

# Court of Claims of Ohio

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ROBERT LEE NORRIS

Case No. 2004-02644

Plaintiff

Judge J. Craig Wright  
Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

RICHLAND CORRECTIONAL  
INSTITUTION

Defendant

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{¶1} Plaintiff brought this action against defendant alleging negligence. The case was tried to a magistrate of the court on the issues of liability and civil immunity.

{¶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. Plaintiff was housed in unit H2, a two-tiered housing unit for inmates who have chronic health problems and who are more than 40 years of age. Plaintiff was moved to H2 when he requested a non-smoking unit.

{¶3} Plaintiff testified that at approximately 1:15 p.m. on December 23, 2003, he saw Corrections Officer (CO) Robert Jeffrey standing at the microwave oven and repeatedly restarting it until smoke began to pour out. Plaintiff was standing near the officer's desk when he began to smell a noxious odor. According to plaintiff, the fumes were very strong and smelled like feces.

{¶4} Inmate Gary Walker was called as a witness for plaintiff. Walker testified that he was the second-shift porter in H2. When he arrived at the unit at approximately 2:00 p.m., he could smell a strong and offensive odor. Walker stated that he found a partially melted bowl in the microwave oven containing what looked like a burned piece of chalk. Walker said that the bowl resembled the one used to hold the toilet brush in the staff restroom. Walker took both the microwave and the bowl outside where he removed the bowl and threw it in the trash. Walker was not in the unit when the bowl was heated and he did not know who was responsible. Walker recalled that he felt nauseated after

Case No. 2004-02644	- 2 -	MAGISTRATE DECISION
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cleaning the microwave oven and that he signed up for sick call. While at sick call, Walker observed plaintiff “on some kind of breathing machine.”

{¶5} CO Jeffrey testified that he removed a plastic bowl from a shelf in the officer’s restroom, placed a block of Swiss cheese in the bowl and heated the bowl in the microwave oven. Jeffrey stated that the restroom contained a refrigerator and some shelves and that it was used as a staff locker room. According to Jeffrey, he wanted to melt the cheese so that he could spread it on summer sausage that CO Thomas had brought from home. Jeffrey testified that he accidentally overheated the bowl causing it to melt onto the glass plate in the oven, creating a strong odor. Inmate Hood took the microwave and bowl outside while Jeffrey and the other COs opened windows and turned on some fans to allow the smell to dissipate.

{¶6} In order to prevail upon a claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant’s acts or omissions resulted in a breach of that duty, and that the breach proximately caused a compensable injury. *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. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235.

{¶7} Plaintiff testified that after conducting his own investigation into the matter, he concluded that Jeffrey had taken the plastic bowl used to hold a toilet brush, placed that bowl in the microwave oven, and then repeatedly heated the oven until the bowl burst into flames spreading noxious smoke and fumes throughout the cellblock. Plaintiff further concluded that in order to cover up this malfeasance, Jeffrey and Thomas disposed of the bowl, concocted a story about burning cheese, and then presented a different bowl to the health and safety coordinator when he conducted his investigation.

Case No. 2004-02644	- 3 -	MAGISTRATE DECISION
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{¶8} Even if the court were to assume that liability could be imposed against defendant for the actions described by plaintiff, the weight of the evidence does not support plaintiff's version of the facts. For example, plaintiff admitted that he did not see Jeffrey place the bowl in the microwave oven and that he did not see the contents of the bowl. Additionally, Health and Safety Coordinator James Houser testified that there was an operational smoke detector less than seven feet away from the microwave oven and that the smoke detector was not activated as a result of the incident. Wendy Lewis, a nurse employed by defendant, testified that plaintiff reported to sick call on December 23, 2003, complaining of a burning sensation in his nose and throat. After conducting a physical examination of plaintiff, she concluded that plaintiff's symptoms were inconsistent with chemical irritation. Lewis stated that there was no record of inmate Walker reporting to sick call on that day.

{¶9} The court finds that the weight of the evidence establishes that CO Jeffrey mistakenly melted a plastic bowl in the microwave oven while attempting to melt cheese. Although Jeffrey's error caused a strong odor to spread throughout the cellblock, it did not result in the release of noxious smoke as plaintiff contends. The evidence demonstrates that the yard was open and that the weather was such that plaintiff could have left the building to escape the odor had he chosen to do so. The evidence further establishes that fans were activated and windows were opened in an effort to dissipate the odor. The court finds that such a response was reasonable under the circumstances. Finally, the court finds that plaintiff has presented no competent or credible evidence that the fumes caused him any harm other than an alleged temporary and minor inconvenience associated with a sensation of some strong and unpleasant odor.

{¶10} In short, plaintiff has failed to establish the elements of his negligence claim. Accordingly, judgment is recommended in defendant's favor. Additionally, to the extent that plaintiff seeks a determination that defendant's employees are not entitled to civil immunity for their acts and omissions in this case, the court finds that all of the employees

Case No. 2004-02644	- 4 -	MAGISTRATE DECISION
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involved in this matter acted within the scope of their employment and without malice or ill will toward plaintiff. Accordingly, it is recommended that the court issue a determination that COs Jeffrey and Thomas, Health and Safety Coordinator James Houser, and nurse Lewis are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction of any actions against these employees arising from the allegations of plaintiff's complaint.

*A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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STEVEN A. LARSON  
Magistrate

cc:

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Case No. 2004-02644	- 5 -	MAGISTRATE DECISION
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Filed January 3, 2007

To S.C. reporter January 22, 2007