

Court of Claims of Ohio

The Ohio Judicial Center
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ROBERT C. JUNIUS , JR.

Case No. 2005-11141

Plaintiff

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

v.

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

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

{¶2} At the start of trial, the parties submitted stipulations setting forth the facts of the case as follows:

{¶3} “1. Plaintiff was an inmate at the Belmont Correctional Institution on October 11, 2004.

{¶4} “2. On October 11, 2004, the water line supplying 1 and 2 House ruptured, which resulted in these areas not having water.

{¶5} “3. At approximately the same time of [sic] the water line rupture, floor drains in 1 and 2 housing units became backed up, causing sewage water to flow onto the floors.

{¶6} “4. This back-up of sewage water occurred twice on October 11, 2004. Once at 8:00 a.m., and again at 1:20 p.m.

{¶7} “5. The sewage water back-up occurred primarily in the inmate restroom and front quiet area.

{¶8} “6. Inmates were utilized by prison staff to clean the sewage water back-up. The sewage water was ankle deep in some areas.

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{¶9} “7. The inmates utilized to clean the sewage water back-up were provided with insufficient amounts of protective equipment such as cleaning gloves and rubber boots.

{¶10} “8. The cleaning agent provided to inmates by prison staff to sanitize the affected areas of the sewage water back-up was not the proper agent for this particular incident.

{¶11} “9. Inmates involved in the sewage water clean-up were not permitted to shower until the following day as running water was not available in the dorm.

{¶12} “10. Water was available in dorms not affected by the water line break.

{¶13} “11. Plaintiff was a participant in the sewage water clean up.” (Joint Exhibit A.)

{¶14} Plaintiff asserts that defendant was negligent both in forcing him to clean up raw sewage without proper protective gear and supplies and in subsequently denying him access to a shower. Defendant argues that plaintiff cannot show that defendant’s actions proximately caused any injury to plaintiff and that he thus cannot meet his burden of proof.

{¶15} Plaintiff testified that on the day of the incident he was working as a porter in the dormitory and that a corrections officer (CO) directed him to participate in cleanup duty. According to plaintiff, he worked throughout the morning pushing sewage with a mop and squeegee from the main living area of the dormitory toward the shower area. In the shower area, other inmates scooped up the sewage, put it in laundry carts, and then dumped it in the yard in front of the building.

{¶16} Plaintiff testified that the sewage was dirty, muddy looking, smelled “like manure,” and that it was ankle-deep most of the time he was working. Plaintiff further testified that by the time he finished working, his hands and feet were covered in sewage and it had soaked into his clothes. Upon completing his assignment, plaintiff asked a CO for permission to take a shower, but his request was denied. Plaintiff stated that while there was no running water available in “One House,” there were operational showers in

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other housing units; however, he was not permitted to take a shower until approximately 3:15 p.m. the following day.

{¶17} Plaintiff testified that soon after the incident, he reported to the institutional infirmary where he was screened and vaccinated for Hepatitis. Plaintiff further testified that he worried about the effect of the sewage on his feet because he is diabetic and has chronic foot problems.

{¶18} Inmate Philip Wilson testified that he was working with plaintiff as a porter when they pushed the sewage toward the shower area using a push broom. Wilson recounted that the sewage consisted mainly of human waste and toilet paper and that it backed up through drains in the bathroom floor, toilets, urinals, showers, and kitchenette.

{¶19} 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. 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. Additionally, “where a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional factors which characterize the particular work performed.” *Boyle v. Dept. of Rehab. & Corr.* (1990), 70 Ohio App.3d 590, 592, citing *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state therefore has a duty to protect inmates from unreasonable risks of harm arising out of the performance of such labor. *Id.*

{¶20} The court finds that defendant committed a breach of its duty owed to plaintiff by subjecting him to an unreasonable risk of harm during the performance of his duties as a porter; to wit, defendant did not provide plaintiff with adequate equipment and protective clothing for the cleanup of raw sewage. In addition, defendant unreasonably denied

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plaintiff the opportunity to shower for more than 24 hours after coming into contact with raw sewage.

{¶21} At trial, defendant argued that plaintiff failed to prove that he suffered any injury as a result of defendant's breach, and that he failed to prove that any such injury was proximately caused by defendant's breach. The court disagrees. After the cleanup, plaintiff reported to sick call for Hepatitis vaccinations and to seek treatment as a result of his concern over the effect of the sewage on his already injured feet. The court finds this trip to sick call provides evidence that plaintiff suffered an injury. Additionally, the court finds that being forced to remain covered in raw sewage for an extended period of time combined with the fear of the possible consequences of being covered in sewage to be an injury in-and-of itself. Plaintiff, however, bears the burden of proving the nature and extent of injury during the damages portion of the trial.

{¶22} Upon consideration of all the testimony and evidence presented at trial, the court concludes that plaintiff has proven his negligence claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of plaintiff in an amount to be determined at a subsequent trial on the issue of damages.

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).

STEVEN A. LARSON

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Magistrate

cc:

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MR/cmd

Filed June 29, 2007

To S.C. reporter July 30, 2007