[Cite as *Calvert v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-4345.]

IN THE COURT OF CLAIMS OF OHIO
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DONALD CALVERT	:	
Plaintiff	:	CASE NO. 2005-04128 Judge Joseph T. Clark
v.	:	Magistrate Steven A. Larson
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	MAGISTRATE DECISION
Defendant	:	

{¶ 1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court. At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Grafton Correctional Institution (GCI), pursuant to R.C. 5120.16.

{¶ 2} Plaintiff was convicted of aggravated burglary in 1997 and sentenced to seven years incarceration. Prior to being housed at GCI, plaintiff was housed at the Noble Correctional Institution where he was issued a medical restriction pass (Plaintiff's Exhibit 1) requiring that he be given a lower bunk in the bottom range of the cell block. Upon arrival at GCI, plaintiff was examined by defendant's medical staff who determined that plaintiff did not require a medical restriction. Plaintiff alleges that on August 8, 2004, he fell down a flight of stairs leading from the top range to the bottom range of housing Unit A-3.

{¶ 3} 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. Additionally, 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. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. See *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, at 702.

{¶ 4} The crux of plaintiff's claim is that defendant's medical staff was negligent in failing to provide him with a medically necessary lower bunk and bottom range restriction upon his arrival at GCI. Defendant asserts that plaintiff failed to provide the court with the expert testimony necessary to show that GCI medical staff should have issued him a medical restriction.

{¶ 5} Plaintiff's medical records show that in March 1997 he was shot in the groin and the left leg. (Joint Exhibit A.) As a result, plaintiff suffers from weakness in his left leg that occasionally causes it to buckle. Plaintiff's records also note that he had been granted various bunk and range restrictions at several correctional institutions before being transferred to GCI.

{¶ 6} Plaintiff testified that he was examined by a doctor soon after he arrived at GCI. According to plaintiff, he informed the

doctor that he had both a loss of feeling in his left leg and difficulty in walking. Plaintiff stated that the doctor examined him, declared him a "fit young man," and issued no medical restriction.

{¶ 7} Plaintiff was housed in Unit D-1 after his transfer to GCI. According to plaintiff, he frequently reported to sick call in early 2004, complaining to defendant's medical staff of his need for a medical restriction. Plaintiff testified that he was transferred from an upper bunk in Unit D-1 to a lower bunk on the top range of Unit A-3 after he fell out of the upper bunk in early 2004. Plaintiff's medical records note that plaintiff was granted a one-year "permanent" lower bunk restriction on March 24, 2004. The reason for that restriction is not expressed in the medical records. Plaintiff's records do not show a lower range restriction.

{¶ 8} Plaintiff claims that on the morning of August 8, 2004, he fell down the stairs leading from the upper range of Unit A-3 to the lower range. According to plaintiff, he was walking down the stairs when his left leg buckled and he fell, injuring his back, right foot, and head. Plaintiff testified that he did not remember his exact location on the steps where he fell. Plaintiff also testified that the steps were wet as a result of recently being mopped but that the mop residue did not contribute to or cause his fall.

{¶ 9} Plaintiff alleges that after he fell, he reported to Corrections Officer (CO) Hoban, who was on duty at his desk located approximately 50 feet from the stairs. Hoban testified that he did not see plaintiff fall and that he did not file an incident report. The log book from Unit A-3 notes that Hoban made the following

entry at 9:00 a.m.: "Calvert reports that he thinks his toe is broken, medical advised, Calvert to medical 0915." (Joint Exhibit C.)

{¶ 10} Inmate Robb Kish testified that he was acquainted with plaintiff and that he was in Unit A-3 on the date of the incident, but that he did not see plaintiff fall. Kish stated that he saw several inmates assisting plaintiff, that he spoke with plaintiff soon after the incident, and that he could tell plaintiff was in pain. Kish also stated that Hoban seemed unconcerned and uncooperative.

{¶ 11} Defendant offered into evidence interdisciplinary progress notes that were excerpted from plaintiff's medical records. (Defendant's Exhibit C.) According to GCI Health Care Administrator Michele Viets, these notes document that plaintiff arrived at the infirmary at 9:20 a.m. on August 8, 2004; that plaintiff complained of pain in his right great toe; that he reported that he had "slipped on wet stairs last p.m."; and that he was provided with a splint and a cane to help him walk. Plaintiff insisted that he did not say that he had slipped the night before.

{¶ 12} Based on the foregoing, plaintiff has not convinced the court that he fell down the stairs. However, even if the court were to find that plaintiff did fall down the stairs, nonetheless plaintiff has failed to prove that such a fall was a result of any negligence on the part of defendant's failing to provide him with a medical restriction.

{¶ 13} "Under Ohio law, as it has developed, in order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or

surgeon of ordinary skill, care, and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things." *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, 131, citing *Ault v. Hall* (1928), 119 Ohio St. 422. (Additional citations omitted.) Furthermore, "[p]roof of the recognized standards must necessarily be provided through expert testimony." *Bruni,* supra, at 132. Plaintiff admitted that he was examined by defendant's medical personnel who determined that he did not require a medical restriction. Plaintiff produced no medical evidence or testimony to show that defendant's medical staff breached the standard of care by failing to issue a medical restriction.

{¶ 14} The court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant or its medical staff breached a duty of ordinary care to plaintiff by not issuing him a lower range restriction. Accordingly, judgment is recommended in favor of defendant.

{¶ 15} *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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MR/cmd
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