

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

SHERI STEWART

Case No. 2005-05591

Plaintiff

Judge Joseph T. Clark

v.

DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} Plaintiff brought this action alleging a claim of negligence. The issues of liability and damages were bifurcated and the case was submitted to the court upon stipulated facts and trial briefs.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Ohio Reformatory for Women (ORW), pursuant to R.C. 5120.16. Plaintiff's claim arises from injuries that she sustained on June 13, 2003, during transport in a van from ORW to Ohio State University Medical Center (OSUMC). Plaintiff was transported by Corrections Officers (COs) Lindsay and James, along with inmates Linville and Knapp. Plaintiff was restrained for the duration of the transport with belly chains and leg shackles. After arriving at OSUMC, Lindsay and James placed a Rubbermaid stepstool outside of the transport van to assist the inmates in exiting the van. Inmate Linville was the first in line to exit the van, choosing to sit on the van floor and stepping out, rather than utilizing the stool. As plaintiff next attempted to exit the van, she applied weight to the stool, whereupon she was thrown forward face-first to the ground, which resulted in injuries to her chin, jaw, teeth, both hands, chest, and knee.

{¶3} Plaintiff alleges that defendant's employees knew that the Rubbermaid stool was unsafe and that they had reported their concerns to a supervisor prior to her fall. Plaintiff further asserts that despite defendant's knowledge of that hazard, transport officers continued to provide the stool as a means of assisting inmates in exiting the van. Plaintiff

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submits that defendant had a duty to take reasonable steps to avoid injury to inmates during transport and that it committed a breach of that duty when it continued to use the stool.¹

{¶4} Defendant asserts the affirmative defenses of contributory negligence and implied assumption of the risk. Defendant contends that plaintiff failed to exercise a reasonable degree of care for her own safety by choosing to use the stool when exiting the van, particularly after plaintiff had watched inmate Linville exit the van without using the stool.

{¶5} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her 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 a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. *Smith v. United Properties Inc.* (1965), 2 Ohio St.2d 310. However, the state is not an insurer of inmates' safety. *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, 702.

{¶6} The state owes a duty to prisoners to furnish a safe and adequate means of transportation. *McAfee v. Overberg* (1977), 51 Ohio Misc. 86. "Where a prison inmate, lacking freedom of choice as to means and method of transportation, is injured as a result

¹According to COs Lindsay and James, James was at the door of the van supervising the inmates as they exited. However, according to plaintiff and inmates Linville and Knapp, James was retrieving lunches from inside the van when plaintiff fell. Both James and Lindsay also stated that their understanding of orders is that they are never allowed to touch inmates, even to prevent them from falling. The court finds that because the COs would not have provided any assistance while the inmates were exiting the van, their whereabouts at the time of plaintiff's injuries are irrelevant.

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of a combination of circumstances, which was reasonably foreseeable, there is a failure to provide safe and adequate means of transportation, requiring the state to bear the loss, entitling the inmate to recover damages proximately resulting.” Id. at paragraph 5 of the syllabus.

{¶7} In *May v. Department of Rehabilitation & Correction* (June 28, 2001), Franklin App. No. 00AP-1327, plaintiff, an inmate, was walking to a job assignment during inclement weather, when he fell in a snow-covered, icy rut that had formed in the yard. The Tenth District Court of Appeals found that the department had committed a breach of its duty of care because it knew of the hazardous conditions of the yard but nonetheless ordered plaintiff to walk through the yard to work. The court further found that there was no comparative negligence because there was no evidence that plaintiff was not being careful in the manner in which he walked across the yard.

{¶8} Similarly, the evidence in this case suggests that plaintiff had no reason to believe that the stool was unsteady. The greater weight of the evidence shows that plaintiff took the necessary precautions that a reasonably prudent person would take upon seeing the stool on the ground near the van door. Additionally, Lindsay testified that she had observed problems with the stool on previous trips and that she had reported the problems to “everyone,” specifically mentioning her observations to Lieutenant Floyd. (Plaintiff’s Exhibit A.) Also, CO Jones, another transport officer, stated that “the step stools are a big problem” and that she had reported that they needed to replace the Rubbermaid stool with a wooden one. (Plaintiff’s Exhibit A.)

{¶9} Defendant argues that because Linville safely exited the van by selecting a method that did not involve using the stool, plaintiff is responsible for her own decision to use it. However, the evidence suggests that the sole purpose of placing the stool near the van’s door was to assist inmates in exiting the vehicle; further, no evidence was presented that plaintiff was ever told by defendant’s employees to proceed with extra caution due to the unsteady nature of the stool or that any alternatives were ever suggested.

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{¶10} Defendant cites *Joseph E. Adams v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2004-10281, 2006-Ohio-2544 for the proposition that allowing inmates to descend a stairway while fully restrained was not unreasonably dangerous under the circumstances, given the demanding security measures needed for inmates. However, there were no allegations in that case of any known unsafe or hazardous conditions in the stairwell, and the evidence established that numerous inmates had used the stairwell many times before without incident.

{¶11} The court has determined in a variety of van-transport cases that defendant did not commit a breach of its duty of care to inmates. However, those cases are distinguishable. In *Morgan v. Dept. of Rehab. & Corr.* (Sept. 25, 1990), Franklin App. No. 90AP-35, an inmate suffered injuries when he fell from a small wooden step that had been placed beside a transport van's door. In *Morgan*, the court considered a number of factors in determining that defendant did not commit a breach of duty, such as the fact that plaintiff was familiar with the specific set of steps that caused his injury, that he had safely navigated the steps on previous occasions, that the COs told him to watch his step, and that when asked if he needed help getting out of the van, he replied "no." *Id.* No such facts are present in this case.

{¶12} R.C. 2315.33, entitled, "Effect of contributory fault on right to recover," provides in relevant part:

{¶13} "The contributory fault of a person does not bar the person as plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery in this action and of all other persons from whom the plaintiff does not seek recovery in this action."

{¶14} The court finds that plaintiff used ordinary care that a reasonably prudent person would use when exiting the van and that her own actions did not contribute to her

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fall. The court further finds that it was reasonably foreseeable that plaintiff could sustain personal injury when she attempted to use a known unsteady stool to exit a van while wearing restraints. The evidence does not show that plaintiff was warned or advised to take extra caution when exiting or that she had any personal knowledge of any safety hazards associated with the stool. Plaintiff has thus proven, by a preponderance of the evidence, that defendant failed to use ordinary care to provide a safe and adequate means of transportation, and that such failure was the sole proximate cause of her injuries.

{¶15} For the foregoing reasons, the court finds that plaintiff has proven her claim of negligence by a preponderance of the evidence and, accordingly, judgment shall be rendered in favor of plaintiff.

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This case was submitted to the court for decision on the issue of liability based upon stipulated facts and trial briefs. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff. The court shall issue an entry scheduling a trial on the issue of damages.

JOSEPH T. CLARK
Judge

cc:

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