

[Cite as *Gwinn v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-2537.]

IN THE COURT OF CLAIMS OF OHIO

JAMES GWINN :
 :
 Plaintiff : CASE NO. 2004-03721
 : Judge Fred J. Shoemaker
 v. : Magistrate Steven A. Larson
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 OHIO DEPARTMENT OF : MAGISTRATE DECISION
 REHABILITATION AND CORRECTION :
 Defendant :
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{¶ 1} Plaintiff brought this action against defendant alleging a claim of negligence. The issues of liability and damages were bifurcated and the case proceeded to trial before a magistrate of the court 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 at Grafton Correctional Institution (GCI). On December 16, 2002, plaintiff was transported to Corrections Medical Center (CMC) in Columbus, Ohio to obtain medical treatment for a hernia.

{¶ 3} Plaintiff was placed in restraints including leg irons, a “belly chain” and handcuffs before being transported to CMC. Plaintiff was restrained using plastic “flex cuffs” instead of standard metal handcuffs. Plaintiff contends that before he left GCI, he complained to corrections officers (COs) that the flex cuffs were too tight on his wrists but that the COs ignored his complaints. Plaintiff’s flex cuffs were eventually removed at CMC and he was issued standard metal handcuffs for the ride back to GCI. Plaintiff contends that defendant’s employees were negligent when they used flex cuffs on him and when they did not promptly remove the flex cuffs once he complained of pain. Plaintiff further asserts that defendant’s negligence caused injury to his wrists and aggravated pre-existing injuries to his left arm.

{¶ 4} Plaintiff testified that several years prior to this incident, he had sustained severe, permanent injuries to his left arm when he fell while working as a window washer. Plaintiff explained that although he had been restrained with flex cuffs before, these particular flex cuffs were a different type of hard plastic that put “inward pressure” on his wrists. He further testified that he could not remember who had placed the flex cuffs on him; that he had complained “a little” about the flex cuffs before he left GCI; that he had a “panic attack” in the waiting room at CMC and begged the COs to remove the flex cuffs because his wrists had become purple and swollen; and that after the incident, he wrote to defendant’s health care administrator but nothing resulted from it.

{¶ 5} CO Philip Simmons testified that he drove the bus to CMC that day and that COs Kenneth Evett and Vincent Blythe were responsible for restraining the inmates for the trip. Simmons described flex cuffs as plastic handcuffs that fasten through the belly chain and tighten by pulling a piece of plastic. Simmons further testified that flex cuffs were used on plaintiff for medical reasons; that the first time that plaintiff complained about his flex cuffs was when plaintiff was in the medical bay at CMC; that Simmons responded by checking with the doctor to see if metal cuffs could be used instead; and that Simmons removed plaintiff’s flex cuffs and replaced them with metal cuffs before plaintiff saw the doctor.

{¶ 6} Evett testified that either he or Blythe had handcuffed plaintiff; that he had used flex cuffs numerous times before the day of the incident; that flex cuffs were tightened until the width of one finger fit between the wrists and the cuffs; and that he had little contact with plaintiff that day other than putting flex cuffs on him.

{¶ 7} Blythe testified that he was part of the team of transport officers that day and that his duties included applying restraints. Although Blythe stated that he could not remember whether he or Evett had restrained plaintiff, Blythe was aware that plaintiff was wearing flex cuffs. Blythe testified that plaintiff called him to the window in the holding cell at CMC to check the cuffs. Blythe further testified that he checked the tightness of plaintiff’s flex cuffs by placing his finger between the cuffs and plaintiff’s wrists and that the cuffs fit properly.

{¶ 8} Inmate Clarence Sauer testified that he was also transported to CMC that day, and that after he and plaintiff had been in the holding cell at CMC, plaintiff complained about pain and discomfort caused by the flex cuffs. Sauer further testified that plaintiff's arms were swollen and turning purple before the flex cuffs were removed.

{¶ 9} Inmate Lorenzo Hunter testified that he first heard plaintiff complain about his flex cuffs at CMC and that approximately 30 to 40 minutes later, plaintiff was given metal cuffs. Hunter further testified that plaintiff's wrists were "really red."

{¶ 10} Inmate Ernest Harwell testified that he heard plaintiff complain about his flex cuffs in the holding cell at CMC and that he saw some scarring on plaintiff's wrists a few days later.

{¶ 11} Michelle Sopkovich, RN, testified that she was the health care administrator at GCI, where her duties included overseeing the health care department and being the records custodian. Sopkovich testified that after reviewing plaintiff's medical records, she could not find a doctor's order to use flex cuffs on him. She did, however, note that there was an entry in plaintiff's medical records days after the incident, dated December 30, 2002, wherein plaintiff complained that the "new flex cuffs seem to cut into wrist area due to old scarring." (Joint Exhibit A, p. 319.)

{¶ 12} John Davis, RN, testified that when inmates return from CMC, they are routinely seen by nurses in the infirmary to determine whether the inmates have any questions or problems regarding the treatment that they received at CMC. Davis saw plaintiff upon return from CMC and wrote a note in plaintiff's medical records stating that plaintiff "denies any problems, understands need to wait for surgery." (Joint Exhibit A, p. 319.) Davis further stated that it was his regular practice at that time to document any complaints or injuries alleged by inmates, even if they did not arise out of the treatment rendered at CMC. Davis stated that although he could not specifically remember looking at plaintiff's wrists that day, no complaints about plaintiff's wrists or arms appear in his note.

{¶ 13} In order for plaintiff to prevail upon his claim of negligence, he 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.

{¶ 14} The greater weight of the evidence shows that defendant's COs were aware that plaintiff had a pre-existing arm injury that necessitated the use of flex cuffs. The court finds that plaintiff first complained to defendant's COs about discomfort when he was in the medical bay at CMC. Plaintiff's assertions that he complained "a little" at GCI are not credible because they are not substantiated by his own witnesses. The court finds that defendant's employees acted reasonably by checking plaintiff's cuffs and ultimately removing them. For the foregoing reasons, the court finds that plaintiff has failed to prove that defendant breached any duty owed to him. Accordingly, judgment is recommended in favor of defendant.

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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MAGISTRATE DECISION

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