

Court of Claims of Ohio

The Ohio Judicial Center
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JAMES D. O'BANION

Case No. 2005-05795

Plaintiff

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

v.

JUDGMENT ENTRY

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} On October 16, 2006, the magistrate issued a decision recommending judgment for plaintiff.

{¶2} Civ.R. 53(D)(3)(b) states: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). ****” Defendant filed objections on November 29, 2006. On December 7, 2006, plaintiff filed a response.

{¶3} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant at the Belmont Correctional Institution (BeCI), pursuant to R.C. 5120.16. On October 11, 2004, plaintiff was working as a porter when a raw sewage back-up occurred in his housing unit. Plaintiff and other porters were directed to clean up the sewage. Plaintiff alleges that he was not given proper equipment, that he became covered in sewage during the cleanup effort, and that he was not permitted to take a shower until the next day. The day after the incident, plaintiff reported to the BeCI infirmary and complained of a skin rash, whereupon he received both a tetanus shot and a Hepatitis A vaccination.

{¶4} The magistrate found that defendant acted in a negligent manner when it subjected plaintiff to an unreasonable risk of harm and then denied him the opportunity to shower for almost 24 hours after his exposure to sewage.

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{¶5} Defendant raises two objections to the magistrate’s decision. Defendant argues in its first objection that plaintiff failed to prove any injury that was proximately caused by defendant’s breach. In its second objection, defendant asserts that the magistrate’s decision is against the manifest weight of the evidence.

{¶6} After an independent review of the record, the magistrate’s decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate’s decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of plaintiff. The court shall issue an entry scheduling a trial on the issue of damages. All outstanding motions are DENIED as moot.

CLARK B. WEAVER SR.
Judge

cc:

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MR/cmd	

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