

[Cite as *Antenori v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2999.]

IN THE COURT OF CLAIMS OF OHIO

LOUIS M. ANTENORI :
Plaintiff : CASE NO. 2000-05169
v. : DECISION
DEPARTMENT OF REHABILITATION : Judge J. Warren Bettis
AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} Plaintiff brings this action against defendant alleging negligence. The case was tried to the court on the issue of liability.

{¶2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant at defendant's Marion Correctional Institution (MCI). At 5:30 a.m., on June 10, 1998, plaintiff awoke from his bunk in "five-dorm" and went to the communal bathroom to take a shower. Five-dorm had a single dormitory-style shower with numerous showerheads protruding from the walls; there was at least one drain in the cement floor.

{¶3} The shower room was separated from the sink area by two 5-foot high partitions extending lengthwise from the shower wall to a front "curb." The curb was approximately 6 inches in height and 6 inches wide extending 4 feet across the front of the shower room between the partition and the shower wall. The curb was designed to prevent water from running onto the bathroom floor. In order to enter or exit the showers, inmates had to step over the curb. A large, circular, multi-spigot sink that was used for washing hands

was located about 7 feet from the shower room. The sink was commonly referred to as the "birdbath." The inmates used the space between the shower and the birdbath for toweling off after a shower.

{¶4} The evidence establishes that both the shower room floor and the floor outside the curb had been painted with a gritty, non-slip epoxy in 1991 or 1992. Shower mats covered nearly the entire shower room floor inside the curb. The mats were made of rubber or plastic with perforations for drainage. These mats were laid down in 3-foot by 7-foot strips approximately 3 to 5 inches apart. There were no mats outside the curb.

{¶5} Plaintiff testified that the shower area was in terrible condition when he entered the bathroom on the morning of June 10, 1998. According to plaintiff, there was a significant amount of standing water inside and outside the curb along with used bars of soap, soap wrappers, empty shampoo bottles, and other debris.

{¶6} Plaintiff also stated that the shower mats were draped over the shower stall partition, leaving the floor in a slippery state. Although plaintiff was wearing rubber shower shoes, his feet went out from under him as he stepped over the curb to exit the shower. The next thing plaintiff remembered was lying on his back with several inmates standing over him. Plaintiff immediately felt pain in his head and realized that he was bleeding from a head wound. Plaintiff was taken to the infirmary, given Tylenol for pain, and his wound was closed with stitches.

{¶7} Plaintiff contends that defendant's negligence in failing to properly maintain the showers in a safe condition, combined with defendant's failure to keep the showers clean and free of debris, created an unreasonably dangerous condition on the premises. Defendant argues that the shower in five-dorm was clean and safe for use on the morning of plaintiff's fall.

{¶8} There was conflicting testimony regarding the cleanliness of the shower area on the morning of plaintiff's fall. In contrast to plaintiff's claims that the shower was filthy and very slippery, five-dorm Corrections Officer (CO) Brad Bekeleski testified that he inspected the cleanliness and safety of the showers on the morning of plaintiff's fall and found the area just outside the curb to be clean and dry. According to Bekeleski, his duties included inspecting the safety, security, and cleanliness of the bathroom in five-dorm at the start of every shift and every half hour thereafter. When he inspected the bathroom on the morning of plaintiff's fall, Bekeleski saw none of the standing water, soap scum, or debris that were pointed out in plaintiff's testimony. He stated that if he had seen any of the problems referred to by plaintiff, he would have ordered an inmate to clean the area immediately. He also testified that inmates can request a mop to remove any excess water from the floor. In Bekeleski's "Incident Report" regarding plaintiff's fall he suggested that defendant "*** get more shower mats for the shower area."

{¶9} Corrections Counselor (CC) Earl Agee also testified concerning the cleanliness and safety of the shower area. He stated that he had worked at MCI for 20 years. CC Agee monitored the performance of the COs by making daily rounds. If he spotted a problem with maintenance or cleanliness, he would report it to the CO on duty and log it in his daily report. CC Agee's daily report for June 10, 1998, was not introduced as evidence at trial. CC Agee recalled that the previous first-shift CO in five-dorm had been "slack" with respect to maintenance and cleanliness, but that the problems were corrected when CO Bekeleski took over in 1997.

{¶10} Referring to the MCI "Housekeeping Plan" in effect at the time of plaintiff's fall, CC Agee testified that the shower area in five-dorm was cleaned three times per day by inmate-porters: the

morning cleaning occurring between 8:00 and 10:30 a.m., the afternoon cleaning occurring between 1:30 and 3:00 p.m., and the last cleaning occurring at 11:00 p.m. when the showers close for the day. During the cleaning process, the shower mats are removed from the floor and cleaned prior to mopping the cement floor.

{¶11} In support of his claim that poor maintenance of the shower area caused his fall, plaintiff introduced defendant's work orders regarding a broken exhaust fan in the bathroom and a leak in the birdbath. Although CC Agee testified that the work had been completed prior to plaintiff's fall, the court was not convinced that the exhaust fan was repaired prior to the fall. However, even if the fan were in disrepair on the day plaintiff fell, there is insufficient evidence to establish a causal connection between the broken exhaust fan and plaintiff's fall. The testimony did establish that the exhaust fan was installed in 1990 to correct a problem with mildew growing on the shower wall. The court notes that there was no testimony about any mildew growing in the shower on the date of plaintiff's fall. Moreover, plaintiff's fall occurred as he was stepping over the curb onto the floor outside the shower. Thus, the court finds that the broken exhaust fan did not cause plaintiff's fall.

{¶12} Based upon the totality of the evidence, the court does not believe that on the date of plaintiff's fall the showers were in the poor condition described. In light of the testimony from CC Agee, the records of the institution, and the written policies and procedures regarding cleanliness, the court finds it difficult to conceive how the showers could become as slippery and filthy as plaintiff described. In short, the court finds that the shower area was not in an unreasonably dangerous condition at the time of plaintiff's fall.

{¶13} Additionally, as this court has previously stated, it is a matter of common knowledge that areas in and around showers can become slippery. See *Donald Williams v. Ohio Dept. of Rehab. & Corr.* (May 11, 1999), Court of Claims No. 97-10979; affirmed, *Williams v. Ohio Dept. of Rehab. & Corr.* (May 18, 2000), Franklin App. No. 99AP-843. Consequently plaintiff was required to exercise the degree of care for his own safety that a reasonable person in plaintiff's position would use to avoid a known danger. *Id.* In this case, had the conditions of the shower on the date of plaintiff's fall been as bad as plaintiff described, any reasonable person in plaintiff's position would have notified the CO on duty and/or requested to use a mop and bucket to correct the problem. Plaintiff's failure to do so in this case constitutes contributory negligence of such a degree as to bar plaintiff's recovery under Ohio's comparative negligence statute, R.C. 2315.19.

{¶14} 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 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.

J. WARREN BETTIS
Judge

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