

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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JUAN ROBERTS

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-05551

Judge Joseph T. Clark
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 defendants at the Madison Correctional Institution (MCI) pursuant to R.C. 5120.16. Plaintiff alleges that on January 3, 2006, he was injured when his right leg was struck by a trailer being towed by a John Deere “gator,” a general purpose maintenance vehicle that is approximately the size of a golf cart. (Defendants’ Exhibits A-C.) Defendants argue that the employee in question drove slowly around a group of MCI inmates that included plaintiff, but that plaintiff was not paying attention and stepped into the path of the gator. Defendants assert that plaintiff’s negligence was the proximate cause of his injury.

{¶ 3} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that defendants’ acts or omissions resulted in a breach of that 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. Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendants the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235.

{¶ 4} Plaintiff testified that at approximately 1:15 p.m. on the day of the incident he was walking on a sidewalk toward “rec.” According to plaintiff, he was speaking with another inmate when he observed the approaching gator “out of the corner of his eye.” Plaintiff testified that the gator had a snowplow attached to the front and was towing a utility trailer. Plaintiff stated that he lifted his leg in an attempt to move out of the way of the vehicle; however, because he believed that inmates were not permitted to walk on the grass, he tried to avoid stepping off of the sidewalk. Plaintiff did acknowledge that another inmate was able to avoid being struck by stepping off the sidewalk and onto the grass. Plaintiff testified that he successfully avoided the plow and the body of the gator, but that a wheel well on the trailer struck his right leg and the trailer ran over his right foot. Plaintiff estimated that the gator was moving at approximately ten miles per hour when it struck him.

{¶ 5} Inmate Darius Peaks was also heading to “rec” at the time of the incident and observed the trailer that hit plaintiff. Peaks testified that a gator towing a trailer was a common sight around MCI and that he usually had to step onto the grass to avoid being hit when one passed near him. According to Peaks, it appeared that plaintiff attempted to step out of the way of the gator, but that he apparently did not see the trailer and it “clipped” his right leg. Peaks testified that plaintiff immediately grabbed his leg.

{¶ 6} Richard Tatman was a Maintenance Repair Worker 3 at MCI and was driving the gator on the day of the incident. Tatman testified that he was traveling at approximately 10 to 15 miles per hour, and that he slowed down to approximately 8 to

10 miles per hour as he approached the group of inmates. Tatman testified that a gator is approximately 5 feet wide, that the plow on the front of the gator is approximately 6 feet wide, and that the trailer is approximately 8 feet wide. Tatman further testified that the paths at MCI are between 6 and 7 feet wide and that there is not enough room on the sidewalk to accommodate both the inmates and a gator with an attached trailer. Tatman stated that he was not aware at the time that the trailer struck plaintiff.

{¶ 7} Based upon the above testimony, the court finds that defendants committed a breach of their duty of reasonable care when their employee caused the trailer to strike plaintiff. Specifically, the court finds that Tatman was driving at an unreasonably fast speed when he passed through the group of inmates on the sidewalk. However, the court further finds that plaintiff was aware of the approaching gator and failed to use reasonable care to avoid the vehicle. Accordingly, Ohio's comparative negligence statute, R.C. 2315.33, is applicable.

{¶ 8} For the foregoing reasons, the court finds that plaintiff has proven his negligence claim by a preponderance of the evidence. The court further finds that the degree of fault attributable to plaintiff for failing to use reasonable care to ensure his own safety is 40 percent. Accordingly, judgment is recommended in favor of plaintiff with a 40 percent reduction in any award for damages.

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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