

[Cite as *Johnson v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-3951.]

IN THE COURT OF CLAIMS OF OHIO

LEONARD JOHNSON	:	
Plaintiff	:	CASE NO. 99-13991
v.	:	<u>DECISION</u>
DEPARTMENT OF REHABILITATION AND CORRECTION	:	Judge Fred J. Shoemaker
Defendant	:	
	:	: : : : : : : : : : : : : : : :

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 hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff worked as a porter in the laundry at Lebanon Correctional Institute (LCI). Plaintiff's duties included sweeping and removing trash from the laundry dock. On the morning of November 21, 1997, plaintiff was directed by his supervisor, Corrections Officer (CO) Paul Cox, to take out the trash. A porter's normal routine for removing trash from the laundry was to carry it from the loading dock to a refuse bin located approximately twenty-five yards from the dock. However, because it was raining that morning, CO Cox motioned to the driver of the trash truck to back up to the loading dock. There was conflicting testimony regarding the events that followed.

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According to CO Cox, the driver, CO Fugate, pulled the truck within one or two feet of the loading dock. Both Cox and Fugate testified that Fugate removed the ignition key, locked the steering wheel and exited the truck after it was parked. Cox claims that he directed plaintiff to "pitch" cardboard boxes onto the truck. Cox testified that plaintiff fell between the parked truck and the dock and landed on the ground about three feet below the dock.

Plaintiff testified that CO Fugate remained in the truck and left the engine running after it was parked by the loading dock.

According to plaintiff, there was no space between the truck and the loading dock when he began to load the boxes. However, plaintiff testified that CO Fugate began to drive away from the dock while plaintiff's legs were straddled between the dock and the truck bed and that the movement of the truck caused him to fall. Plaintiff claims that he injured his head and back as a result of the fall. He was examined by two of defendant's nurses at the scene of the accident and was later taken to the LCI infirmary for treatment.

In order to prevail, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty, and that defendant's breach of duty proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310. Although there is a special relationship between an inmate and his custodian, no higher standard of care

is derived from this relationship. *Scebbi v. Ohio Dept. of Rehab. & Corr.* (March 21, 1989), Court of Claims No. 87-09439, unreported. "Where a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional facts which characterize the particular work performed." *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208, 537 N.E.2d 665, 669.

The testimony of several witnesses contradicted plaintiff's version of the facts. With regard to the position of the truck, both CO Cox and inmate Sanchez, another porter who worked in the area, testified that the truck was parked one or two feet from the loading dock. Inmate Sanchez further testified that he and plaintiff were throwing boxes and bags from the dock onto the truck. Inmate Smith also saw where the truck was parked prior to the accident and described it as being "not far" from the loading dock. This testimony directly contradicted plaintiff's claim that there was no space between the truck and the dock and that "a piece of metal" from the truck extended over the dock.

Plaintiff's testimony that CO Fugate remained in the truck with the engine running while the trash was being loaded was also disputed. Other witnesses testified that Fugate exited the vehicle and that the engine was not running after it was parked.

CO Cox corroborated Fugate's testimony that Fugate was walking towards the sally port when the incident occurred. Inmate Smith also testified that the truck engine was not running when he helped plaintiff take the trash out.

According to George Crutchfield, the shift captain who conducted an investigation of the incident, inmate Smith was the only witness who claimed to have seen the accident. Although

inmate Simpson testified that he saw plaintiff fall as the truck began to pull away from the loading dock, he gave a written statement to Crutchfield on or about December 19, 1997, stating that plaintiff "slipped off" the back of the truck. The statement did not mention that the truck was in motion or that the fall was caused by any movement of the truck.

The determination of whether defendant breached a duty to plaintiff in this case turns on witness credibility.

In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Adair v. Ohio Dept. Of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

Applying these criteria, the court finds COs Cox and Fugate to be the more credible witnesses. In contrast, the court finds the testimony of plaintiff and inmate Simpson to be unreliable.

Furthermore, the court finds that it was reasonable for CO Cox to deviate from the standard trash removal procedures on the day of the incident due to the rainy weather. The laundry loading dock was not covered and the wooden steps leading from the dock were wet and slippery according to Cox. Cox testified that he directed Fugate to drive the truck up to the loading dock so that the porters would not have to carry trash down the wet steps.

The court concludes that plaintiff did not prove by a preponderance of the evidence that defendant breached the duty of

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care owed to him or that any alleged negligence proximately caused his injury. Judgment is rendered in favor of defendant.

FRED J. SHOEMAKER
Judge

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JUDGMENT ENTRY

DEPARTMENT OF REHABILITATION
AND CORRECTION

:

Judge Fred J. Shoemaker

:

Defendant

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

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 defendant. 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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