

[Cite as *Scott v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-1859.]
IN THE COURT OF CLAIMS OF OHIO

GEORGE E. SCOTT :
Plaintiff : CASE NO. 2000-03760
v. : DECISION
OHIO DEPARTMENT OF : Judge Russell Leach
REHABILITATION AND CORRECTION :
Defendant :

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

At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff worked in a kitchen area that is referred to as the "sinkolator" room, a name taken from an appliance used for rinsing trays. On September 17, 1999, plaintiff was working in the sinkolator room dumping trash from the trays into a trash can and stacking the trays near the sinkolator for rinsing. One of the inmate workers brought a large number of trays into the room and stated that the trays needed to be re-washed before use. The inmate left the trays on a cart near the doorway just a few feet away from plaintiff.

According to plaintiff, Correction Officer (C.O.) Good entered the sinkolator room and began yelling and cursing at plaintiff and the other inmate workers in the room. He allegedly screamed at them about the dirty trays and kicked a stack of trays in plaintiff's general direction. Plaintiff claims that a few of these trays hit his ankle, causing injury. Plaintiff

testified that when he reported the injury to Good, Good did nothing. Plaintiff went to the infirmary after the shift and was given some over-the-counter pain medication for treatment of his subjective complaints. None of the inmates who were on duty in the sinkolator room that day testified at the trial.

C.O. Good was the supervisor of the inmates on plaintiff's shift. Good acknowledged that he was on duty in the sinkolator room that day, but denied that the incident described by plaintiff ever happened. Good did not remember complaining about dirty trays, yelling at the inmates about the trays, using profanity or kicking trays. Good stated that he does not remember plaintiff even though plaintiff had been working on kitchen crew for six months prior to the incident. Good recalled that Lieutenant Oyer was on duty in the dining hall that day but claimed not to know what Oyer's duties were.

Oyer testified that on September 17, 1999, he was on duty as the first shift security officer in the mess hall. Oyer was stationed near the phone just outside the sinkolator room. Since Oyer was required to watch the mess hall, he stood with his back to the sinkolator room. Oyer had no present recollection of the incident described by plaintiff. However, in an incident report prepared by the institutional inspector, Oyer reportedly overheard C.O. Good yelling at the inmates about the dirty trays.

According to the report, Oyer heard Good say something like "*** these trays look like shit *** get your asses in gear and clean up these trays." Because Oyer's back was to the sinkolator room, he did not see Good make the statements nor did he see Good kick any trays.

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In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The law is well-settled that prison officials owe inmates a duty of reasonable care. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. This duty includes the obligation to protect inmates in their care from reasonably foreseeable risks. *Id.*

In this case, whether defendant breached its duty to plaintiff comes down to an issue of witness credibility. In making a determination of credibility the court examines the demeanor of the witnesses, the manner in which they testify, their connection or relationship to a party and their interest, if any, in the outcome. *State v. Antill* (1964), 176 Ohio St. 61, 67. Defendant contends that plaintiff's testimony is not worthy of belief because he did not make a written complaint about this incident until October 4, 1999, just after defendant revoked plaintiff's bottom bunk restriction. The court finds, however, that even if defendant's revocation of plaintiff's bottom bunk restriction motivated plaintiff to file his written complaint, it does not necessarily follow that the incident is fictitious.

Indeed, upon examination of the above-noted factors affecting credibility, the court finds that plaintiff's testimony about this incident was the more credible. It is significant to the court that Good's denials regarding yelling and using profanity were directly contradicted by Oyer's statements cited in the inspector's report. The court finds that C.O. Good kicked a stack of trays in anger and that a few of these trays struck plaintiff. The court further finds that Good's conduct created a

foreseeable and unreasonable risk of harm to plaintiff. Therefore, defendant was negligent.

In order to establish liability on the part of defendant, plaintiff has the burden of proving that defendant's negligence proximately caused some compensable injury to plaintiff. The evidence admitted in the liability phase of the trial supports a finding that plaintiff's injury was extremely minor. Nevertheless, plaintiff has satisfied his burden of proof on this issue.

In short, plaintiff has established that defendant was negligent and that defendant's negligence proximately caused some injury to plaintiff, however minor. The nature and extent of that injury will be determined at a second trial on the issue of damages. Judgment will be rendered in favor of plaintiff on the sole issue of liability.

RUSSELL LEACH
Judge

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Plaintiff

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JUDGMENT ENTRY

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

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Judge Russell Leach

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Defendant

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This case was tried to the court on the sole issue of liability. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the second phase of the trial dealing with the issue of damages. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

RUSSELL LEACH
Judge

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