

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

ALBERT SMITH

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-03125

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 to this action, plaintiff was an inmate in the custody and control of defendant¹ at the Pickaway Correctional Institution (PCI) pursuant to R.C. 5120.16. Plaintiff alleges that he sustained personal injury when a transport bus in which he was a passenger struck another vehicle. On the day of the accident, Corrections Officer (CO) Roosevelt Green picked up plaintiff and three other inmates, including inmate David Washington,² at the PCI quartermaster's office to transport them to the Corrections Medical Center. On the way, Green stopped at the Corrections Reception Center (CRC) to pick up additional inmates. Green pulled the bus into a sally port at CRC and the gates behind the bus closed. Green and the inmates waited in the sally port for approximately 30 minutes until the additional inmates were escorted out

¹The term defendant shall hereinafter refer to the Ohio Department of Rehabilitation and Correction.

and led through a pedestrian gate and onto the bus. After those inmates were aboard, the back gates of the sally port opened; Green then began to back out and turn onto the roadway when the bus struck a large utility truck. In his complaint, plaintiff alleges that the collision caused him to be thrown from his seat and against a metal security screen injuring his back, neck, right arm, elbows, left leg and body, and thereby causing aggravation of a pre-existing arthritic condition. He alleges that Green was negligent in his operation of the bus.

{¶ 3} Defendant argues that it did not breach any duty of care owed to plaintiff, that the accident was a “minor fender-bender,” and that plaintiff cannot establish that the accident was the proximate cause of his alleged injuries.

{¶ 4} 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 him to suffer injury. *Armstrong v. Best Buy Co., 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 upon the state a duty of reasonable care and protection of its inmates. *McCoy v. Engle* (1987), 42 Ohio App.3d 204, 207-208. Reasonable care has been defined as “that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances.” *McElfresh v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 04AP-177, 2004-Ohio-5545, ¶16. The state, however, is not an insurer of the safety of prison inmates, and a special relationship between the state and the inmate does not expand or heighten the duty of ordinary reasonable care. *Id.*

{¶ 5} Green testified that he had been employed at PCI for more than ten years and that he had previous experience driving the bus that was involved in the accident. He stated that he was traveling at approximately five miles per hour as he backed out of the sally port, that he was simultaneously turning and applying the brakes, and that he

²David Washington filed Case No. 2006-03777 in relation to the same accident.

did not see the utility truck in his rearview or side mirrors. The photographs offered into evidence depict damage to the left rear bumper of the bus such that an area approximately equal to one-third of the bumper was dented inward. (Plaintiff's Exhibits 1-2.) Green testified that the bus had been in use for many years, that it was dented "all over" and that, based upon his prior experience driving the bus, the damage alleged to have been caused to the bumper had existed for some time prior to the accident. He further testified that he was not injured as a result of the accident.

{¶ 6} Diane Huston, the driver of the utility truck, did not testify at trial but stated in her Incident Report (Plaintiff's Exhibit 3) that she was parked by the roadway waiting for the bus to leave the sally port so that she could enter. The roadway where she was parked was not a public access thoroughfare. According to Huston, the bus backed out and hit her vehicle causing damage to the passenger side fender and bumper. Huston also stated that she was not injured.

{¶ 7} Plaintiff and all of the other inmates on the bus were shackled around the ankles and wrists and their wrists were shackled to a belly chain. Plaintiff testified that he was seated at the rear of the bus behind a security screen. He related that he was being transported to CMC for examination of a knee injury. Plaintiff testified that Green was traveling at a "nice little clip" when he pulled out of the sally port and that the impact with the utility truck caused him to be thrown against the security screen and over the top edge of it, injuring his neck, back, and elbow. He testified that he was taken into CRC for medical examination after the incident. Plaintiff stated that he was familiar with the bus shown in exhibits 1 and 2, that he had ridden on the bus on previous occasions, and that he had not seen any damage to the bus prior to the accident.

{¶ 8} Washington testified that he was seated near the middle of the bus and that he knew that plaintiff was seated at the rear. He stated that when the bus struck the utility truck it made a loud "boom" and that, although he did not see what happened to plaintiff, he heard him call out that he was hurt. Washington further related that after the accident, COs asked the inmates whether anyone was injured and that he and

plaintiff replied that they were. He stated that he heard plaintiff complaining about back pain when they got off the bus.

{¶ 9} Defendant presented the testimony of George Bruce, a registered nurse at PCI at the time of the accident, and Tobbi Reeves-Valentine, a registered nurse and PCI's medical operations manager. Nurse Bruce testified regarding plaintiff's previous health history, all of which was unrelated to the accident. Nurse Valentine testified regarding the remainder of plaintiff's medical records that were admitted into evidence. Specifically, Valentine testified that the Medical Exam Report from CRC on the date of the incident (Defendants' Exhibit E) reflects that plaintiff stated that he had hit the back of his head on the back of the bus, that he had a history of back problems, that he was then experiencing pain in his neck, shoulders, and lower back, and that he had a "funny feeling" in his head. The CRC nurse noted that plaintiff ambulated without difficulty but she suggested that x-rays be taken. The Medical Exam Report from PCI on the evening of the incident (Defendants' Exhibit D) reflected that plaintiff complained of a stiff neck and stated that he had pain in his right elbow. The PCI nurse noted that plaintiff's right elbow was slightly swollen, that there was tenderness in his right shoulder, that there was some swelling in his left shoulder, and that he had pain in his lower back upon extension. Plaintiff was given Tylenol and released to his housing unit.

{¶ 10} Upon review of the evidence, the court finds that CO Green breached a duty of care owed to plaintiff when he failed to observe the utility truck and collided with it. The common law of Ohio imposes a duty of reasonable care upon all motorists that includes the responsibility "to observe the environment in which they drive, not only in front of their vehicle, but to the sides and rear as the circumstances may warrant." *Hubner v. Sigall* (1988), 47 Ohio App.3d 15, 17, citing *State v. Ward* (1957), 105 Ohio App. 1; *Scott v. Marshall* (1951), 90 Ohio App. 347, 365. The court finds that Green's failure to observe the large utility truck in the 30-minute time frame that he was parked in the sally port constitutes a lack of reasonable care and that such lack of care resulted

in injury to plaintiff. Accordingly, it is recommended that judgment be entered in favor of plaintiff on the issue of liability

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:

Amy S. Brown
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

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

Magistrate Steven A. Larson

LH/cmd
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