and off and demonstrated the use of the buffer. While plaintiff believed that he should have received additional instruction, at no point did plaintiff ever request additional instruction or express to anyone that he was not comfortable operating the buffer. Additionally, it was not shown what additional instruction was necessary for the proper operation of the buffer.

{¶23} The magistrate finds that plaintiff was properly supervised at the time of the accident. The evidence established that there were two corrections officers and one sergeant who were in the area while plaintiff was operating the buffer. It was also established that plaintiff lost control of the buffer shortly after commencing to buff the floors. While plaintiff believes he should have been instructed to hold on to the buffer with two hands, it was not established that the corrections officers were aware that plaintiff was only using one hand to buff the floors as the accident occurred either immediately after plaintiff began operating the buffer or within moments of plaintiff commencing his work. Furthermore, Powers testified that although he has observed inmates operate the buffer with one hand, he has instructed those inmates to use two hands while operating the buffer.

{¶24} The magistrate finds that defendant breached its duty of care by assigning plaintiff to buff the floors with a buffer that did not have rubber grips, thus increasing the foreseeable risk that plaintiff would lose control of the buffer. The magistrate finds that defendant's negligence was a proximate cause of the accident. The magistrate also finds that plaintiff failed to use reasonable care to ensure his own safety when he chose to operate the buffer with one hand while holding a cup of coffee with his other hand. Plaintiff's disregard for his own safety was also a proximate cause of the accident. The magistrate finds that the degree of fault attributable to plaintiff is 50 percent.

{¶25} Accordingly, judgment is recommended for plaintiff with a 50 percent reduction in any award for damages.

GARY PETERSON
Magistrate