

[Cite as *West v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-5482.]

TIMOTHY WEST

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-01542AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Timothy West, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on March 26, 2018, while he was housed at defendant’s Grafton Correctional Institution (“GCI”), he was resting on the bottom bunk of a bunk bed when defendant’s agent, Sergeant Mandeville, “slammed into the bed, causing the entire bed to be yanked in a sudden jerking motion which caused injury to plaintiff’s neck. The act of slamming into the freestanding bed was done recklessly and/or negligently.”

{¶2} Plaintiff seeks damages in the amount of \$10,000.00, for “whiplash type soft tissue injury to the neck of plaintiff, causing intense pain, loss of mobility, and sharp pains to the upper back of the plaintiff.” Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant submitted an investigation report. ODRC acknowledged that Sgt. Mandeville did make contact with plaintiff’s bunk bed, “it was not done so in a forceful manner or with enough force to cause injury.” Furthermore, defendant argues that the neck pain plaintiff was experiencing was not caused by the contact on March 26, 2018, but rather plaintiff “is suffering from mild degenerative disc disease which was the reason an x-ray was required and the source of his neck pain.” Finally, although plaintiff complains of continued neck pain, defendant records reveal he went to medical thirty-four times after the incident and did not complain about his alleged neck injury.

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{¶4} Defendant submitted a copy of a Report of Inspector of Institutional Services to Shelly Clemmons, Legal Services, which in pertinent part stated:

“Actions or Conclusions and Recommendations: After interviewing Doctor Douglas about the alleged injury to Mr. West I have found that Dr. Douglas did examine Mr. West on 3-30-18. Dr. Douglas found no bruising or laceration to the skin. Dr. Douglas prescribed heat/ice, whichever is most effective. Dr. Douglas also submitted request for an x-ray on same date. On 4-18-18 an x-ray performed on Mr. West in which the results showed the following: Cervical spine 2 or 3 views Findings: there are mild end plate changes, disc space loss and peripheral osteophyte formation compatible with degenerative disc disease. There is normal alignment of the vertebral bodies. No compression or fracture, or bone lesion is noted. there is no gross evidence of spondylolisthesis. the soft tissue appears grossly normal.

CONCLUSION: Mild degenerative disc disease of the cervical spine. Consider CT or MRI if clinical concerns for a fracture or lesion persist.

It should be noted that since the alleged injury from the date of 5-21-18 to 2-20-19 Mr. West has been to medical 34 times and has no documented complaints about his alleged neck and shoulder injury.”

{¶5} ODRC submitted copies of medical evaluations conducted on plaintiff concerning the injury sustained. On March 30, 2018, Janice Douglas, MD saw plaintiff and determined he sustained a shoulder muscle sprain. Plaintiff was directed to use heat or ice whichever is more effective and massage regularly. On April 5, 2018, Dr. Douglas informed plaintiff “that the collar would not benefit him and not to use it.” It should be noted no pain medication was prescribed.

{¶6} ODRC submitted a follow-up report from Dr. Douglas dated April 18, 2018, which revealed “shoulder injury. (Improved).” At that time, an x-ray was ordered to rule out cervical arthritis. ODRC provided the results of the x-ray which in pertinent part stated:

“REPORT

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Exam:

Cervical Spine 2 or 3 views findings: There are mild end plate changes, disc space loss, and peripheral osteophyte formation compatible with degenerative disc disease. There is normal alignment of the vertebral bodies. No compression fracture, or bone lesion is noted. There is no gross evidence of spondylolysis or spondylolisthesis. The soft tissues appear grossly normal.

CONCLUSION: Mild degenerative disc disease of the cervical spine.”

{¶7} Plaintiff filed a response to defendant’s investigation report. Plaintiff asserted judgment should be granted in his favor since defendants admitted its agent made contact with plaintiff’s bunk. Furthermore, plaintiff asserted the medical report supplied by ODRC was redacted.

CONCLUSIONS OF LAW

{¶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

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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.

{¶10} In the case at bar, defendant does not dispute that Sgt. Mandeville negligently came in contact with the bunk bed in which plaintiff was resting. Furthermore, as a result of this contact, plaintiff was seen by Dr. Douglas on March 30, 2018, who diagnosed plaintiff of having sustained “shoulder muscle sprain.” Accordingly, plaintiff established he sustained injury as the result of the negligent contact.

{¶11} While plaintiff contended as a result of this contact, he suffered “whiplash-type soft tissue injury... causing intense pain, loss of mobility and sharp pains to the upper back... which combined pain and suffering continues through the date of this writing.” However, a review of the medical information submitted by ODRC reveals he saw the doctor on March 30 and April 18, 2018, who stated plaintiff should apply heat to the affected area. It should be noted plaintiff was not prescribed pain medication as a result of this injury and was told that a “collar would not benefit him & not to use it.”

{¶12} While plaintiff asserted he continues to experience long-term pain as the result of this injury, plaintiff did not present any expert testimony establishing the cause of any alleged long-term soft tissue injury or pain that he may be experiencing. In short, plaintiff failed to prove that the subjective long-term injuries of which he complained were the proximate result of being negligently struck while he was lying in bed. See *Argie v. Three Little Pigs, Ltd.*, 10th Dist. Franklin No. 11AP-437, 2012-Ohio-667, 2012 Ohio App. Lexis 570, ¶ 15 (Subjective, soft-tissue injuries, being internal and elusive and not observable, require expert testimony to establish causation).

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{¶13} On April 18, 2018, x-rays were ordered. The results of the x-rays revealed the following:

“REPORT

Exam:

Cervical Spine 2 or 3 views findings: There are mild end plate changes, disc space loss, and peripheral osteophyte formation compatible with degenerative disc disease. There is normal alignment of the vertebral bodies. No compression fracture, or bone lesion is noted. There is no gross evidence of spondylolysis or spondylolisthesis. The soft tissues appear grossly normal.

CONCLUSION: Mild degenerative disc disease of the cervical spine.”

{¶14} Nevertheless, this court recognizes that plaintiff sustained some injury as the result of the negligent contact. However, such injuries were temporary in nature and appeared to be resolved over the course of the next several weeks. Plaintiff has failed to establish the proximate cause of any long-term injuries that he claims to be experiencing were the result of the bed bumping incident.

{¶15} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988).

{¶16} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. of Ohio*, 102 Ohio App.3d 782, 658 N.E.2d 31 (12th Dist. 1995).

{¶17} Plaintiff has suffered damages in the amount of \$100.00, plus the \$25.00 filing fee, which may be awarded as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc.2d 19, 587 N.E.2d 90 (Ct. of Cl. 1990).

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$125.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk