

[Cite as *Griffin v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-2954.]

IN THE COURT OF CLAIMS OF OHIO
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MARK GRIFFIN :

Plaintiff : CASE NO. 2004-05007
Judge J. Craig Wright
v. : Magistrate Steven A. Larson

DEPARTMENT OF REHABILITATION : MAGISTRATE DECISION
AND CORRECTIONS, et al. :
Defendants :
: : : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action against defendant, the Department of Rehabilitation and Correction (DRC),¹ alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issues of liability and civil immunity of Corrections Officer (CO) Donald Seymour.

{¶ 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 July 2, 2003, plaintiff was transported from Mansfield Correctional Institution (ManCI) to the Corrections Medical Center (CMC) in Columbus, Ohio, for treatment by a dermatologist. Plaintiff was transported by bus both to and from CMC by defendant's COs Delbert Hicks and Donald Seymour. While in transit, plaintiff was restrained with leg chains and handcuffs that were attached to a belly chain.

{¶ 3} Plaintiff testified that he was located in the last seat of the bus behind a steel security cage. According to plaintiff, the bus was traveling southbound to Columbus on Interstate 71 (I-

¹For the purposes of this decision, defendant will refer to the Department of Rehabilitation and Correction.

71), positioned in the center of three lanes of traffic. Plaintiff estimated that the bus was being driven at a speed of 25-30 miles per hour when it rounded a curve and encountered traffic that was at a standstill. Plaintiff recalled that the bus driver applied the brakes, that the brakes locked, and that he was thrown forward into the security cage. Plaintiff testified that although the bus came upon the traffic suddenly, it did not strike the car ahead. After the incident, plaintiff complained to the dermatologist of chest and arm pain and requested an x-ray. Plaintiff testified that he received x-rays at CMC before being transported back to ManCI.

{¶ 4} Seymour was driving the transport bus on July 2, 2003. He testified that while southbound on I-71 in the right lane, a car entered the interstate from the entrance ramp and cut in front of the bus, whereupon he applied the brakes. Seymour stated that there was no collision and that the bus never came to a complete stop. After the incident, two of the 24 inmates on the bus complained of injuries. As a precaution, upon arriving at CMC, all 24 inmates were examined.

{¶ 5} Hicks testified that the bus was traveling southbound on I-71 in the right lane when it was cut off by a car using the entrance ramp onto I-71. According to Hicks, when Seymour applied the brakes the bus lurched, but it did not come to a complete stop or make contact with the other vehicle. Hicks testified that no inmates had visible injuries and that all were seen by medical staff at CMC.

{¶ 6} Nurse Alice Cain, ManCI health care administrator, testified as to the content of plaintiff's medical file as it related to the July 2, 2003, incident, and that, upon review,

plaintiff's July 2, 2003, chest x-rays were normal and did not show any sign of injury. Cain also testified that x-rays later taken of plaintiff in March 2004 were normal. Although plaintiff was scheduled for an MRI he refused to keep his appointment and signed a "release of responsibility." (Defendant's Exhibit G.) Additionally, interdisciplinary progress notes from May 6, June 4, and July 15, 2004, all indicate that despite plaintiff's complaints of pain, he presented with normal ambulation, no abnormalities, and normal grip strength. (Defendant's Exhibits K, L, M.) Cain stated that although plaintiff exhibited no signs of injury, he was provided with physical therapy exercises due to his ongoing complaints of pain.

{¶ 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} R.C. 4511.21(A) states as follows:

{¶ 9} "(A) No person shall operate a motor vehicle, trackless trolley, or street car at a speed greater or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions, and no

person shall drive any motor vehicle, trackless trolley, or streetcar in and upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead." Furthermore, the common law of Ohio imposes a duty of reasonable care upon motorists that includes the responsibility to observe the environment in which one is driving. See, e.g., *Hubner v. Sigall* (1988), 47 Ohio App.3d 15, at 17.

{¶ 10} To establish a violation of R.C. 4511.21(A), the evidence must show that a driver collided with an object that (1) was ahead of him in his path of travel; (2) was stationary or moving in the same direction as the driver; (3) did not suddenly appear in the driver's path; and (4) was reasonably discernible. *Blair v. Goff-Kirrby Co.* (1976), 49 Ohio St.2d 5,7.

{¶ 11} Upon review of all the evidence adduced at trial, the court finds that plaintiff has failed to prove by a preponderance of sufficient, credible evidence that DRC was negligent. The court finds that, in all probability, defendant's bus was traveling at an appropriate speed for the conditions, that Seymour did maintain an assured clear distance ahead, and that Seymour did not collide with another vehicle. Furthermore, the medical evidence does not support plaintiff's claim that he suffered injuries to his chest or arms while riding in defendant's bus. The medical exams revealed no signs of recent trauma to plaintiff's chest or arms. For the foregoing reasons, the court finds plaintiff cannot prevail on his cause of action and, accordingly, judgment is recommended in favor of defendant.

{¶ 12} In light of the above findings, the court concludes that CO Seymour did not act manifestly outside the scope of his employment, with malicious purpose, in bad faith, or in a wanton or

reckless manner. It is therefore recommended that the court issue a determination that Seymour is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.

{¶ 13} *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

Entry cc:

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LM/cmd

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