

[Cite as *Johnson v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2388.]

IN THE COURT OF CLAIMS OF OHIO

OTIS JOHNSON :

Plaintiff : CASE NO. 2001-01361

v. : DECISION

DEPT. OF REHABILITATION AND : Judge J. Warren Bettis
CORRECTION, et al.

Defendants :

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{¶1} Plaintiff brought this action against defendants alleging negligence.¹ The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. On January 13, 1999, plaintiff was transported from the Orient Correctional Institution (OCI) to the Corrections Medical Center (CMC) in Columbus, Ohio, where he received treatment for gastrointestinal complaints. Plaintiff was transported in a van to and from CMC by defendant's corrections officer (CO) Virgil Ackley and CO Randy Dunham. While in transit, plaintiff was restrained with leg chains and handcuffs that were attached to a belly chain.

The COs used a nylon "zip tie" to secure the left handcuff to plaintiff's left wrist because it was covered with a splint and an ace bandage.

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For purposes of this decision, "defendant" refers to Department of Rehabilitation and Correction.

{¶3} Plaintiff testified that he told the COs that he objected to riding in the van known as the "meat wagon" because it was used to transport deceased inmates. Plaintiff initially testified that he was forced to sit on a milk crate because there were no seats in the back of the van. However, when called to testify in rebuttal, plaintiff stated that he objected to riding in the van because he was concerned for his safety and that he sat on a bench seat, rather than on a milk crate. Plaintiff further testified that there was snow and ice on the roads that caused the van to slide and, on the return trip to OCI, the van was damaged when it slid off the road. Plaintiff claims that he was thrown from his seat onto the floor of the van, causing injury to his left hand, the back of his neck, and his "side."

{¶4} After returning to OCI, plaintiff informed the COs that he had been injured when he fell from the seat. Plaintiff was escorted to Frazier Health Center (FHC) where he was examined by defendant's medical staff. The January 13, 1999, medical report documents that plaintiff complained of pain in his left knee and left hand as a result of an impact that occurred when the "van skidded on ice in [the] sally port." The examining nurse reported that she observed no swelling, discoloration or deformity and that plaintiff was able to ambulate without difficulty. The report also notes that plaintiff's hand and wrist had been wrapped with an ace bandage over a splint due to a prior injury.

{¶5} On January 14, 1999, plaintiff was again examined for complaints of left knee pain. The examination revealed no swelling, deformity or redness and plaintiff was advised to sign up for nurses' sick call. The next day, plaintiff's left hand and left knee were x-rayed and he was examined by Dr. Bernard Oppong, the medical director for FHC. Dr. Oppong's examination notes show that the x-rays did not reveal any fracture and that no swelling,

redness or tenderness to palpation were detected. Plaintiff was treated with Tylenol and an analgesic balm.

{¶6} On January 28, 1999, plaintiff was examined by Dr. Roberts, an orthopedic surgeon, who noted that plaintiff had had reconstructive surgery on his left knee more than ten years prior to the alleged incident. Dr. Roberts also noted that plaintiff had a normal gait, no effusion, an "intact extensor mechanism" and "gross chronic ACL deficiency." Dr. Roberts concluded that plaintiff had "no injury of consequence." In a radiology report signed by Eva Chanpin, M.D.; post-operative changes were noted in connection with "a single long screw" that extended through plaintiff's left knee joint. Dr. Chapin also determined that the radiograph was "negative for acute abnormality" although "post operative and degenerative changes" were noted.

{¶7} In order to prevail on his negligence claim, 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. In the context of a custodial relationship, the state owes its inmates a common-law duty of reasonable care and protection from unreasonable risks of physical harm; however, the state is not an insurer of inmate safety, and the special relationship between the state and the inmate does not expand or heighten the duty of ordinary reasonable care. *Woods v. Ohio Dept. of Rehab. & Corr.* (1998), 130 Ohio App.3d 742, 744-745; *McCoy v. Engle* (1987), 42 Ohio App.3d 204.

{¶8} Although plaintiff contends that he was injured as a result of a motor vehicle mishap, defendant maintains that the van was not involved in any accident during the trip and that plaintiff was not injured during the trip. Dr. Oppong testified regarding his examination of plaintiff, plaintiff's medical record and the

treatment that he received following the alleged incident. According to Dr. Oppong, an examination of plaintiff's knee would have revealed at least some swelling or redness if the joint had been injured as plaintiff had claimed. Dr. Oppong opined that the x-rays confirmed the extent of plaintiff's existing knee injuries but they did not reveal any "new" injury. Dr. Oppong testified that at the time of the examination, plaintiff was able to walk without difficulty; that his subjective complaints of pain were treated with Tylenol and ice.

{¶9} Upon review of the testimony and evidence, the court finds that plaintiff's version of the return trip to OCI lacked credibility in several respects. Although the medical records and the testimony of defendant's employees were consistent with regard to the splint and bandage that plaintiff wore on his left hand and wrist, plaintiff testified that he was not wearing a splint or bandage and that the handcuffs cut his left wrist and "messed-up tendons" in his wrist. With regard to the seats that were available in the back of the van, plaintiff initially maintained that there were no seats and that he was forced to sit on a milk crate. Following the testimony of all the witnesses, plaintiff was recalled to the witness stand and recanted his earlier statement about the seating in the van. Plaintiff then testified that he sat on an unattached bench seat that moved during the trip because it was not secured to the van; however, defendant's employees testified that the seats were permanently secured to the van.

{¶10} Plaintiff's testimony was also inconsistent regarding the location of the alleged accident. Plaintiff testified that he was injured and the van was damaged when it slid off of the snow-covered road and down a hill. However, the medical records reveal that plaintiff informed defendant's medical staff that he was injured when the van slid on ice in the sally port at OCI.

Plaintiff's credibility was also undermined by the testimony of defendant's COs. COs Ackley and Dunham testified that there was no accident at all; that there was no ice or accumulated snow on the roads and that the van did not skid or slide during the travel to or from CMC. The COs also testified that they were able to observe plaintiff through the plexiglass window that separated the cab from the rear of the van and that they would have heard the sound of plaintiff striking the van floor if he had fallen.

{¶11} In considering the conflicting testimony presented, the court finds the testimony of defendant's COs to be more credible than the testimony of plaintiff. Furthermore, the medical evidence does not support plaintiff's claim that he suffered injuries to his left hand or knee while riding in defendant's van. The medical examinations revealed only pre-existing injuries and showed no signs of recent trauma to plaintiff's left hand or left knee. Based upon the evidence presented, plaintiff has failed to establish that he was injured as a result of any negligence of defendant's employees. Accordingly, judgment is rendered in favor of defendants.

{¶12} This case was tried to the court on the 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 defendants. 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.

J. WARREN BETTIS
Judge

Entry cc:

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