

# Court of Claims of Ohio

The Ohio Judicial Center  
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WALLACE JAMES STEWART

Case No. 2000-12351

Plaintiff

Judge J. Craig Wright  
Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

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{¶1} On January 22, 2003, the court overruled defendant’s objections to the magistrate’s decision and rendered judgment in favor of plaintiff in an amount to be determined in a separate trial. On October 30, 2003, the case came on for trial at the Lebanon Correctional Institution (LeCI) on the issue of damages.

{¶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. On January 10, 2000, while incarcerated in the Chillicothe Correctional Institution (CCI), plaintiff fell from an upper bunk. The court found that defendant was liable for plaintiff’s injuries from the fall because it knew of plaintiff’s well-documented history of seizures and right-side deformity/paralysis and that, therefore, it should have issued a lower-bunk restriction.

{¶3} At the trial on damages, plaintiff related that the fall caused a myriad of injuries. Plaintiff testified that he climbed into his upper bunk and, because he suffered a seizure, fell onto the cement floor below. He said that as he fell, he hit an adjacent bed and a metal locker box. After the fall, plaintiff was taken to the infirmary where he was evaluated by a nurse. Plaintiff claimed that he was “dizzy, ached all through his body and walked with a limp after the fall.” In response to a question as to how his head felt he replied, “not good.” He also said that his “bones hurt” and that he was “bleeding at the mouth.” After being treated in the infirmary, he returned to the dorm where he was

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transferred to a lower bunk. He complained that he was not given any medication to relieve his pain.

{¶4} After two weeks, plaintiff was transferred from CCI to LeCI. He testified that during the two weeks prior to his transfer, he attempted to go to the infirmary three to four times a day due to bleeding from his mouth, pain in his upper and lower back and in both legs. Furthermore, plaintiff testified that the fall affected his eyesight and that he “couldn’t see good.” However, he admitted that he never actually went to the infirmary for follow-up treatment, citing the \$3 co-pay per visit as a deterrent. Plaintiff opined that everyone he saw or told about his fall “didn’t care.”

{¶5} Plaintiff called defendant’s medical director Michael McWeeney, M.D. as a witness. Dr. McWeeney testified that he obtained his license to practice medicine in Ohio in 1984 after graduating from medical school in Pennsylvania. He was board-certified in emergency medicine and had worked for defendant for 16 years as a contract physician. As medical director, Dr. McWeeney supervises the medical care at all nine of defendant’s institutions and provides primary medical treatment for inmates at sick call at seven of defendant’s institutions on a weekly basis. Although he was not working at CCI when plaintiff fell from his bunk, Dr. McWeeney treated plaintiff many times after his transfer to LeCI and reviewed all of plaintiff’s medical records in preparation for his trial testimony.

{¶6} Dr. McWeeney testified that plaintiff’s medical records showed that a registered nurse, not a medical doctor, examined plaintiff in the infirmary after his fall on January 10, 2000. The progress notes reflected that plaintiff was seen in the infirmary at 11:40 a.m. complaining that he fell from an upper bunk. The nursing assessment recorded plaintiff’s condition that morning. The first entry states: “[Plaintiff] claims to have hit head on falling. No bleeding or edema note.” Additionally, the notes record plaintiff’s general appearance in part as: “No injuries noted, denies pain or discomfort.” (Joint Exhibit K.)

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{¶7} Interdisciplinary progress notes show that plaintiff was seen in the infirmary on January 14, 2000, to develop a treatment plan for seizures. The fall was noted in the record, but no complaints of injuries were noted. (Joint Exhibit K.)

{¶8} On January 19, 2000, the progress notes documented that plaintiff was seen again in the infirmary. Dr. McWeeney's notes state: "[Plaintiff] seen. Feels much better today continues to complain of neck and back ache since he fell from bed 10 days ago. No seizure since last seen here. Complains of pain on resisted motion. Neck not stiff. Impression: contusion of neck/back and muscle due to the fall." (Joint Exhibit K.)

{¶9} Dr. McWeeney treated plaintiff on several occasions after his transfer to LeCI. Dr. McWeeney testified that there were no objective findings to support plaintiff's complaints. Dr. McWeeney opined that the complaints that plaintiff described on January 19, 2000, would have appeared within 10 to 12 hours of his fall, not nine days later when plaintiff first reported them. Dr. McWeeney testified that cuts or contusions from the fall should have been apparent immediately and such injuries would also have been apparent when plaintiff was examined on January 14, 2000; however, no injuries were noted in the medical records.

{¶10} Plaintiff testified that after the fall he had pain in his upper and lower back, pain in both legs, headaches, and bleeding from the mouth. He claimed that he had experienced persistent pain all over his body from the fall. Dr. McWeeney testified that there are no objective findings to support plaintiff's complaints of his multiple and diffuse injuries.

{¶11} Finally, Corrections Officer Robert Buckley testified that he worked at the commissary at LeCI, and that he had known plaintiff for six to nine months because plaintiff had been assigned to work in the commissary. Buckley testified that plaintiff never complained to him that he suffered from pain or discomfort as a result of a prior fall from a top bunk. In fact, Buckley described plaintiff as one of the best workers in the commissary. According to Buckley, plaintiff could pull heavy carts that other inmates could not pull,

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loved to work, and wanted to be treated as other inmates despite a deformity in one of his arms.

{¶12} Based upon the evidence presented, the court finds that plaintiff has failed to prove by a preponderance of the evidence that he suffered prolonged pain in his back and legs, bleeding from the mouth, or persistent headaches. The court does find that plaintiff has proven by a preponderance of the evidence that the fall resulted in pulled and bruised muscles in his back and neck. The court finds that plaintiff’s injuries resulting from his fall healed within one month.

{¶13} Therefore, it is recommended that judgment be rendered in favor of plaintiff in the amount of \$1,250, which includes the \$25 filing fee paid by plaintiff.

*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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