

[Cite as *Davis v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-5464.]

RODERICK DAVIS

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-00043JD

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

{¶1} On May 2, 2019, the court issued a judgment entry in favor of defendant regarding plaintiff's February 5, 2018 slip and fall claim and judgment in favor of plaintiff on his negligence claim regarding the September 22, 2017 incident involving injuries that were caused by a dog. On October 2, 2019, the case came to trial on the issues of proximate cause and damages.

{¶2} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Richland Correctional Institution (RCI). As discussed in the liability decision, plaintiff testified that he had been diagnosed with diabetes, congestive heart failure, high blood pressure, and swelling in his legs. Plaintiff related that his diabetes occasionally made him feel "dizzy" and that, before the incident, he had used a cane because his legs could "buckle" at any time. Plaintiff testified that he also suffered from osteoarthritis which could cause his knees to "go out."

{¶3} On September 22, 2017, plaintiff was walking from his housing unit toward a recreation court when two unleashed dogs "charged at full speed" and lunged at him. Plaintiff testified that he was "bracing" when the dogs made contact with him causing his right knee "snap." Plaintiff related that he was in great pain as he returned to his dormitory. Plaintiff notified a Corrections Officer (CO) who obtained a wheelchair for plaintiff to use. According to plaintiff, four days later, he visited the RCI medical clinic where he was treated with a cortisone shot and provided a knee brace. Plaintiff testified

that his pain decreased for only a couple days and that he returned to the clinic approximately two weeks later and received both over-the-counter (OTC) pain medication (ibuprofen) and a bottom bunk restriction.

{¶4} Plaintiff attends chronic care appointments every three months to evaluate his continuing pain and he testified that he receives only ibuprofen to treat his pain. Plaintiff further testified that he has received a cortisone injection about every six months, but the injection and ibuprofen are insufficient to treat the pain he experienced. Plaintiff stated that the pain in his knees became worse after the February 5, 2018 incident, when he slipped and fell on an icy sidewalk.

{¶5} Danny Hall, a physician assistant who is employed by defendant, testified that he had worked at RCI since 2015. Hall identified medical records which document his treatment of plaintiff as a chronic care patient. Plaintiff's medical records show that Hall examined plaintiff on several occasions in 2017. Hall testified that plaintiff had been diagnosed with Type 2 diabetes and that, at the time in question, plaintiff had been prescribed insulin to regulate his blood glucose. According to Hall, plaintiff experienced swelling in his legs due to his diabetic condition. On September 25, 2017, Hall examined plaintiff as a chronic care patient and noted his history of bilateral knee pain. (Plaintiff's Exhibit 4, p. 71.) Hall's six-page examination report shows that his assessment and treatment plan was discussed with plaintiff, that "all questions [were] answered," and that there was no reference to either an incident involving a dog or a recent right knee injury. Hall testified that he was aware of the incident with the dog from his review of plaintiff's sick call notes.

{¶6} Hall examined plaintiff again on October 16, 2017, when plaintiff complained that both of his knees get swollen and make it difficult for him to walk. (Plaintiff's Exhibit 4, p. 68.) Plaintiff also requested an injection for pain in his right knee and he related that he had "turned the wrong way" when he was approached by a dog on the prison yard. Hall next examined plaintiff on October 28, 2017 for bilateral knee

pain, at which time plaintiff requested another right knee “steroid injection for chronic knee pain.” (Plaintiff’s Exhibit 4, p. 77.) Plaintiff was also issued a “rollator” and instructed to use OTC analgesics as needed. Hall explained that osteoarthritis is a degenerative cartilage disease which becomes progressively worse over time. Hall testified that an injury caused by twisting a leg can exacerbate the symptoms of osteoarthritis.

{¶7} Alfred Granson, M.D., testified that he is employed by defendant and he currently serves as both an Assistant State Medical Director and the Chief Medical Officer at RCI. Dr. Granson reviewed plaintiff’s medical records and he explained the contents of certain progress notes and medical reports. Dr. Granson corroborated Hall’s testimony regarding the progressive degeneration of joints caused by osteoarthritis. Dr. Granson further testified that osteoarthritis can be exacerbated by any type of movement of the affected joints. According to Dr. Granson, the x-ray reports from plaintiff’s May 12, 2017 and February 12, 2019 examinations showed that there was no significant change in the condition of plaintiff’s knee joints during that period of time. (Defendant’s Exhibit H.)

{¶8} “In order to sustain an action for negligence, a plaintiff must show the existence of a duty owing from the defendant to the plaintiff or injured party, a breach of that duty, and that the breach was the proximate cause of resulting damages.” *Sparre v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-381, 2013-Ohio-4153, ¶ 9. “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 (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, ¶ 20 (10th Dist.).

{¶9} “Although a claimant may establish proximate cause through circumstantial evidence, ‘there must be evidence of circumstances which will establish with some degree of certainty that the alleged negligent acts caused the injury.’” *Mills v. Best W. Springdale*, 10th Dist. Franklin No. 08AP-1022, 2009-Ohio-2901, ¶ 20, quoting *Woodworth v. New York Cent. RR. Co.*, 149 Ohio St. 543, 549 (1948). “It is well-established that when only speculation and conjecture is presented to establish proximate causation, the negligence claim has failed as a matter of law.” *Harris v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-466, 2013-Ohio-5714, ¶ 15. “Generally, where an issue involves a question of scientific inquiry that is not within the knowledge of a layperson, expert testimony is required.” *Id.* at ¶ 16, citing *Stacey v. Carnegie-Illinois Steel Corp.*, 156 Ohio St. 205 (1951). “Where complicated medical problems are at issue, testimony from a qualified expert is necessary to establish a proximate causal relationship between the incident and the injury.” *Tunks v. Chrysler Group LLC*, 6th Dist. Lucas No. L-12-1297, 2013-Ohio-5183, ¶ 18.

{¶10} Upon review of the evidence, the court finds that following plaintiff’s contact with the dogs on September 22, 2017, plaintiff sustained an exacerbation of his underlying osteoarthritis, which caused him additional pain in his right knee. Plaintiff required the use of a rollator to aid him in walking after the incident. Although the court finds that plaintiff’s testimony that he experienced an increase in pain in his right knee for several months following the incident was credible, his testimony that he continues to experience long-term pain in his right knee associated with the incident was not credible. Where subjective, soft-tissue injuries are alleged, it is generally beyond the scope of common knowledge to establish a causal connection and thus requires expert

testimony. *Argie v. Three Little Pigs, Ltd.*, 10th Dist. Franklin No. 11AP-437, 2012-Ohio-667, ¶ 15.

{¶11} Plaintiff failed to present expert testimony to support his contention that the knee pain he continues to experience is causally related to the incident. The absence of expert testimony generally precludes recovery where injuries are “internal and elusive” in nature, and not “sufficiently observable, understandable and comprehensible by the trier of fact.” *Wright v. Columbus*, 10th Dist. Franklin No. 05AP-432, 2006-Ohio-759, ¶ 19. The court finds that the testimony of Dr. Granson regarding the lack of notable change between the May 12, 2017 and February 12, 2019 x-ray reports was particularly persuasive. Although there is no question that plaintiff suffers debilitating knee pain associated with osteoarthritis, the court is persuaded by the totality of the evidence that the exacerbation of his right knee pain which was caused by the incident at issue was temporary in nature and resolved over a period of months.

{¶12} Based upon the foregoing, the court finds that plaintiff is entitled to recover \$7,025 which represents \$7,000 in damages, plus the \$25 filing fee. Accordingly, it is recommended that judgment be entered for plaintiff in that amount.

{¶13} *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).*

ANDERSON RENICK
Magistrate

Filed December 12, 2019
Sent to S.C. Reporter 1/24/20