

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

DAVID GUMINS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2006-06132

Judge J. Craig Wright
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, plaintiff was an inmate in the custody and control of defendant at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16. On February 2, 2006, plaintiff was working in the GCI kitchen cleaning ovens. Plaintiff alleges that after several hours on his hands and knees scrubbing large oven racks with “Greasecutter,” he suffered chemical burns to his legs. (Plaintiff’s Exhibits 4-6.) Plaintiff asserts that he was not properly trained to use hazardous chemicals like Greasecutter and that he was not provided with protective equipment.

{¶ 3} In order to prevail upon his claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached its 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. While the court is cognizant of a “special

relationship” between an inmate and his custodian, no higher standard of care is derived from the relationship. *Clemets v. Heston* (1985), 20 Ohio App.3d 132. “[W]here a prisoner also performs labor for the state, the duty owed by the state must be defined in the context of those additional facts which characterize the particular work performed.” *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 208.

{¶ 4} Plaintiff testified that when he first arrived at GCI he worked in the kitchen as a dishwasher, but that he took the job cleaning ovens because it paid \$1 more per month and he worked only when the ovens needed cleaning. Plaintiff stated that he did not receive formal training prior to starting the new job. According to plaintiff, another inmate had him sign paperwork that he did not read. Plaintiff explained that to do the job, he would take the metal racks out of the ovens and scrub them with scrubbing pads and a chemical degreaser dispensed by GCI staff. Plaintiff testified that some of the oven racks were small enough to clean in the sink, but that the larger ones had to be placed on the floor to be cleaned. According to plaintiff, the only safety equipment provided was a pair of vinyl kitchen gloves and that when he used Greasecutter the gloves would dissolve and rip such that he “went through quite a few pairs.” Plaintiff testified that after performing this work his hands were often raw, red, and sore. Plaintiff stated that he never asked for goggles or an apron, but that when he asked for better gloves his requests were refused and that he eventually stopped asking.

{¶ 5} Plaintiff testified that on the day of the incident it was the first time that he attempted to clean large oven racks. According to plaintiff, he placed the racks on the floor and reported to GCI kitchen supervisor Ms. Herrera to obtain Greasecutter to clean them. Plaintiff stated that she poured a “couple cups” of the chemical in a bucket

and that he returned to the racks to clean them. Plaintiff testified that he returned to Herrera for more chemical three times and, that after several hours on his hands and knees scrubbing the racks, his knees started to hurt. According to plaintiff, he stood up and lifted up his pant legs, saw that his legs were red and burned, and immediately reported to Herrera and asked to go to the infirmary. Plaintiff testified that he was told to wait for "count to clear" so he asked for a meal while he waited. According to plaintiff, infirmary staff told him to strip and bathe, and then he was transported to the Elyria Memorial Hospital emergency room.

{¶ 6} Amy Peters was working as a food service coordinator on the day of the incident. Peters testified that plaintiff came to her and complained about the burns on his knees. Peters stated that his knees looked like they had chemical burns and that she therefore sent him to the infirmary. However, Peters further stated that she was not directly supervising plaintiff and did not observe him cleaning the oven racks. According to Peters, if she had seen him on his knees using the chemical she would have told him to get up and wash it off. Peters testified that she is familiar with Greasecutter and is aware that it is a caustic chemical. Peters stated that inmates are required to wear heavy gloves and aprons when using it. (Defendant's Exhibits E and F.) Peters also stated that she conducts orientation programs for inmates who have been assigned to work in the GCI kitchen and that during those orientations she instructs them on the proper procedures for working with caustic chemicals such as Greasecutter. However, Peters testified that plaintiff did not participate in any of the orientations that she conducted and she did not know whether plaintiff had attended an orientation.

{¶ 7} Peggy Trill testified that she had been a food service manager at GCI for seven years. Trill testified that she supervises the food service coordinators who work

in the GCI kitchen. According to Trill, the coordinators conduct training orientations on Saturday mornings. Trill testified that at the orientations, either the coordinator in charge or an inmate clerk sets up a television and VCR and shows a training video while paperwork, including documents relating to the proper use of chemicals, is passed out for the inmates to read and sign. (Defendant's Exhibit D.) She testified that the inmates are then taken on a tour of the kitchen and shown where the chemicals and protective equipment are stored. According to Trill, the inmates are instructed to treat all chemicals as hazardous. Finally, Trill acknowledged that the material safety data sheet and labels for Greasecutter were kept in a chemical room and were not available for inmates to review.

{¶ 8} Carol Bycheck testified that she was the food service manager who conducted the orientation that plaintiff allegedly attended, although she did not remember the date of the orientation and could not recall whether plaintiff attended. Bycheck testified that during an orientation, she "goes over" chemicals used in the kitchen and how to use them properly. Bycheck testified that personal safety equipment such as gloves, aprons, and goggles are readily available in the kitchen for inmates to use, and that if she had observed plaintiff cleaning the oven racks in the manner he described she would have stopped him and sent him to the infirmary immediately. Bycheck also identified two documents that plaintiff had signed. The first is a list of rules for inmates working in food service and the second is an acknowledgment that plaintiff had completed food service training. (Defendant's Exhibits H and I.)

{¶ 9} Inmates Steven Stranan, Paul Evans, Michael King, Raymond Gau, and former inmates Greg McAdams and Dale Compton each testified that they worked in

the GCI kitchen at some point during their incarceration. The inmates also testified that while they were given a brief orientation and told to sign a number of forms, their training consisted largely of “on the job” training by other inmates rather than GCI staff, and that there was no instruction regarding the use of hazardous chemicals.

{¶ 10} Darlene Krandall is the institutional inspector for GCI and she investigated the incident after plaintiff filed an informal complaint and notification of grievance. (Plaintiff’s Exhibits 8 and 9.) Krandall found that on the day of the incident, Herrera provided plaintiff with the Greasecutter and “chemical resistant gloves” but that no other safety equipment was either provided or requested. Krandall further found that plaintiff reported a problem with his knees to Herrera sometime between 3:30 and 3:45 p.m.; that he asked to go to “medical” and for a meal before he went; and that he did not sign out of the kitchen until 4:30 p.m. As a result of her investigation of the incident and the procedure for handling potentially dangerous chemicals in the kitchen, Krandall concluded that staff who issue chemicals needed additional training.

{¶ 11} Based upon the foregoing testimony, the court finds that the training plaintiff received concerning his work in the GCI kitchen was inadequate. Specifically, based upon plaintiff’s testimony and that of the other inmates, the court finds that plaintiff was not properly trained in the use of caustic chemicals and Greasecutter in particular. However, based upon plaintiff’s testimony that he had used Greasecutter in the past to clean small oven racks and that it was so caustic as to require him to keep replacing the gloves he was using and made his hands raw, the court finds that plaintiff knew or should have known that the chemical he was using on the day of the incident was potentially harmful and that he failed to take precautions to ensure his own safety. On the day of the incident, plaintiff did not seek further instruction in the use of the

chemical and did not inquire as to the availability of any additional safety equipment that several GCI staff testified was readily available. Accordingly, the court finds that plaintiff's negligence outweighs any negligence on the part of defendant. 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

cc:

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Daniel R. Forsythe
Douglas R. Folkert
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Magistrate Steven A. Larson