

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Juan Roberts,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 09AP-1056
v.	:	(C.C. No. 2006-05551)
	:	
Ohio Department of	:	(REGULAR CALENDAR)
Rehabilitation and Correction et al.,	:	
	:	
Defendants-Appellants.	:	
	:	

D E C I S I O N

Rendered on October 26, 2010

Walter W. Messenger, Jr., for appellee.

Richard Cordray, Attorney General, *Eric A. Walker*, *Amy S. Brown* and *Daniel Forsythe*, for appellants.

APPEAL from the Court of Claims of Ohio.

McGRATH, J.

{¶1} Defendants-appellants, Ohio Department of Rehabilitation and Correction and the Office of Risk Management (collectively "ODRC"), appeals from a judgment of the Court of Claims of Ohio, in favor of plaintiff-appellee, Juan Roberts ("Roberts"). For the following reasons, we affirm the judgment of the Court of Claims.

{¶2} On January 3, 2006, while Roberts was incarcerated at the Madison Correctional Institution ("MCI"), his right leg was struck by a trailer that was being towed by a John Deere "gator," a multipurpose maintenance vehicle. On August 30, 2006, Roberts filed a negligence action in the Court of Claims against ODRC for the injuries he allegedly sustained as a result of being hit by the trailer. On September 18, 2007, the issue of liability was tried to a magistrate. The following facts were adduced at trial before the magistrate and are germane to this appeal.

{¶3} Roberts testified that at approximately 1:15 p.m. on the day of the incident, he was walking with a fellow inmate on a designated pathway toward MCI's weight room for "rec." According to Roberts, while speaking with the other inmate, he became aware of the approaching gator when it was almost upon him. Roberts stated that he raised his leg so as to avoid the plow attached to the front of the gator, but when he placed his foot back down, the trailer being towed by the gator made contact with his leg. Roberts explained that he lifted his leg, as opposed to moving over on to the grassy area next to the pathway, because inmates are prohibited from walking on the grass.¹ Roberts estimated that the gator was moving at approximately ten miles per hour when it struck him.

{¶4} Inmate Darius Peaks ("Peaks"), who was also heading to "rec" and was walking approximately ten feet behind Roberts, observed the incident. Peaks testified that Roberts stepped off the pathway and missed the gator, but when Roberts stepped back onto the pathway, the trailer made contact with his leg. Peaks further testified that

¹ Roberts testified that walking on the grass "would be an infraction that can land [an inmate] in the hole[.]" (Tr. 15.)

after being hit, Roberts immediately grabbed his leg. Peaks explained that he avoided being hit by the gator by stepping onto the grassy area next to the pathway.

{¶5} Richard Tatman ("Tatman"), a Maintenance Repair Worker 3 at MCI, was driving the gator on the day of the incident. According to Tatman, the gator he was driving that day was about four-and-a-half feet wide, the trailer being towed by the gator measured approximately ten feet long and eight feet wide, and the plow attached to the front of the gator was about six feet wide. He further stated that the pathway on which the inmates are required to walk measured six feet, although some areas measured five feet, and there is not enough room on the pathway to accommodate both a gator with a trailer and the inmates. Tatman also testified that the gator did not have a horn or a speedometer and that 15 miles per hour was the gator's maximum speed. With respect to speed, Tatman estimated that he was initially traveling approximately ten to fifteen miles per hour, and that he slowed down to approximately eight to ten miles per hour as he approached the group of inmates walking on the pathway. Tatman explained that he was not aware that he had hit Roberts while driving the gator and only learned of the incident later that day.

{¶6} Based upon the above testimony, the magistrate found that ODRC committed a breach of their duty of reasonable care when Tatman, their employee, caused the trailer to strike Roberts. The magistrate explained:

* * * Tatman was driving at an unreasonably fast speed when he passed through the group of inmates on the sidewalk. However, the court further finds that plaintiff was aware of the approaching gator and failed to use reasonable care to avoid the vehicle. Accordingly, Ohio's comparative negligence statute, R.C. 2315.33, is applicable.

For the foregoing reasons, the court finds that plaintiff has proven his negligence claim by a preponderance of the evidence. The court further finds that the degree of fault attributable to plaintiff for failing to use reasonable care to ensure his own safety is 40 percent. Accordingly, judgment is recommended in favor of plaintiff with a 40 percent reduction in any award for damages.

(Magistrate's Decision at 3.)

{¶7} ODRC filed objections to the magistrate's decision, which the trial court overruled. The matter was then referred back to the magistrate and tried on the issue of damages. The magistrate recommended that Roberts was entitled to damages in the amount of \$20,000, with a 40 percent reduction in damages due to his own negligence. No objections were filed, and the trial court adopted the magistrate's recommendation.

{¶8} ODRC appeals and asserts the following two assignments of error for our review:

APPELLANTS' ASSIGNMENT OF ERROR NO. 1

Because Appellee failed to prove that the vehicle speed of 8 to 10 mph was a breach of the standard of reasonable care, the trial court erred as matter of law by holding that Appellants breached their duty of care to Appellee.

APPELLANTS' ASSIGNMENT OF ERROR NO. 2

Because Appellee failed to prove that he would not have been injured if the vehicle had traveled at a slower speed, the trial court erred as a matter of law by holding that Appellee proved that Appellants' actions were a proximate cause of Appellee's injury.

{¶9} Because the assignments of error are interrelated, we shall discuss them together. In its first assignment of error, ODRC argues that Roberts did not prove that Tatman failed to exercise ordinary care. Specifically, ODRC contends that Roberts did

not prove that the speed at which Tatman was driving the gator (eight to ten miles per hour) breached the standard of reasonable care. In its second assignment of error, ODRC asserts that Roberts failed to prove that had Tatman been traveling at a speed of less than eight to ten miles per hour, Roberts would not have been injured.

{¶10} Judgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. This court, sitting as a "thirteenth juror," must weigh the evidence and determine whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. The credibility of witnesses is an issue primarily for the trier of fact, who stands in the best position to evaluate such matters. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77. Thus, if the evidence is susceptible to varied conclusions, this court must interpret it in a manner consistent with the verdict and judgment. *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1109, 2003-Ohio-3533, ¶19.

{¶11} To establish actionable negligence, a plaintiff must show the existence of a duty, breach of that duty, and injury proximately resulting from the breach. *Cooper v. Meijer Stores Ltd. Partnership*, 10th Dist. No. 07AP-201, 2007-Ohio-6086, ¶8, citing *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285; *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make ODRC the insurer of

inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235.

{¶12} Upon review, we cannot say that the trial court erred when it found that the ODRC, vis-à-vis Tatman, breached a duty of care owed to Roberts. To begin, it is unknown what exact speed Tatman was traveling because the gator he was driving did not have a speedometer. Thus, removing the issue of speed, what is known is that the gator made contact with Roberts, and that he sustained injuries as a result. In this case, Tatman was driving the gator on the same pathway upon which the inmates were walking; he approached the group on the gator from behind. The inmates were not permitted to walk on the grass, although driving on the grass was an option for Tatman. There was no horn on the gator to alert the inmates of its approach, nor did Tatman otherwise announce his approach; rather, it was up to each inmate to ascertain that the gator was coming upon them. Roberts became aware of the gator approaching and lifted his leg so as to avoid the vehicle, but was clipped by the trailer attached to the rear of the gator. This incident happened on or around a curve on the pathway. (Roberts' Exhibit D.)

{¶13} Based on the facts set forth above, we find no error in the trial court's determination that Tatman failed to exercise ordinary care when the gator he was driving made contact with Roberts, causing him to sustain injuries. We further find the case law cited by ODRC in support of its second assignment of error to be factually inapposite, and, therefore, unpersuasive. Accordingly, we overrule ODRC's first and second assignments of error.

{¶14} Having overruled ODRC's two assignments of error, we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.
