

[Cite as *Duley v. Ohio Dept. of Rehab. & Corr.*, 2009-Ohio-5324.]

Court of Claims of Ohio

The Ohio Judicial Center
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ELBERT DULEY

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-05787

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. Defendant did not contest the issue of liability and the case is now before the court on the issue of damages.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Belmont Correctional Institution (BeCI) pursuant to R.C. 5120.16. On October 11, 2004, plaintiff and other inmates were directed to clean up a backup of raw sewage. Plaintiff was not provided with either protective equipment or cleaning supplies and, as a result, he became covered in raw sewage. Plaintiff was denied the opportunity to take a shower for at least 24 hours following the incident.

{¶ 3} In support of his claim, plaintiff presented his own testimony, portions of his medical records, and copies of complaints and grievances that he had filed with defendant after the incident.

{¶ 4} Plaintiff testified that during the cleanup he and other inmates used dustpans and mop buckets to scoop the sewage up and put it in garbage cans that were then emptied outside. Plaintiff testified that he participated in two cleanup “shifts” of four hours each and then had to help scrub the showers the next day. Plaintiff stated that he became covered in sewage during the course of the cleanup. Plaintiff testified that when he and the other inmates requested to be sent to another building for a shower since the water was turned off in their building, Corrections Lieutenant Johnson told them “lay down and lick your nuts.” According to plaintiff, he was permitted to shower approximately 30 hours later. Plaintiff testified that he visited the BeCI infirmary after

the cleanup and received a tetanus shot and a series of hepatitis vaccines. Plaintiff further testified that he developed a rash on his arms, legs, and side, a blister on his left ear that drained pus, and severe stomach cramps. Plaintiff testified that the rash went away in a few days but that he was sent to the Corrections Medical Center (CMC) twice for treatment to his ear and that it still becomes irritated and forms blisters on a regular basis. According to plaintiff, the problem with his ear developed two or three days after the sewage cleanup. Regarding his stomach, plaintiff stated that he started suffering from severe abdominal pain about a week after the sewage cleanup. Plaintiff testified that BeCI treated the problem with over-the-counter antacids, but on one occasion the pain was so severe that he was taken to a local hospital and eventually to CMC and The Ohio State University Medical Center (OSUMC). According to plaintiff, his stomach still bothers him. Plaintiff did not provide any expert medical testimony to show that the sewage cleanup caused either the problem with his ear or his stomach.

{¶ 5} Susan Nesbitt, healthcare administrator at BeCI, testified that she reviewed plaintiff's medical records to determine the medical treatment that he had received after the sewage cleanup. According to Nesbitt, interdisciplinary progress notes that are part of plaintiff's medical records show that on October 13, 2004, he was seen in the BeCI infirmary by a nurse who noted that plaintiff complained of a rash and that his arms and chest were red. The nurse gave plaintiff an antibiotic soap and hydrocortisone cream. (Plaintiff's Exhibit 12.) The records further show that plaintiff was given a tetanus shot on October 14, 2004, and that he started receiving a Hepatitis A vaccine on December 2, 2004.

{¶ 6} With regard to plaintiff's ear, Nesbitt testified that a rash on plaintiff's lower left ear was first described on September 14, 2005, and that on September 22, 2005, a doctor at BeCI examined plaintiff and gave him a medicated cream for his ear. According to Nesbitt, in August 2007 plaintiff was seen by a dermatologist at OSUMC who diagnosed the problem with his ear as sun damage.

{¶ 7} Nesbitt testified that plaintiff's records show that he first complained of abdominal problems on February 23, 2007, and that on March 21, 2007, he was admitted to CMC complaining of abdominal pain. According to Nesbitt, plaintiff underwent a series of diagnostic tests, but no cause for his pain was discovered at that time. Nesbitt further testified that on March 25, 2008, plaintiff tested positive for H. Pylori bacteria in his abdomen, which can be an indicator of an ulcer.

{¶ 8} Based upon the totality of the testimony and evidence, the court finds that plaintiff had to endure at least 24 hours of severe discomfort due to being covered in raw sewage, and that he suffered from anxiety for a significant period of time thereafter due to his fear of infection and disease. Thus, the court finds that plaintiff's emotional injuries were significant. The court also finds that plaintiff suffered a mild rash on his arms and chest after the cleanup. However, the court finds that plaintiff failed to prove that the problems that he experienced with his left ear and stomach were caused by his exposure to raw sewage during the cleanup on October 11, 2004. The court concludes that plaintiff's damages in this case amount to \$4,500. Accordingly, judgment is recommended in favor of plaintiff in the amount of \$4,525 which includes the \$25 filing fee.

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

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Magistrate Steven A. Larson

MR/cmd
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