

[Cite as *Nickerson v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-7113.]

IN THE COURT OF CLAIMS OF OHIO

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MICHAEL V. NICKERSON, SR. :  
Plaintiff : CASE NO. 2000-02208  
v. : Judge J. Craig Wright  
DECISION  
DEPARTMENT OF REHABILITATION :  
AND CORRECTION, et al.  
Defendants :  
: : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action against defendants<sup>1</sup> alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on November 28, 2005, on the issue of liability. The trial reconvened for closing arguments on December 16, 2005, at which time Defendant's Exhibits B and D were marked and admitted.

{¶ 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.

{¶ 3} On July 7, 1999, Corrections Officers John Hertenstein and Wesley Harber transported plaintiff from Corrections Reception Center (CRC) in Orient, Ohio, to The Ohio State University Medical Center (OSUMC) in Columbus, Ohio for medical treatment. The van in which plaintiff was transported was equipped with two front bucket seats where officers sat, a barrier behind those seats, and three rows of bench seats behind the barrier for inmates. Plaintiff sat in the middle of the bench seat closest to the front of the van for

<sup>1</sup>"Defendant" shall be used to refer to the Department of Rehabilitation and Correction throughout this decision.

both trips. Plaintiff was the sole inmate in the van that day and he was shackled in leg irons, a "belly band," and handcuffs.

{¶ 4} On the way back to CRC, the driver, Hertenstein, proceeded south on High Street. Plaintiff asserts that Hertenstein applied the brakes suddenly two times, and that the van was then struck from the rear by a pickup truck. Officer Mark George from the Columbus police department arrived on the scene to investigate the accident.

{¶ 5} Plaintiff alleges that defendant's employees were negligent when they failed both to provide and to secure plaintiff with a seat belt, and that he sustained personal injury as a result. Plaintiff further asserts that Hertenstein did not exercise ordinary care while driving. Defendant claims that plaintiff was securely seated in the van and that his seat belt was fastened. Defendant further contends that the proximate cause of any injury that plaintiff sustained was the negligent operation of the pickup truck, and that Hertenstein did not drive negligently.

{¶ 6} Plaintiff testified that he did not remember whether seat belts were available for his use in the van but insists that the officers did not secure him with one. Furthermore, plaintiff argues that since he was in full restraints, he could not have fastened a seat belt himself.

{¶ 7} Hertenstein testified that he could not remember who had placed plaintiff in the van, but that plaintiff was assisted by an officer because he could not have seated himself while in full restraints; that plaintiff was secured with a lap belt; and that after the accident, plaintiff still had his lap belt on. Hertenstein estimated that he had been driving at approximately 25 miles per hour when he applied the brakes and that shortly thereafter, the van was at a complete stop when a pickup truck struck it from behind. Hertenstein further testified that upon

return to CRC, plaintiff, Harber and he all went to "med bay" to be examined.

{¶ 8} Harber testified that he drove to OSUMC and rode as a passenger on the return trip, that plaintiff had been secured with a seat belt on both trips, and that the accident resulted in no discernible damage to the van.

{¶ 9} Mark George testified that he was a Columbus police officer who was dispatched to investigate the accident; that he completed an accident report at the scene (Defendant's Exhibit D); that although he did not specifically recall much detail about the accident, his report accurately reflected his findings; and that his report showed that plaintiff was secured with a lap belt at the time of the accident.

{¶ 10} 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. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ under similar circumstances. *Smith v. United Properties, Inc.* (1985), 2 Ohio St.2d 310. Defendant owes a duty to provide safety restraints to prisoners being transported in a van while restrained in handcuffs, a belly band and leg irons. *Woods v. Ohio Dept. of Rehab. & Corr.* (1998), 130 Ohio App.3d 742, 745.

{¶ 11} Based upon the evidence presented at trial, the court finds that the officers' testimony, coupled with the accident

report, establishes that plaintiff was wearing a lap belt at the time of the accident. Furthermore, the court finds that the proximate cause of any injury to plaintiff was the impact by the pickup truck when it collided with the van. Moreover, the court finds that plaintiff has not provided any evidence to show that Hertenstein drove negligently. For the foregoing reasons, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant breached any duty owed to him and accordingly, judgment shall be rendered in favor of defendants.

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Plaintiff	:	CASE NO. 2000-02208
v.	:	Judge J. Craig Wright
DEPARTMENT OF REHABILITATION AND CORRECTION, et al.	:	<u>JUDGMENT ENTRY</u>
Defendants	:	
: : : : : : : : : : : : : : : :		

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.

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J. CRAIG WRIGHT  
Judge

Entry cc:

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Filed December 21, 2005  
To S.C. reporter January 11, 2006