**[Cite as *Anders v. Dept. of Rehab. & Corr.*, 2014-Ohio-5918.]**

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

TIMOTHY J. ANDERS

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00273

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

**{¶1}** On December 6, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On December 27, 2013, plaintiff filed a memorandum in opposition; however, to the extent that proof of service was not endorsed thereon or separately filed, Civ.R. 5(B)(3) provides that the document "shall not be considered." The motion for summary judgment came before the court for a non-oral hearing pursuant to L.C.C.R. 4(D) on January 3, 2014. On January 10, 2014, defendant filed a motion for leave to file a reply, which is DENIED.

**{¶2}** Civ.R. 56(C) states, in part, as follows:

**{¶3}** "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party

against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

**{¶4}** At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Marion Correctional Institution (MCI). Plaintiff alleges that during his recreation time on the afternoon of August 9, 2012, he sat down on the top row of a set of bleachers in the prison yard to watch a ball game. According to plaintiff, he lost his balance, began to fall backward, and attempted to catch himself by reaching his foot underneath the wooden board that served as the seat for the row in front of him. Plaintiff states that the board was not securely fastened, however, and thus raised up from the force of his foot, and he proceeded to fall off the back of the bleachers and suffer injury. Plaintiff claims that he and other inmates examined the board and found that some of the hardware that should have kept it fastened down was missing.

**{¶5}** Plaintiff's claim sounds in negligence. "To prevail on a negligence claim, a plaintiff must establish that: (1) defendant owed him a duty, (2) defendant breached that duty, and (3) the breach proximately caused his injuries." *Snider v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-965, 2012-Ohio-1665, ¶ 11. "The existence of a duty depends on the foreseeability of the injury." *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). "Generally, a defendant's duty to a plaintiff depends upon the relationship between the parties and the foreseeability of an injury to someone in the plaintiff's position. *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 645 (1992). Injury is foreseeable if the defendant knew or should have known that its act or omission was likely to result in harm to someone." *Aldamen v. Sunburst USA, Inc.*, 10 Dist. No. 08AP-235, 2008-Ohio-5071, ¶ 15.

**{¶6}** "In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from

unreasonable risks." *Woods v. Ohio Dept. of Rehab. & Corr.*, 130 Ohio App.3d 742, 744-745 (10th Dist.1998). "Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances." *Antenori v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 01AP-688 (Dec. 18, 2001). "The state is not an insurer of inmate safety, but, 'once it becomes aware of a dangerous condition it must take reasonable care to prevent injury to the inmate.'" *Forester v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 11AP-366, 2011-Ohio-6296, ¶ 8, quoting *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 02AP-1109, 2003-Ohio-3533, ¶ 20.

**{¶7}** In support of its motion, defendant submitted the affidavit of Steven Brinkley, the Warden's Assistant at MCI. Brinkley avers, in part, that defendant has no record of any incidents involving the bleachers prior to the alleged accident, nor any previously submitted maintenance requests. By way of Brinkley's affidavit, defendant has presented evidence demonstrating that it did not have prior notice of any dangerous condition associated with the bleachers. Plaintiff has not presented evidence tending to controvert Brinkley's averments or to otherwise demonstrate that the condition that allegedly caused his injury could or should have been discovered.

**{¶8}** Moreover, reasonable minds can only conclude that even if defendant had discovered that the seat board was not securely fastened as alleged, the condition did not represent an unreasonable danger to someone using the seat board in an intended or reasonably foreseeable manner inasmuch as it was not likely that someone would lift the seat board up, rather than sit down upon it, and suffer harm as a result.

**{¶9}** Based upon the foregoing, the court concludes that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this

judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH
Judge

cc:

Amy S. Brown
Christopher L. Bagi
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Timothy J. Anders, #583-589
P.O. Box 57
Marion, Ohio 43301-0057

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