

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

SHERI STEWART

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2005-05591

Judge Joseph T. Clark

DECISION

{¶ 1} On August 7, 2007, the court rendered judgment in favor of plaintiff on the issue of liability. On June 2, 2008, the court conducted a trial on the issue of damages.

{¶ 2} Plaintiff's claim arises from injuries that she sustained on June 13, 2003, when she was an inmate at the Ohio Reformatory for Women (ORW). Plaintiff had been transported in a van from ORW to The Ohio State University Medical Center (OSUMC) for a scheduled medical appointment. Plaintiff was restrained for the duration of the transport with belly chains and leg shackles. After arriving at OSUMC, corrections officers placed a Rubbermaid stepstool outside the transport van to assist inmates in exiting the van. As plaintiff attempted to exit the van, she applied weight to the stool with her foot, whereupon she was thrown forward face-first to the ground. Plaintiff sustained injuries to her chin, jaw, teeth, both hands, chest, knee, and shoulder.

{¶ 3} At trial on the issue of damages, plaintiff testified that when she entered the Ohio penal system in July 2002, she had no pre-existing medical problems. While in defendant's custody but prior to her fall, plaintiff was restrained in handcuffs behind

her back for several hours which caused her discomfort. As a result, an x-ray of her right shoulder was taken. The x-ray revealed no abnormalities.

{¶ 4} Plaintiff testified that when she fell, she thought that she was having a heart attack and that she “was going to die” because she could not breathe. Her face bled profusely and she received eight stitches to repair her chin. Her face and shoulder hurt after the fall. Plaintiff presented photographs that were taken the day after the fall. The photographs depict severe bruising to her chin, cuts on her wrist, a bruise on her knee, and a bruise on her chest.

{¶ 5} Plaintiff also presented her medical records from the incident, which substantiate her injuries. Plaintiff testified that she had trouble opening and closing her jaw after the fall; that she was prescribed a liquid diet for one week due to her jaw injury; that she could not perform her job as a seamstress at ORW for eight months because of pain in her hand and wrist while using scissors; that she had problems navigating stairs because of her knee injury; that she had continued shoulder and wrist pain for months after the fall; and, that an MRI taken on May 13, 2004, confirmed that she had a tear of the anterior labrum, one of the three tendons that make up the rotator cuff in her right shoulder. Plaintiff testified that she continues to suffer from chronic right shoulder pain and jaw pain as a result of the fall, and that the scar on her chin is permanent.

{¶ 6} Plaintiff filed an affidavit of Thomas G. Andreshak, M.D., a board-certified orthopedic surgeon, who opined to a reasonable degree of medical probability that plaintiff’s fall was the proximate cause of the tear of her anterior labrum of her right shoulder.¹ Dr. Andreshak also averred that tears of the labrum do not spontaneously heal, and that they must be repaired surgically. Dr. Andreshak opined that the approximate cost to repair a torn labrum, including the costs of surgery, anesthesia, three to four months of postoperative physical therapy, and medication would be \$30,000. Dr. Andreshak opined that plaintiff might experience a delay in her response to surgery because of her current lack of medical treatment. In that case, Dr. Andreshak opined that the time period for plaintiff’s physical therapy might extend to nine months, which would cost an additional \$3,000.

¹Prior to trial, the parties stipulated to the admissibility of the affidavit and opinion letter of Thomas G. Andreshak, M.D., in lieu of his testimony at trial.

{¶ 7} Plaintiff testified that she desires to have shoulder surgery but that she has not done so because she does not have health insurance and cannot afford it at this time.

{¶ 8} Regarding her employment, plaintiff testified that she is currently a delivery person for *The Toledo Blade*, where she delivers newspapers to 55 businesses for sale by them. Plaintiff stated that her net income is \$2,400 per month. Plaintiff estimated that she would need to be off work for six months after surgery.

{¶ 9} On cross-examination, defendant presented evidence to show that plaintiff declined an extraction of an abscessed tooth after the fall, which defendant argues may have contributed to her jaw pain. Plaintiff eventually consented to the extraction approximately seven months later.

{¶ 10} Plaintiff seeks damages for: 1) past and future pain and suffering; 2) the cost of shoulder surgery and related physical therapy; 3) the presence of a permanent scar; and, 4) future lost wages during her recovery from surgery. Defendant asserts that plaintiff is not entitled to recover a loss of future wages. However, damages may be awarded to compensate a plaintiff for losses that are reasonably certain to be incurred in the future. *Galayda v. Lake Hosp. Sys., Inc.* (1994), 71 Ohio St.3d 421, 425.

{¶ 11} Based upon the evidence presented at trial, the court finds that plaintiff has proven by a preponderance of the evidence that her fall from the van was the proximate cause of the tear of her labrum. Therefore, the court finds that plaintiff is entitled to \$30,000 for the cost of shoulder surgery and related physical therapy. While Dr. Andreshak opined that plaintiff may require additional physical therapy, the court finds that an award of damages for more than four months of physical therapy would be speculative. Plaintiff has proven that it is reasonably certain that she will incur four months of work loss after her surgery. Therefore, the court further finds that plaintiff will incur lost wages in the amount of \$9,600. In addition, plaintiff shall be awarded \$7,500 for the presence of a permanent scar on her chin. Lastly, the court finds that plaintiff is entitled to an award of \$15,000 for past and future pain and suffering. Therefore, judgment shall be rendered in favor of plaintiff in the amount of \$62,125 which includes the \$25 filing fee.

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JUDGMENT ENTRY

This case was tried to the court on the issue of damages. The court has considered the evidence and for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff in the amount of \$62,125 which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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HTS/cmd
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