



Court of Claims of Ohio

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LINDA J. BICKERSTAFF, Admx.
Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION
Defendant

AND

VINCENT MASTASO, III
Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION
Defendant

Case Nos. 2012-03409 and 2012-03417

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

JUDGMENT ENTRY

{¶ 1} On August 8, 2013, the magistrate issued a decision recommending judgment for defendant.

{¶ 2} Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R.

53(D)(4)(e)(i).” On August 22, 2013, plaintiffs filed their objections to the magistrate’s decision.¹ On August 28, 2013, defendant filed a response.

{¶ 3} As an initial matter, on September 12, 2013, plaintiffs filed both a motion for leave to supplement their objections with a DVD recording of the trial and a DVD recording of the trial. Defendant did not file a response. Civ.R. 53(D)(3)(b)(iii) provides in, relevant part: “An objection to a factual finding whether or not specifically designated as a finding of fact under Civ.R.53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered.” Upon review, plaintiffs’ motion is GRANTED. See *Marok v. Ohio State Univ.*, 10th Dist. No. 11AP-744, 2012-Ohio-2593.

{¶ 4} In reviewing a party’s objections, the “court must conduct an independent analysis of the underlying issues, undertaking the equivalent of a de novo determination and independently assessing the facts and conclusions contained in the magistrate’s decision.” *Shihab & Assoc. Co. LPA v. Ohio Dept. of Transp.*, 168 Ohio App.3d 405, 2006-Ohio-4456, ¶ 13 (10th Dist.); *Dayton v. Whiting*, 110 Ohio App.3d 115, 118 (2nd Dist.1996).

{¶ 5} This case arises out of a May 31, 2010 incident in which inmates Dalin Anderson and plaintiff Vincent Mastaso were struck by lightning while participating in recreational activities in a large open yard at the honor camp of the Belmont Correctional Institution. Anderson’s injuries were fatal. Plaintiffs alleged that defendant was negligent in failing to close the recreation yard while the storm approached. The magistrate determined that plaintiffs failed to prove that defendant breached its duty of care by not closing the recreation yard prior to the fatal lightning strike. The magistrate

¹ Plaintiffs’ August 22, 2013 motion for leave to file objections exceeding the page limitation is GRANTED instanter.

further determined that defendant had no duty to close the yard and that the injuries caused by the lightning strike are solely attributable to an Act of God.

{¶ 6} Although not specifically enumerated, plaintiffs generally object to three of the magistrate's conclusions. In their first objection, plaintiffs generally argue that defendant breached the standard of care by failing to follow several internal prison rules or policies. However, as the magistrate correctly concluded, it is well settled that prison rules or policies "are primarily designed to guide correctional officials in prison administration rather than confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, citing *Sandin v. Conner*, 515 U.S. 472, 481-482 (1995). "A breach of internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. and Corr.*, 67 Ohio Misc.2d 1, 3 (1993). See *Horton v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 05AP-198, 2005-Ohio-4785, ¶ 29. Plaintiffs' first objection shall be overruled.

{¶ 7} In their second objection, plaintiffs argue that the magistrate's decision is contrary to law and not supported by the manifest weight of the evidence. Specifically, plaintiffs challenge the magistrate's conclusions that defendant did not breach its duty of reasonable care by not closing the recreation yard prior to the fatal lightning strike and that the injuries caused by the lightning strike are solely attributable to an Act of God.

{¶ 8} The court notes that inmates William Rotan, Eric Lieser, Corey Woodruff, and Joshua Thompson each testified that the fatal storm did not develop suddenly. However, inmates Richard Griffin and Matthew Wilhoite indicated that the storm developed suddenly. Additionally, to support his conclusion that the storm developed suddenly, the magistrate relied upon a video recording depicting a portion of the recreation yard. As the magistrate further noted, inmates at the honor camp are allowed to move unescorted between the yard and the dormitory building. Plaintiffs have offered no explanation as to why the inmates remained in the yard and watched the approaching storm when they were free to return to the dormitory building. The court cannot say that the magistrate's decision is contrary to law and not supported by

the manifest weight of the evidence. The court agrees with the magistrate's conclusions.

{¶ 9} To the extent that plaintiffs argue that the magistrate was compelled to accept the testimony of plaintiffs' weather expert inasmuch as defendant did not present contrary evidence, the court is not compelled to accept the testimony of plaintiffs' weather expert. *Jeffery Rogers. State v. J.L.S.*, 10th Dist. No. 08AP-33, 2012-Ohio-181 (trier of fact is free to believe or disbelieve any or all of a witness' testimony). Accordingly, plaintiffs' second objection shall be overruled.

{¶ 10} In their third objection, plaintiffs challenge the magistrate's decision to deny their May 3, 2013 motion in limine to exclude a video recording of the recreation yard and portions of the testimony of Kathy Cole. In their motion in limine, plaintiffs stated that such a motion was "limited to Ms. Cole's description and opinions of events that occurred on May 31, 2010 at the yard of Belmont County Correctional Institution ('BCI') and video footage of events occurring in said yard on May 31, 2010." Plaintiffs' motion, pages 1-2. The court notes that at the liability trial, the magistrate denied the motion.

{¶ 11} Plaintiffs argue that the magistrate placed "great weight on an inaccurate video" and allowed Cole to offer expert testimony. However, there is no dispute that the video recording of the recreation yard is authentic. Although the video recording does not depict the entire recreation yard and has certain limitations, it does have some evidentiary value. Regarding's Cole's testimony, Cole testified concerning her findings following an investigation consisting of witness statements and a review of the video of the recreation yard. It does not appear that the magistrate considered Cole's testimony to be expert in nature. The court agrees with the magistrate's conclusions and the objection shall be overruled.

{¶ 12} Upon review of the DVD recording, the exhibits, the magistrate's decision, and the objections, the court finds that the magistrate has properly determined the

factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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