

[Cite as *Solomon v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-3180.]

IN THE COURT OF CLAIMS OF OHIO

PAUL SOLOMON :

Plaintiff : CASE NO. 2003-06557
Magistrate Steven A. Larson

v. :
MAGISTRATE DECISION

OHIO DEPARTMENT OF :
REHABILITATION AND CORRECTION :

Defendant :

: : : : : : : : : : : : : : : :

{¶1} On May 3, 2004, this case was tried before a magistrate of the court at the London Correctional Institution (LCI) on the issue of liability.¹ Plaintiff alleges that defendant was negligent when he was injured while boarding defendant's bus.

{¶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. Early in the morning on February 6, 2003, plaintiff was boarding a prison bus at LCI to travel to a medical appointment at the Corrections Medical Center (CMC) in Columbus, Ohio. For security reasons, plaintiff was restrained with handcuffs attached to a chain around his waist and shackles which restricted the movement of his legs and feet. Plaintiff testified that he boarded the bus and began walking down the aisle that divided the two rows of seats on the bus. As he started down the aisle, plaintiff tripped over what he described as a "bar" that was affixed to the floor across the aisle. Plaintiff explained that as a consequence of his restraint, he fell forward and struck his head on the floor.

¹Defendant's Civ.R. 41(B)(2) motion to dismiss, which was previously held in abeyance is hereby DENIED.

{¶3} Plaintiff was thereupon taken to the infirmary and examined for injuries. Subsequent to the examination, plaintiff re-boarded the bus and completed his trip to CMC.

{¶4} Plaintiff stated that he was never warned about the bar; that he could not see the floor of the bus because the inmates who were boarding the bus in front of him blocked his view; and that improperly fastened leg irons contributed to his fall.

{¶5} Corrections Officer (CO) Robert L. Dunkle was positioned in the driver's seat facing forward and did not see plaintiff fall. Dunkle turned and saw plaintiff lying in the aisle after he fell, whereupon Dunkle helped plaintiff to his feet and escorted him to the infirmary.

{¶6} Dunkle described the bus as having two rows of seats with an aisle down the middle. The passenger compartment is divided into three sections by three pairs of steel mesh doors that slide open and shut on metal tracks affixed to the floor. The rear section seats four inmates, usually those "in segregation," and the middle and front sections seat 18 and 20 inmates, respectively. When closed, the mesh door panels meet in the center of the aisle and are locked with handcuffs during a trip. Dunkle testified that the three tracks that run across the aisle are each approximately 1½ inches in height and are clearly visible on the floor. Also, the mesh doors that slide in the tracks can easily be seen by anyone entering the bus whether they are open or closed.

{¶7} CO David Backus, a transportation officer for 10 years, testified that he was outside the bus helping inmates board and did not see plaintiff fall. He conceded that he did not warn plaintiff or other inmates that the tracks ran across the aisle. However, Backus also described the tracks as plainly visible.

{¶8} In order to prevail upon his claim of negligence, 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. Ordinarily, under the common law of Ohio, the duty owed by an owner or occupier of premises turns upon the status of the injured person, and whether the person is either a trespasser, a licensee, or an invitee. See, e.g., *Patete v. Benko* (1986), 29 Ohio App.3d 325, at 327. An inmate incarcerated in a state penal institution is not afforded the status of any of the traditional classifications. The state does have a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab. and Corr.* (1993), 89 Ohio App.3d 107, 112; *Saunders v. McFaul* (1990), 71 Ohio App.3d 46, 50. The owner of premises has no duty to warn of a dangerous condition which is so open and obvious that a person may reasonably be expected to discover it and protect themselves against it. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573.

{¶9} In this case, plaintiff failed to be observant as he boarded the bus. Although plaintiff was shackled and handcuffed at his waist, the court finds that the track on the floor in front of him was clearly visible; thus, the metal track on the floor as described by both COs was so open and obvious that it could have been avoided.

{¶10} Plaintiff asserted that he could not see the floor because other inmates were in front of him. Notwithstanding, plaintiff is required to exercise some degree of care for his own safety. *Hartman v. DiLello* (1959), 109 Ohio App. 387, 390-391. There is no evidence that plaintiff was required to walk so close to other inmates that he could not see the floor. Inasmuch as he was shackled and handcuffed at the waist, plaintiff should have exercised a greater degree of care. Finally, plaintiff admitted that he did not complain to either CO that his shackles

were improperly fastened. Backus testified that had plaintiff complained that his shackles were improperly fastened, he would have adjusted them, if necessary.

{¶11} For the foregoing reasons, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant breached any duty of care owed to him and accordingly, judgment is recommended in favor of defendant.

{¶12} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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SAL/cmd
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