

[Cite as *Thrower v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-6251.]

IN THE COURT OF CLAIMS OF OHIO

ALBERT D. THROWER	:	
Plaintiff	:	CASE NO. 2000-08656
v.	:	<u>MAGISTRATE DECISION</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	Steven A. Larson, Magistrate
Defendant	:	
	:	: : : : : : : : : : : : : : : :

{¶1} This matter was tried to a magistrate of the court on the issue of liability. Plaintiff alleges that he was injured as a result of defendant's negligent installation and/or maintenance of wiring in the hog lot barn where he had been assigned to work. At the outset of the proceedings, plaintiff's motion for a continuance was DENIED. Additionally, plaintiff was allowed to amend his complaint during the trial to specify the date of the incident in question as August 20, 1998.

{¶2} At all times relevant hereto, plaintiff was an inmate at Grafton Correctional Institution in the custody and control of defendant pursuant to R.C. 5120.16. He contends that he suffered an electrical shock while cleaning under an air duct in the northeast barn of the hog lot. According to plaintiff, a large jolt of electricity arched to his head and knocked him to the ground, causing him to lose consciousness for a short period of time. Plaintiff also maintains that the incident caused him to develop a stutter and to experience on-going heart palpitations. He testified that he reported the incident to Richard Manning, the hog lot

manager, and that Manning then inspected the air duct and subsequently told plaintiff that when he touched it, it "knocked him on his ass." Plaintiff further testified that Manning later told him it was safe to clean under the air duct again because an electrician had been to the barn to repair the loose wire that caused the problem.

{¶3} In order to recover on his negligence claim, plaintiff 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. 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. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, at 702. "Where a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional factors which characterize the particular work performed." *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208.

{¶4} In this case, the court finds that there are no additional factors to consider in defining defendant's duty. The type of work performed by plaintiff was basic farm labor that did not expose him to any special risk. Therefore, the duty in this case is that of reasonable and ordinary care.

{¶5} The sole support for plaintiff's claim is his own testimony. He did offer an exhibit composed of newspaper articles;

however, they were not admissible; and are therefore not in evidence. In response to plaintiff's evidence, defendant offered the testimony of Jeff Hutchinson, a maintenance supervisor with more than twelve years of work experience at Grafton; Bobby Sparks, the maintenance superintendent; Dorothy Wicks, a licensed practical nurse; and Richard Manning. Defendant also offered several exhibits, including a maintenance work log for the period from August 3, 1998, to October 26, 1998; a photograph of the duct work at the hog lot, and a photograph of the steel framework in the area of the duct work.

{¶6} The parties' evidence can be summarized as follows. Plaintiff admitted that he did not kite the incident to medical personnel or the administration. He stated he was not aware of any incident report being made regarding the occurrence. He stated that he was not offered any medical attention when he reported the incident to Manning. However, he noted that although he is wary of medical providers and fears the possibility of false medical reports, he did admit that he has sought medical treatment for other injuries while in defendant's custody. He also stated that he sustained no burn marks as a result of the shock and that his only symptoms were the stuttering and his own perception of heart palpitations. When questioned as to why he did not appear to be stuttering during his testimony, plaintiff maintained that the "physical part" had subsided but that he still experienced it "in his mind." According to all four of defendant's witnesses, the alleged incident simply did not occur.

{¶7} Hutchinson and Sparks, who were responsible for 95 percent of all electrical work needed at Grafton (and were at least aware of the five percent that might be contracted out to private

contractors) stated that no electrical repair work had been performed at the location, including during the alleged time frame.

They stated that if such work were performed, it would have been reported in the log book. Moreover, both men testified that the duct work was plastic, and was suspended by plastic "straps" from a metal framework. The duct work was used specifically because it was non-corrosive and did not conduct electricity. Hutchinson testified that he had never heard of anyone receiving an electric shock in the hog barn in the entire 12 ½ years he had worked there. Sparks stated that if such incident were to occur, they would stop all other work, shut down the hog barn and repair the problem area. He also stated that there was "no way" an injury of the nature alleged could have taken place without maintenance having been notified.

{¶8} Nurse Wicks testified that plaintiff's medical file reflected no treatment having been administered between August 20, 1998, and October 15, 1998. She stated that plaintiff was seen on October 26, 1998, as a result of being "shaken up" while riding as an unrestrained passenger in a van. She did acknowledge that a refusal of medical treatment might not be noted; however, she also corroborated that if an inmate did sustain injury it had to be recorded as an incident report and in medical records.

{¶9} Finally, Manning testified that he did not make the statements that plaintiff alleged. He stated unequivocally that plaintiff had never reported an incident of electrical shock to him; that he never told plaintiff that he had also been shocked or that a repair person had corrected the alleged problem. He also stated that he would definitely have sought medical attention for plaintiff if he had, in fact, sustained the type of injury alleged.

{¶10} Upon consideration of all the evidence, the court finds that plaintiff has failed to establish a prima facie case. Assuming, arguendo, that something did happen to plaintiff at the time and place alleged, he failed to show that it was the result of any breach of a duty owed by defendant. Accordingly, judgment is recommended for defendant.

STEVEN A. LARSON
Magistrate

Entry cc:

Albert D. Thrower
3948 Wetmore Road
Cuyahoga Falls, Ohio 44223

Pro se

Patrick J. Piccininni
Tracy M. Greuel
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorneys General

LH/cmd
Filed 10-31-2002
To S.C. reporter 11-15-2002