

plaintiff running down the middle of the street.

Black pursued plaintiff, driving east on West Broad Street with his overhead flashers and siren in operation. As plaintiff approached the 1-70 overpass, Black pulled up beside him and commanded plaintiff to stop. Plaintiff did not respond and continued to run, going under the overpass. As plaintiff exited from underneath the overpass, he proceeded in the direction of a field adjacent to the 1-70 exit ramp. Fearing that he would lose plaintiff in the field, Black pulled the car onto the exit ramp to block plaintiff's path. Plaintiff continued running and ran into the car, sustaining injuries to a knee and ankle.

Plaintiff's claim for a right to relief is framed as a negligence claim. Plaintiff asserts that Black was negligent in the pursuit and capture, and that this negligence was the sole and proximate cause of his injuries. Conversely, defendant denies that Black was negligent, and asserts that plaintiff's own actions were the sole and proximate cause of his injuries.

Ohio's comparative negligence statute, R.C. 2315.19, bars plaintiff from recovery if his actions were a greater cause (more than fifty percent) of his injuries than any acts of defendant. Regardless of whether defendant was negligent (the court makes no such finding), the court finds that plaintiff's own actions were a greater cause of his injuries than any action of Black. More specifically, plaintiff's fleeing and failing to stop when commanded to by Black, who was pursuing plaintiff in a car with flashing lights and siren operating, and then plaintiff running into the stationary patrol car, were more than fifty percent the proximate cause of injuries. Therefore, plaintiff is barred from recovery.

[Cite as *Reid v. Central Ohio Psychiatric Hosp.*, 1992-Ohio-265.]

In this action, defendant has asserted a counterclaim against plaintiff claiming that he is liable to defendant for his care and treatment in its hospital. Plaintiff contests this counterclaim by arguing that allowing defendant to recover would be a denial of equal protection under both the Ohio and the United States Constitutions, because persons incarcerated do not pay for their care.

The law in Ohio on this matter is "where a [person] is found not guilty by reason of insanity of an offense and is thereafter committed to a state hospital . **the state may charge and collect, pursuant to R.C. 5121.12, from that [person] *** for his support and maintenance while confined in such state facility. Allowing the state to collect from the defendant under these circumstances does not violate the equal protection provisions of either the Ohio or the United States Constitutions.**" *State, ex rel. Dept. of Mental Health and Mental Retardation, v. Talikka* (1983), 13 Ohio App. 3d 420. Here, plaintiff was committed to COPH as a result of a finding of not guilty by reason of insanity. Accordingly, the court finds that plaintiff is liable to defendant for the care and treatment he received while in its hospital.

In view of the above, the court finds in favor of defendant on both its counterclaim and plaintiff's claim. Regarding defendant's counterclaim, this cause will be rescheduled as soon as possible, but at the convenience of the parties, to determine the amount plaintiff owes defendant for his care and treatment.

LOWELL B. HOWARD
Judge

[Cite as *Reid v. Central Ohio Psychiatric Hosp.*, 1992-Ohio-265.]

IN THE COURT OF CLAIMS OF OHIO

DONALD REID	:	
	:	
Plaintiff	:	CASE NO. 91-01099
	:	
v.	:	<u>JUDGMENT ENTRY</u>
	:	
CENTRAL OHIO PSYCHIATRIC HOSPITAL	:	Judge Lowell B. Howard
	:	
Defendant	:	
	:	
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The court has considered the evidence and rendered decisions filed herein on both plaintiff's claim and defendant's counterclaims. Judgment is rendered in favor of defendant and against plaintiff. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

Regarding defendant's counterclaim, the assignment commissioner is hereby directed to set this cause for trial to determine the amount plaintiff owes defendant for his care and treatment.

LOWELL B. HOWARD
Judge

Entry cc:

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