

Court of Claims of Ohio

The Ohio Judicial Center
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PHILLIP MAYLE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-01550

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 defendant at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16. On November 12, 2006, plaintiff proceeded from his housing unit toward the GCI infirmary where he was to receive his daily medications at the 7:30 p.m. “pill call.” Plaintiff and other inmates bound for the infirmary walked along a concrete path through the yard that separates the infirmary and housing units.

{¶ 3} Due to repair work on a section of the path near the infirmary, defendant had placed plywood boards end-to-end on the adjacent lawn to provide a detour. As plaintiff crossed the boards, an inmate in front of him stepped on the far end of one board, causing the end nearest plaintiff to rise. Plaintiff tripped on the raised board and fell. Other inmates summoned infirmary staff, who helped plaintiff to his feet, accompanied him to the infirmary, and treated him with pain medication.

{¶ 4} Plaintiff alleges that defendant negligently routed the path onto the boards and that such negligence was the proximate cause of his injuries. Defendant argues that it owed no duty of care to plaintiff inasmuch as the boards presented an open and obvious condition.

{¶ 5} 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 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.

{¶ 6} Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends on whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137. However, an inmate incarcerated in a state correctional facility is not afforded the status of any of the traditional classifications. In the context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. The state is not the insurer of inmate safety, though. *Moore*, supra.

{¶ 7} "Where a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises." *Armstrong*, supra, syllabus. This rule is based upon the rationale that the very nature of an open and obvious danger serves as a warning, and that the "owner or occupier (of land) may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves." *Id.* at 80, quoting *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶ 8} An exception to the open and obvious doctrine applies when there are attendant circumstances surrounding an event that would distract an ordinary person and thereby cause the person to exercise a reduced degree of care. *Conrad v. Sears, Roebuck & Co.*, Franklin App. No. 04AP-479, 2005-Ohio-1626, at ¶11. “The attendant circumstances must, taken together, divert the attention of the pedestrian, significantly enhance the danger of the defect, and contribute to the fall. * * * Both circumstances contributing to and those reducing the risk of the defect must be considered.” *Barrett v. Enterprise Rent-A-Car Co.*, Franklin App. No. 03AP-1118, 2004-Ohio-4646, at ¶14, quoting *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App.3d 494, 499.

{¶ 9} Plaintiff testified that the boards had been in place for about three weeks prior to the incident and that he had walked across them every day during that time on his way to and from the infirmary. Plaintiff also testified that he knew the boards rested loosely on uneven ground and that he had “slipped” on them on a prior occasion.

{¶ 10} Plaintiff stated that the area where he fell was not well lit, but he admitted that there was enough light to observe the path. Plaintiff testified that this path was the only route by which he could access the infirmary and he therefore had no choice but to walk on the boards. According to plaintiff, institution rules require inmates to cross the yard only on paths; walking in the grass is forbidden. Plaintiff further stated that although another path to the south also led to the infirmary, inmates were prohibited from using it.

{¶ 11} The testimony of inmates Maynard Nettle, Frank Newman, and Alan Shaw generally corroborated plaintiff’s contention that inmates could access the infirmary only by way of the path that was taken. Corrections Officer Brian Gribble, testified that an alternate path to the south was indeed available for inmate use. During his testimony, Gribble marked the alternate path on a map of GCI. (Defendant’s Exhibit B.) Bobby Sparks, the building maintenance superintendent at GCI, also testified that plaintiff could have utilized this alternate path.

{¶ 12} Considering the witnesses' credibility and conflicting testimony regarding the alternate path, the court finds the testimony of Gribble and Sparks to be the most credible. The court therefore concludes that plaintiff could have avoided walking on the boards by taking the alternate path.

{¶ 13} As to plaintiff's claim of insufficient lighting, inmate Paul Showalter testified that he was among the group of inmates walking to the infirmary with plaintiff and that he recalls the area in question being poorly lit. Inmates Nettle and Shaw were not present when plaintiff fell, but they too testified that the area is not well lit.

{¶ 14} Correctional Captain Ivan Gordon testified that GCI maintains substantial lighting throughout the yard for security purposes. According to Gordon, the particular area where plaintiff fell is illuminated by pole-mounted lights in the yard and by lights at the nearby infirmary entrance. During his testimony, Gordon denoted the location of several lights on a map of GCI. (Defendant's Exhibit B.)

{¶ 15} Weighing the evidence, particularly Gordon's testimony as to the security interest in illuminating the yard, as well as plaintiff's testimony as to the visibility of the path, the court concludes that sufficient lighting existed to make the boards plainly visible. Moreover, "[d]arkness is always a warning of danger, and for one's own protection it may not be disregarded." *Jeswald v. Hutt* (1968), 15 Ohio St.2d 224, paragraph three of the syllabus.

{¶ 16} Notwithstanding the degree of lighting and the availability of an alternate path, plaintiff asserts that attendant circumstances such as inclement weather and inmates walking near him were distractions that contributed to his fall. However, plaintiff admitted at trial that the weather was not a factor, that he could see where he was going, and that he was not handcuffed. Moreover, Showalter testified that he and plaintiff were in a group of only about five inmates walking single file. Accordingly, the court finds that plaintiff failed to establish that attendant circumstances enhanced any danger posed by the boards.

{¶ 17} Finally, plaintiff had a duty to exercise some degree of care for his own safety while walking. See *Lydic v. Lowe's Cos., Inc.*, Franklin App. No. 01AP-1432, 2002-Ohio-5001, at ¶16. However, plaintiff testified that at the time of his fall, he was looking ahead and not "particularly" observing the ground.

{¶ 18} For the foregoing reasons, the court finds that the boards presented an open and obvious condition. Therefore, defendant owed no duty to protect plaintiff from or to warn him about the boards, and plaintiff has failed to prove his negligence claim 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

cc:

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MAGISTRATE DECISION

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