[Cite as *Chisholm v. Marion Correctional Inst.*, 2007-Ohio-5152.]

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

EUGENE CHISHOLM

Plaintiff

v.

MARION CORRECTIONAL INSTITUTION

Defendant

Case No. 2005-09634

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of the Ohio Department of Rehabilitation and Correction at the Marion Correctional Institution (MCI) pursuant to R.C. 5120.16. Plaintiff was employed at MCI in the Ohio Penal Industries furniture factory. On the morning of June 21, 2004, plaintiff was seated in a chair at the factory waiting to begin his shift. Suspended from the ceiling above plaintiff was an electric heating unit with a round metal air deflector that was designed to direct air outward from the unit. As plaintiff waited, the deflector suddenly fell and struck his right leg and foot, resulting in a superficial laceration below the knee. (Defendant's Exhibit E.) Plaintiff claims that defendant was negligent in failing to protect him from the defective heating unit.

{¶3} 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 defendant's acts or omissions resulted in a breach of 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.

{¶4} Ohio law imposes upon the state a duty of reasonable care and protection of its inmates, but 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. When the state becomes aware of a dangerous condition, it must take reasonable care to prevent injury to inmates. *Harwell v. Grafton Correctional Inst*., Franklin App. No. 04AP-1020, 2005-Ohio-1544, at ¶11.

{¶5} Unless defendant had actual or constructive notice of a defect in the heating unit prior to the accident that occurred on June 21, 2004, plaintiff was owed no duty with regard to the deflector.

{¶6} The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶7} Factory supervisor Robert Stark testified that the heating unit at issue was one of approximately 20 identical units suspended from the ceiling throughout the factory, providing heat in the winter and circulating air in the summer. Stark stated that he had worked in the factory for 17 years and had no recollection of a similar accident occurring during that time. He surmised that vibration from the heating unit might have gradually loosened the bolt that held the deflector in place. According to Stark, inmates examined and cleaned the heating units every four months to prevent the buildup of sawdust; defendant's employees inspected all equipment in the factory weekly and performed a more general safety inspection of the factory monthly; and employees of the federal Occupational Safety and Health Administration inspected the factory on a regular basis.

{¶8} Defendant's Exhibits A and B, respectively, document the weekly and monthly factory safety inspections that defendant had performed shortly before the accident. Neither exhibit evidences any problems with the heating units. Joe Phillips, the health and safety coordinator at MCI at the time of the accident, testified that he personally

performed the monthly safety inspection of the factory on June 7, 2004, and found no dangers associated with the heating units.

{¶9} To support his claim of negligence, plaintiff has the burden of proving that defendant had notice of the dangerous condition. Neither plaintiff's testimony, nor that of any witness gave an indication that defendant or anyone else knew of the danger. The only documentary evidence proffered by plaintiff was a copy of the medical records that describe plaintiff's injury. The records do not bear upon the issue of notice.

{¶10} The complete absence of any proof on the dispositive issue of notice permits only one conclusion; based upon the evidence adduced at trial, the court finds that defendant did not know or have any reason to know of the danger posed by the deflector that fell upon plaintiff.

{¶11} For the foregoing reasons, the court finds that plaintiff failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

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
Magistrate

[Cite as *Chisholm v. Marion Correctional Inst.*, 2007-Ohio-5152.]
cc:

Douglas R. Folkert Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130	Eugene Chisholm 15804 Scottsdale Shaker Heights, Ohio 44120
RCV/cmd	

Filed August 28, 2007
To S.C. reporter September 28, 2007