

[Cite as *Cordell v. Dept. of Rehab. & Corr.*, 2008-Ohio-4210.]

Court of Claims of Ohio

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PHILLIP KEITH CORDELL

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

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Case No. 2005-12180

Judge Joseph T. Clark
Magistrate Steven A. Larson

JUDGMENT ENTRY

{¶ 1} On March 10, 2008, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: “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).” Plaintiff filed ten objections on April 22, 2008. On June 3, 2008, defendant filed a response. On June 19, 2008, plaintiff filed a reply to defendant’s response.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Madison Correctional Institution (MaCI) pursuant to R.C. 5120.16. On August 29, 2005, corrections officers (COs) led plaintiff and other inmates through the MaCI parking lot toward a bus bound for the Corrections Medical Center in Columbus. While walking through the parking lot, plaintiff tripped on a curb and fell. Plaintiff alleges that defendant was negligent both in providing insufficient lighting and in escorting him such that he was unable to see the curb.

{¶ 4} The magistrate found “that the curb was an open and obvious condition * * * [and] that defendant did not commit a breach of any duty owed to plaintiff and that plaintiff failed to prove his claims by a preponderance of the evidence.”

{¶ 5} Plaintiff’s first, second, third, seventh, and ninth objections pertain to the magistrate’s application of the open and obvious doctrine. In his first objection, plaintiff argues that the magistrate erred in finding the curb to be an open and obvious

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condition. In his third and seventh objections, plaintiff contends that the open and obvious doctrine is inapplicable to the extent that an inmate lacks discretion to select routes of travel. In his second and ninth objections, plaintiff argues that the magistrate erred in concluding that attendant circumstances did not contribute to plaintiff's fall so as to bar application of the open and obvious doctrine.

{¶ 6} Upon review, the court concludes that the magistrate appropriately determined that the curb was an open and obvious condition and that attendant circumstances did not exist sufficient to significantly enhance any danger posed by the curb. It is well settled that "[t]he 'open and obvious doctrine,' where warranted, may be applied in actions against the ODRC with the result that ODRC would owe no duty to an injured inmate." *Williams v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 04AP-1193, 2005-Ohio-2669.

{¶ 7} In his fourth and fifth objections, plaintiff contends that the magistrate erred in finding that defendant was not negligent in its method of escorting him, particularly in leading him and the other inmates through the parking lot instead of using a sidewalk. Review of the trial transcript, though, reveals that security concerns were intrinsic to the escort procedure. In particular, CO Ronald Hawes testified that the escort route led through the parking lot so as to allow a vehicle to follow the inmates. The court finds that defendant's method of escorting plaintiff through the parking lot involved the maintenance of internal order and security, and when making decisions on such matters, prison officials must be afforded broad discretion. *Bell v. Wolfish* (1979), 441 U.S. 520, 546-547.

{¶ 8} In his sixth objection, plaintiff argues that the magistrate erred in finding the parking lot to have been adequately lighted in order for plaintiff to see the curb. Upon review of the evidence adduced at trial, the court determines the magistrate's finding is supported by the greater weight of the evidence.

{¶ 9} Plaintiff argues in his eighth objection that the magistrate erred in permitting Hawes and Captain Mickey Holcomb to testify that they could see the curb on

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the morning of plaintiff's fall. Upon review, the court finds that the witnesses' testimony was based upon their personal knowledge of the conditions that existed at or about the time of plaintiff's fall and that the evidence was relevant to the subject matter of this case. Accordingly, the magistrate did not err in admitting the witness testimony. Moreover, the magistrate's decision does not rely on this testimony. Consequently, even if the testimony was inadmissible, the erroneous admission of such testimony did not prejudice plaintiff.

{¶ 10} Plaintiff's tenth objection is that the magistrate's decision is against the manifest weight of the evidence. The court does not agree.

{¶ 11} 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. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

John P. Reichley Naomi H. Maletz Assistant Attorneys General 150 East Gay Street, 18th Floor Columbus, Ohio 43215-3130 Magistrate Steven A. Larson	Richard F. Swope 6504 East Main Street Reynoldsburg, Ohio 43068-2268
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Filed July 23, 2008
To S.C. reporter August 18, 2008