

Court of Claims of Ohio

The Ohio Judicial Center
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EDWARD EUGENE CASE

Case No. 2004-08031

Plaintiff

Judge J. Craig Wright
Magistrate Steven A. Larson

v.

JUDGMENT ENTRY

GRAFTON CORRECTIONAL
INSTITUTION

Defendant

{¶1} On March 19, 2007, the magistrate issued a decision recommending judgment in favor of plaintiff. The magistrate determined that defendant's employee was negligent in transporting plaintiff from a medical facility and that plaintiff suffered injuries when he fell while exiting an institution van.

{¶2} Civ.R. 53(D)(3)(b)(i) 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 timely filed objections.

{¶3} Defendant's first two objections concern specific findings made by the magistrate: that plaintiff testified that the step he slipped on was wet; and that Corrections Officer (CO) Luman could not recall whether plaintiff asked him for help in climbing out of the van.

{¶4} Civ.R. 53(D)(3)(b)(iii) provides that: "An objection to a factual finding *** shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding ***." The court finds that defendant has not provided the court with a complete transcript of the testimony which is relevant to the objectionable findings; namely, the complete testimony of plaintiff and CO Luman. Moreover, the court finds that the portions of the transcript that defendant has provided fully support the magistrate's findings.

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{¶5} Defendant argues that the magistrate erred in finding that plaintiff testified that the step he slipped on was wet. As support for its objection, defendant references a portion of the transcript wherein plaintiff states that the step was not wet. However, after being shown his deposition testimony to refresh his recollection, the following exchange occurred between defendant’s counsel and plaintiff:

{¶6} “Q. So the step was wet?

{¶7} “A. Yeah.”

{¶8} (Trial Transcript, Page 62, Lines 19-20.)

{¶9} Thus, defendant’s first objection is OVERRULED.

{¶10} Defendant’s second objection is to the magistrate’s finding that CO Luman could not recall “whether plaintiff asked him to remove the shackles or requested any other help.” However, the transcript shows the following:

{¶11} “Q. Do you *remember* him saying anything to you, would you help me, or would you help me out of the van?

{¶12} “A. No, I do not.”

{¶13} (Trial Transcript, Page 81, Lines 13-16.) (Emphasis added.)

{¶14} Based on the foregoing, the court finds that the magistrate properly found that CO Luman could not recall whether plaintiff asked for help exiting from the van. Accordingly, defendant’s second objection is OVERRULED.

{¶15} Defendant’s fourth objection is that the magistrate erred in resolving inconsistent testimony and in assessing the credibility of the witnesses. As stated above, defendant has not provided the court with the full transcript of the testimony relevant to this objection as required by Civ.R. 53(D). Accordingly, defendant’s fourth objection is OVERRULED. Defendant’s third objection is that the magistrate erred as a matter of law in finding that defendant owed plaintiff a duty to make a reasonable effort to ensure his safety during transport. Defendant’s fifth objection is that the magistrate’s

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recommendation is against the manifest weight of the evidence. Upon review of the magistrate's recommendation, the relevant law, and trial testimony as provided, the court finds that defendant's third and fifth objections are without merit and accordingly, those objections are OVERRULED.

{¶16} Upon 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. The court shall issue an entry scheduling a trial on the issue of damages.

J. CRAIG WRIGHT
Judge

cc:

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MR/cmd/ Filed July 18, 2007
To S.C. reporter August 15, 2007