

[Cite as *Bojdys v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-7410.]

IN THE COURT OF CLAIMS OF OHIO

WALT BOJDYS	:	
Plaintiff	:	CASE NO. 2000-04685
v.	:	<u>JUDGMENT ENTRY</u>
DEPARTMENT OF REHABILITATION AND CORRECTION	:	Judge Fred J. Shoemaker
Defendant	:	
	:	: : : : : : : : : : : : : : : :

{¶1} This case was tried to a magistrate of the court. On July 1, 2002, the magistrate issued a decision recommending judgment for defendant. Plaintiff timely filed his objections and an affidavit of evidence pursuant to Civ.R. 53(E)(3)(b). Defendant filed a response to plaintiff's objections and a transcript of proceedings.

{¶2} In plaintiff's first and second objections, plaintiff contends that the magistrate ignored certain evidence favorable to plaintiff's case. However, in reviewing the magistrate's decision and the transcript of proceedings, the court finds that the magistrate did consider the specified evidence but found either that the evidence was not credible or that the evidence was not persuasive in light of the other evidence presented in the case. Therefore, plaintiff's first and second objections are OVERRULED.

{¶3} In plaintiff's third and fourth objections, plaintiff challenges the magistrate's finding that the attack upon plaintiff was not foreseeable; that the magistrate erred by allowing defendant's expert to offer an opinion on foreseeability and then

relying upon that opinion. However, as the magistrate stated in his decision, expert testimony is required to establish both the standard of care and proximate cause. *Ramage v. Central Ohio Emergency Serv., Inc.* (1992), 64 Ohio St.3d 97. Dr. Noffsinger was the only medical expert to testify in this matter. Consequently, it was not error for the magistrate to permit Dr. Noffsinger to opine on the issue of foreseeability or for the magistrate to rely on that opinion. Accordingly, plaintiff's third and fourth objections are OVERRULED.

{¶4} In plaintiff's fifth and final objection, plaintiff contends that the magistrate's decision was against the manifest weight of the evidence and contrary to law. However, upon review of the record and transcript of proceedings, the court finds that the magistrate's findings of fact are supported by the greater weight of the evidence, that the magistrate correctly applied the law to the facts and that the magistrate's conclusions are in accordance with law. Accordingly, plaintiff's fifth objection is OVERRULED.

{¶5} Having overruled each of plaintiff's objections, the court adopts the magistrate's decision and recommendation as its own. 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.

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FRED J. SHOEMAKER  
Judge

Entry cc:

Richard F. Swope

Attorney for Plaintiff

Case No. 2000-04685

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JUDGMENT ENTRY

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