

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Francis Coffman, Jr.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-447
	:	(C.C. No. 2007-02246)
Mansfield Correctional Institute,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on November 5, 2009

Mason, Mason & Kearns, and Thomas L. Mason, for appellant.

Richard Cordray, Attorney General, Velda Hofacker Carr and Emily M. Simmons, for appellee.

APPEAL from the Court of Claims of Ohio.

BRYANT, J.

{¶1} Plaintiff-appellant, Francis Coffman, Jr., appeals from a judgment of the Court of Claims of Ohio that determined defendant-appellee, Mansfield Correctional Institute, was not negligent in its operation of a bus transporting plaintiff to a medical facility. Plaintiff assigns a single error:

The Court of Claims erred by ruling that the Appellant suffered no injury in an automobile accident.

Because the court's judgment is not against the manifest weight of the evidence, we affirm.

I. Procedural History

{¶2} On January 24, 2003, plaintiff was an inmate at defendant's facility. In order to convey plaintiff to a previously scheduled medical appointment, defendant arranged transportation for plaintiff on a bus designated for prisoners. When the bus arrived at the medical facility, and while plaintiff was still on board, the driver attempted to back the bus into a parking spot abutting the building. The driver misjudged the distance to the building, and the rear of the bus came into contact with the building. Based on that incident, plaintiff filed a complaint with the Court of Claims on February 23, 2007 alleging defendant's negligence in operating the bus caused plaintiff permanent physical injury.

{¶3} The Court of Claims bifurcated the issues of liability and damages; the liability trial commenced on May 22, 2008 before a magistrate of the court. Plaintiff was his only witness, and he testified that at the time of the incident, he was seated in the last row of seats on the right side of the bus. Although he was not restrained with a seatbelt, plaintiff was wearing leg chains and handcuffs attached to a "belly chain." (Tr. 24.) Plaintiff stated that at the moment of impact his eyes were closed, but he felt the bus speed up before hitting the wall.

{¶4} Plaintiff theorized that the driver's foot slipped off the brake and hit the accelerator while the driver was backing into the parking spot. According to plaintiff, the impact was so severe that, although the bus's tires were on the ground, the rear of the bus was lifted off the ground three or four inches. Plaintiff stated the driver then "let off the

brake and the bus * * * lowered down." (Tr. 31.) The impact, plaintiff testified, caused him to snap "like a whip," precipitating pain in the lower part of his back. (Tr. 31.) When plaintiff got off the bus, he examined the outside of the bus; the only visible damage was a broken right taillight cover.

{¶5} The purpose of plaintiff's medical appointment that day was to treat a preexisting back injury sustained when plaintiff jumped off the second floor range of defendant's facility in an attempt to commit suicide. The January 24, 2003 incident, plaintiff testified, made his back pain worse, and he informed medical personnel at the Corrections Medical Center of his pain from the incident.

{¶6} The bus driver, Corrections Officer Donald Seymour, testified that, contrary to plaintiff's version of events, the bus was idling when he backed it into the parking spot. Seymour stated that, as the bus moved at a very slow speed, he slightly misjudged the distance and "tapped" the wall with the rear of the bus. (Tr. 49.) Noting that the taillights protrude from the body of the bus, Seymour testified the only damage he observed to the bus was a cracked right taillight cover; the light itself was not damaged. Seymour further stated that while he felt the impact of coming into contact with the wall, it felt no different than coming to a stop using the brakes. According to Seymour, the impact did not cause the bus to rise off the ground at all; nor did the bus pick up speed before it touched the wall.

{¶7} The magistrate issued a decision on February 9, 2009 recommending judgment for defendant. The magistrate found Seymour's testimony to be more credible than plaintiff's testimony and concluded the contact between the bus and the building was

so minimal that defendant did not breach its duty of care to plaintiff. The magistrate further found that, even if defendant breached its duty of care, plaintiff failed to establish by a preponderance of the evidence that the incident proximately caused him any new injury or aggravated his preexisting injury.

{¶8} Plaintiff filed objections to the magistrate's decision, but the Court of Claims determined those objections were neither timely nor well-taken. Plaintiff filed amended objections, but the Court of Claims overruled them, concluding the magistrate properly determined defendant did not breach its duty of care. The Court of Claims noted plaintiff's testimony that he felt pain after the incident was not enough to prove injury. Moreover, the court determined that because plaintiff's testimony lacked credibility, the magistrate properly found plaintiff failed to prove the incident proximately caused the pain plaintiff described. As a result, the court adopted the magistrate's findings of fact and conclusions of law and entered judgment for the defendant on April 3, 2009. Plaintiff appeals.

II. Assignment of Error

{¶9} As his sole assignment of error, plaintiff alleges the Court of Claims erred in finding plaintiff suffered no injury in the incident. In order to prevail on a negligence claim, a plaintiff must prove by a preponderance of the evidence that (1) defendant owed him a duty, (2) defendant breached that duty, and (3) the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Plaintiff here argues the Court of Claims' determination that the incident did not proximately cause plaintiff's injury is against the manifest weight of the evidence.

{¶10} In civil cases, if some competent, credible evidence supports all the essential elements of the case, a reviewing court will not reverse the judgment as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 280. In determining whether a civil judgment is against the manifest weight of the evidence, a presumption that the findings of the trial court are correct guides an appellate court. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Id.*

{¶11} In concluding plaintiff did not prove the incident proximately caused his alleged injuries, the Court of Claims, through its magistrate, premised its conclusion on plaintiff's lack of credibility. Whether an incident proximately caused a plaintiff's injuries is "inextricably intertwined" with the plaintiff's credibility. *Krannitz v. Harris*, 4th Dist. No. 00CA649, 2001-Ohio-2683. "Credibility issues are not resolved as a matter of law, but are left to the trier of fact to determine." *Rose v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 04AP-1360, 2005-Ohio-3935, ¶8, citing *Ciccarelli v. Miller*, 7th Dist. No. 03 MA 60, 2004-Ohio-5123, ¶35, citing *Lehman v. Haynam* (1956), 164 Ohio St. 595 (internal quotation marks omitted). The magistrate found plaintiff's testimony lacked credibility both standing alone, due to internal contradictions, and when measured against the testimony of Corrections Officer Seymour.

{¶12} Plaintiff's own testimony contained many inconsistencies. Plaintiff initially testified he did not have problems with his back before the incident on January 24, 2003. He contradicted himself when he later testified his suicide attempt in 2001 left him with a severe back injury. Plaintiff also stated he did not need to use a cane until after the January 24, 2003 incident. On cross-examination, however, plaintiff admitted his appointment to be fitted with a cane was scheduled before the incident. Additionally, plaintiff testified the back pain he sustained in the January 24, 2003 incident caused him to slip and fall frequently; he testified he did not fall before the incident. Contrary to his testimony, his medical records indicate plaintiff slipped and required medical attention for a fall in February 2002. When pressed, plaintiff also admitted to falling in the shower at some time in 2002.

{¶13} Aside from the noted inconsistencies in plaintiff's testimony regarding his health before and after the January 24, 2003 incident, plaintiff's testimony also diverges significantly from the testimony of Corrections Officer Seymour. Where plaintiff testified the bus picked up speed before it hit the wall, Corrections Officer Seymour said the bus was idling and moving very slowly. Where plaintiff stated the bus hit the building with enough force to be lifted off the ground, Corrections Officer Seymour testified the bus merely tapped the wall and was not lifted off the ground in any way. Where plaintiff said the impact of hitting the wall caused him to snap "like a whip," Corrections Officer Seymour testified the impact was only faintly appreciable on board the bus and no different than coming to a stop using the brakes. Where plaintiff stated his seat on the bus was only six inches from the point of impact, Corrections Officer Seymour said plaintiff

was seated three or four feet from the back of the bus to make room for a storage compartment.

{¶14} To the extent the magistrate based his credibility determination on inconsistencies, the record amply supports it. Moreover, the record presents a reasonable reason the magistrate would find Corrections Officer Seymour, not plaintiff, to be credible. The evidence that the only damage to the bus was a crack in the plastic taillight cover on the right-hand side, a point on which both plaintiff and Corrections Officer Seymour agree, supports only minor contact between the bus and wall, not the version of events to which plaintiff testified. Some competent, credible evidence thus supports that the magnitude of the contact between the bus and the building was not severe enough to cause injury to anyone on board the bus.

{¶15} Despite the credibility issue, plaintiff contends the fact he testified he felt pain following the incident, no matter the degree, is conclusive proof the incident proximately caused him some injury, whether new or aggravated. Preliminarily, plaintiff presented no medical expert testimony that the incident caused him injury. Rather he presented only his own testimony which, regarding his pain, is subjective and thus inherently linked to his credibility. See, e.g., *Moore v. Jock* (Sep. 5, 1991), 10th Dist. No. 91AP-102 (noting that where injury is dependent upon subjective symptoms, the credibility of the plaintiff is necessarily brought into question). Just as the trial court had the discretion to disbelieve plaintiff's account of the incident, so, too, it could disbelieve plaintiff's claims of pain. A witness's lack of credibility on one matter can cast doubt on the testimony as a whole. *Jackson v. Jackson*, 5th Dist. No. 03-CA-17, 2004-Ohio-816, ¶21

(stating "the court is free to accept or reject, in whole or in part, the testimony or opinions of any witness, whether accepted as an expert or not and determine the weight and credibility to be given thereto").

{¶16} Plaintiff further argues that, his testimony notwithstanding, medical evidence supports his claim of injury. Plaintiff points to new pain medication prescribed to him after the incident and a bone scan conducted in July 2003 showing a joint facet problem in his back. The medical evidence, plaintiff argues, leads to the inference that the bus incident proximately caused plaintiff some injury. The very purpose of plaintiff's appointment on January 24, 2003, however, was to diagnose and treat a problem with his back. Moreover, in the two years leading up to the incident, plaintiff jumped off a second-story range and fell on a number of occasions. In the end, nothing, apart from plaintiff's testimony, indicates the conditions reflected in the medical records resulted from the incident. Having found plaintiff's testimony not to be credible, the Court of Claims reasonably could conclude any pain plaintiff actually experienced and any abnormal bone scan findings resulted from plaintiff's previous falls.

{¶17} For the stated reasons, plaintiff's assignment of error is not well taken. Some competent, credible evidence, in the form of Corrections Officer Seymour's testimony, supports the Court of Claims' decision that, because the incident involved such minimal contact, it did not proximately cause plaintiff any new injury or aggravate any preexisting injury. The judgment of the Court of Claims therefore is not against the manifest weight of the evidence. For the sake of completeness, however, we address whether the evidence proves defendant breached its duty to plaintiff, even though plaintiff

did not assign as error the Court of Claims' conclusion that defendant did not breach its duty.

{¶18} An appellate court sustains or overrules "only assignments of error and not mere arguments." *Karras v. Rogers*, 10th Dist. No. 08AP-221, 2008-Ohio-5760, ¶12, quoting *State v. Fed. Ins. Co.*, 10th Dist. No. 04AP-1350, 2005-Ohio-6807, ¶7 (internal quotation marks omitted). Thus, even though plaintiff argues in his brief that the bus's making contact with the wall was negligence, we need not reach the breach of duty prong of plaintiff's negligence claim because plaintiff did not assign it as error. Plaintiff's adverse ruling in the Court of Claims on the breach of duty element of his negligence claim, and his failure to appeal it, are fatal to his entire claim. *Whiting v. Ohio Dept. of Mental Health* (2001), 141 Ohio App.3d 198, 202, following *Osler v. Lorain* (1986), 28 Ohio St.3d 345, 347.

{¶19} Even had plaintiff assigned the breach of duty element as error, we would conclude the Court of Claims properly determined defendant did not breach its duty to plaintiff. The duty defendant owed to plaintiff is reasonable care. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207-08 (stating the state owes its inmates a duty of reasonable care and protection). The state, acting through defendant, breaches its duty if it exposes an inmate to an unreasonable risk of harm. *Id.* Based on Corrections Officer Seymour's testimony, the Court of Claims found that the bus tapped the wall of the building with the rear of the bus, so that the impact was only faintly appreciable on board the bus. With that finding, the Court of Claims concluded plaintiff was not exposed to an unreasonable risk of harm and, thus, did not breach its duty. Some competent, credible evidence, again in

the testimony of Corrections Officer Seymour, supports the court's factual finding, which in turn supports the Court of Claims' determination that the bus's tapping the wall did not expose plaintiff to an unreasonable risk of harm. As a result, plaintiff's negligence claim fails for the additional reason that he did not prove defendant breached its duty of care to plaintiff.

{¶20} In the final analysis, the judgment of the Ohio Court of Claims is not against the manifest weight of the evidence. Some competent, credible evidence supports the finding that the incident did not proximately cause plaintiff any injury. We overrule plaintiff's sole assignment of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and McGRATH, JJ., concur.
