

[Cite as *Moore v. Ohio Dept. of Rehab. & Corr.*, 1992-Ohio-281.]

IN THE COURT OF CLAIMS OF OHIO

JOHN MOORE, #188-473 :
Plaintiff : CASE NO. 90-11180
v. : JUDGMENT ENTRY
OHIO DEPARTMENT OF : Judge Fred J. Shoemaker
REHABILITATION AND CORRECTION :
Defendant :
: :

This cause came on for hearing before a referee of this court on the amended complaint of plaintiff and the answer of the defendant to the amended complaint.

On April 23, 1992, pursuant to Civ. R. 53(A), Fred D. Gartin, at attorney admitted to practice in Ohio, was appointed referee in this cause. The cause was tried by the referee on April 27, 1992. After the evidence was completed, counsel for both parties filed post-trial briefs. On July 1, 1992, the referee filed his report in which he recommended that the court grant judgment in favor of defendant. Plaintiff timely filed objections to the report and a motion requesting that the court hear additional evidence. Plaintiff supported his objections with the filing of a partial transcript and a brief. Defendant filed a brief in opposition to both the objections and plaintiff's motion to take additional evidence.

The first issue for the court to decide is plaintiff's motion to take additional testimony. Said motion is hereby OVERRULED. Counsel knew that hearsay statements are not

admissible as evidence. If certain evidence was important to plaintiff's case, he should have called the witness himself. He had no cause to assume that such witness would be called by defendant.

It is not unusual in any case that after a trial is completed, counsel believes he or she should have called another witness or asked additional questions. Furthermore, counsel for plaintiff did not request the referee to call inmate Mack at trial or even before the referee rendered his report.

As stated in *Ivywood Apts. v. Bennett* (1976), 51 Ohio App. 2d 209, "A hearing before a referee is not fair and complete until a judge, exercising independent and careful consideration, along with an opportunity to review objections, has acted upon the referee's report."

I recognize that as a the trial judge, I have the responsibility to critically review and verify to my satisfaction the correctness of the referee's report. Therefore, I read the submitted partial transcripts and reviewed the complete file, including a study of the referee's report.

It is my best judgment that the referee has made all the proper factual findings and legal conclusions and his recommendation that judgment be granted to defendant is supported by the legal authorities noted in his report. Therefore, the court hereby adopts the report, but makes the additional finding that defendant was not negligent as to the act that directly and proximately caused plaintiff's injury. The sky light in question was not built to withstand falls by people creating a big impact against the skylight. Obviously, the skylight had been on the

roof for many years, but the sole cause of plaintiff's injury was the negligence of the inmate in falling with great force against the skylight.

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.

FRED J. SHOEMAKER
Judge

Entry cc:

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