

[Cite as *Walston v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-6990.]

IN THE COURT OF CLAIMS OF OHIO

ROGER WALSTON	:	
Plaintiff	:	CASE NO. 2000-02194
v.	:	<u>DECISION</u>
DEPARTMENT OF REHABILITATION AND CORRECTION	:	Judge Fred J. Shoemaker
Defendant	:	
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This matter was tried to the court on the sole issue of liability. Plaintiff alleges a single cause of action sounding in negligence; specifically, that defendant is liable for injuries plaintiff suffered when he fell on defendant's premises.

At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Ross Correctional Institution (RCI) pursuant to R.C. 5120.16. On February 17, 1999, plaintiff was seen by a nurse at the institution's infirmary with complaints of chronic back and knee problems. He also requested to be housed on a lower level of cells (lower range restriction) because of constant knee pain. Plaintiff was then referred to a doctor and on February 19, 1999, he was issued an indefinite lower range restriction by a Dr. Loescher.

Plaintiff was housed on the upper range, or second floor, of Unit 5A. Consequently, plaintiff was frequently required to traverse stairs. The range restriction limited plaintiff's cell assignment to a bottom bunk on the lower range of the unit. However, the range restriction was not implemented by the unit administration.

As of March 16, 1999, plaintiff remained housed on the upper range of the unit. On that day, shortly before "count time," plaintiff was descending the stairs when his knee "gave out," causing him to fall.¹ Afterward, he walked back up the stairs to his cell for count. Some time after count concluded, plaintiff told Corrections Officer (CO) Moore that he had fallen on the stairs. Plaintiff was transported to the infirmary where he was treated with warm moist compresses.

Defendant concedes that it issued plaintiff a lower range restriction on February 19, 1999. However, defendant argues that plaintiff has failed to prove that he fell.

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 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

¹Plaintiff's medical records state that he appeared at the ER and stated that he was walking down the steps when his left knee "gave out" and caused him to nearly fall. Plaintiff further stated that when he attempted to break his fall, he pulled something in his back.

ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310.

The evidence is uncontested that the medical range restriction issued by Dr. Loescher was not implemented. Despite notice of plaintiff's range restriction, unit staff failed to relocate plaintiff's cell assignment from the upper range to the lower range. Nurse Michelle Daniels testified that when a lower range restriction is ordered, the nurse writes the restriction and gives it to the medical secretary. The original order goes to the chart, a copy goes to the unit where the inmate is housed, and a copy is given to the inmate. Daniels testified that she did not know how long the process takes, but once advised, the unit should observe the order from the doctor. Nevertheless, defendant still had not relocated plaintiff almost one month after the issuance of the medical restriction.

The court finds that plaintiff's testimony regarding the incident on March 16, 1999, was credible and that the medical records document that he sustained personal injury while descending the stairs. The court further finds that plaintiff sustained injury as a proximate result of defendant's failure to implement the lower range restriction in a timely manner. Based upon these findings, the court concludes that plaintiff has proven by a preponderance of the evidence that defendant breached its duty of reasonable care.

However, plaintiff is required to exercise some degree of care for his own safety. See *Hartman v. Di Lello* (1959), 109 Ohio App. 387, 390-1; *Bowins v. Euclid General Hospital* (1984),

20 Ohio App.3d 29, 31; *Thompson v. Kent State University* (1987), 36 Ohio Misc.2d 16. "Contributory negligence" means "any want of ordinary care on the part of the person injured, which combined and concurred with the defendant's negligence and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred." *Joyce-Couch v. DeSilva* (1991), 77 Ohio App.3d 278, 290. In the instant case, plaintiff failed to exercise a reasonable degree of care for his own safety when he did not bring his lower range restriction to the attention of defendant's staff. Plaintiff's range restriction was issued on February 19, 1999. Plaintiff fell on the stairs on March 16, 1999. Plaintiff failed to bring his range restriction to the attention of his unit manager for nearly four weeks after it was issued. The court finds that plaintiff's actions in failing to remind defendant's staff of his range restriction contributed to his injuries.

Although the court finds that defendant was negligent, Ohio's comparative negligence statute, R.C. 2315.19, bars a plaintiff from recovery only if his or her own negligence is greater than defendant's. In this case, the court finds that plaintiff's own negligence was less than that of defendant. Therefore, the court apportions fault at thirty-five percent plaintiff and sixty-five percent defendant. Judgment shall be rendered accordingly in favor of plaintiff.

FRED J. SHOEMAKER
Judge

Case No. 2000-02194

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DECISION

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v. : JUDGMENT ENTRY
DEPARTMENT OF REHABILITATION : Judge Fred J. Shoemaker
AND CORRECTION :
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. As stated in the court's decision, any compensatory damages recoverable by plaintiff shall be reduced by thirty-five percent, to account for plaintiff's contributory negligence. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

FRED J. SHOEMAKER
Judge

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