

[Cite as *Thrower v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-1851.]

IN THE COURT OF CLAIMS OF OHIO

ALBERT THROWER

:

Plaintiff

:

CASE NO. 2000-01732

v.

:

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

:

Lewis F. Pettigrew, Magistrate

:

Defendant

: : : : : : : : : : : : : : : :

Plaintiff brought this action against defendant alleging negligence. The case was tried to a magistrate of the court on the sole issue of liability.

At all times relevant hereto plaintiff was an inmate in defendant's Grafton Correctional Institution (Grafton). On June 23, 1998, plaintiff was housed in unit "D-2," a dormitory style building in the prison. Plaintiff occupied a lower bunk, bunk 50, in aisle A, at the north end of the dormitory. Plaintiff's bunk was separated from the adjacent bunk by a thin metal chest of drawers with a top-mounted television stand. The chest of drawers sat against the back wall approximately 21 inches from the head of plaintiff's bed. According to plaintiff, the drawers had sharp edges. Plaintiff stated that it was his practice to keep the drawers shut when he slept, but that the drawers would often open on their own. All inmates at Grafton are issued footlockers which fit underneath the bottom bunk. Plaintiff's practice was to push his footlocker part of the way under his bunk, lengthwise, leaving one end of the footlocker to use as leverage to push himself up from the bed and onto the floor.

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Plaintiff testified that due to the heat of the summer, the lights in "D-2" were turned off and the dorm was kept "97% dark," even in the daytime hours. According to plaintiff, on the night that he was injured he was awakened from a nap by some unidentified commotion or noise. When he tried to raise himself from his bed and onto the floor, he lost his balance due to the dark conditions and fell forward, striking his face on the edge of an open dresser drawer. Plaintiff sustained a gash in his lip from the fall. It is plaintiff's contention that defendant was negligent in failing to provide adequate lighting in D-2 and that this failure directly and proximately caused his injuries. The court disagrees.

In order for plaintiff to prevail on his claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty and that the breach of duty was the proximate cause of his damages. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The duty owed to an inmate by his custodian is one of ordinary care in the furtherance of the custodial relationship. *Jenkins v. Krieger* (1981), 67 Ohio St.2d 314; *Scebbi v. Dept. of Rehab. & Corr.* (March 21, 1989), Court of Claims No. 87-09439, unreported. The requisite standard of care is that which is reasonable and ordinary for the health, care and well-being of the inmate. See *Clemets v. Heston* (1985), 20 Ohio App.3d 132. *Id.*

Evidence in the record contradicts plaintiff's version of the facts. For example, plaintiff was sure that he fell off the left side of his bed and cut himself on the sharp edge of his dresser drawer. Plaintiff was also sure that his contact with the drawer caused him to bleed rather heavily from the lip. However, no blood spots were observed at or near the drawer

plaintiff claims to have struck, nor were there any blood spots along the left side of his bed. In fact, blood spots were seen only on the floor at the right side of plaintiff's bed. There were no dressers or other furniture at the right side of plaintiff's bed. At trial, plaintiff explained this by stating that the blood may have spurted from his lip onto the floor at the right side of his bed. However, plaintiff told Correction Officer (CO) Morales that he may have crawled to the other side of his bunk after he struck the drawer. Given plaintiff's own description of his position at the time he struck the drawer, neither of plaintiff's explanations are plausible. Thus, plaintiff's testimony lacks credibility.

Although plaintiff denies that his injury was a result of being struck by another inmate, the CO to whom plaintiff first reported his injury noted in an incident report that plaintiff's injury was a result of an "inmate affair," meaning that he believed plaintiff had been struck by another inmate. While this CO did not witness any fight, his belief is supported by the photograph taken of plaintiff shortly after the incident. The photograph reveals swelling and discoloration around plaintiff's left eye and left cheek in addition to the gash on his lip. Indeed, the registered nurse who examined plaintiff noted a black bruise under plaintiff's left eye and a bruise behind his left ear in addition to the gash on his lip. Given plaintiff's injuries and the other physical evidence presented, the court does not find plaintiff's testimony about his injury to be credible.

Moreover, even if the court were to believe plaintiff's account of the incident, plaintiff's own testimony about the

incident leads the court to the conclusion that plaintiff's own negligence was the sole proximate cause of his injuries.

Plaintiff stated that when he awoke he was groggy; that he turned to the side and reached down to his footlocker to brace himself and climb out of bed; that the footlocker was not in its usual position; and that when he reached for the footlocker he lost his balance and fell because the footlocker was not there. Under the circumstances, plaintiff's own carelessness caused him to fall forward and strike the drawer.

In short, plaintiff did not prove by a preponderance of the evidence that defendant breached the duty of care owed to him or that any alleged negligence proximately caused his injury. Judgment is recommended in favor of defendant.

LEWIS F. PETTIGREW
Magistrate

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