

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

JAVELEN WOLFE

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00058

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence arising out of an accident in which he slipped and fell on the premises of the Ross Correctional Institution (RCI) on July 27, 2012. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff, who is imprisoned pursuant to convictions for murder and harassment by inmate, testified that he lived in a cell in Housing Unit 7A at RCI when the accident occurred. Plaintiff stated that it was his habit to clean his cell every morning after he had a chance to go to the restroom and brew some coffee, and that, in keeping with this habit, he walked from his cell to the mop closet around 7:00 a.m. on the day of the accident in order to retrieve supplies for cleaning the cell. Plaintiff stated that once he got the supplies and rounded a corner on his way back to the cell, he slipped on the tile floor near the corrections officers' desk and fell to the ground.

{¶3} Plaintiff testified that while lying on the floor, he observed for the first time a puddle of liquid about the size of a plate, partially covered by his body. Plaintiff acknowledged that he had not been looking down when he fell, but he also stated that normally the lights in that area were only dimly lit at that time of day. According to

plaintiff, the puddle was close to, but not across, the yellow line painted on the floor near the officers' desk which inmates were not allowed to cross. Plaintiff testified that he then asked a corrections officer named Campbell, who was standing at the desk looking at a computer, what was on the floor, and Campbell replied that inmate porters must have recently mopped the floor. Plaintiff, however, testified that he was a porter himself, and that, in his experience, the porters did not mop the floors that early in the morning. Plaintiff also stated that he did not notice any wet floor signs in the area. But, plaintiff admitted that corrections officers normally did not engage in any cleaning at all. In any event, plaintiff testified that Campbell asked him if he wanted to go to the infirmary, but he declined.

{¶4} Plaintiff testified that he then got up and walked back to his cell, but he explained that after being told by another inmate, Michael Gover, that the substance on the floor had been sprayed by a corrections officer, he took a piece of gauze and returned to the scene to sop up some of the substance with the idea that he could have it tested; plaintiff stated, though, that he never had any testing done. According to plaintiff, the substance he wiped up with the gauze had a green color similar to that of the floor tile.

{¶5} Plaintiff recalled that around 12:30 p.m., Campbell came to his cell and told him to go to the infirmary, and handed him a pass to do so. (Plaintiff's Exhibit 11.) Plaintiff testified that when he went to the infirmary, he was examined by Nurse Michael Scott, who prepared a Medical Exam Report in which he recorded treating plaintiff for left knee pain. (Plaintiff's Exhibit 7.) Plaintiff also testified that he returned to the infirmary a few days later as a result of numbness in his left leg. On July 29, 2012, plaintiff submitted two Informal Complaint Resolution (ICR) forms regarding his fall, complaining that Campbell had sprayed the floor and not put out any warning signs, although in one of them he complained that he injured his right knee, not his left.

(Plaintiff's Exhibit 3; Defendant's Exhibit E.) Plaintiff's ICRs were followed by a Notification of Grievance form that he filed on August 14, 2012. (Plaintiff's Exhibit 4.)

{¶6} Plaintiff acknowledged that he weighed about 300 pounds at the time of the fall and had been having some knee pain before the fall. Plaintiff also acknowledged that about one week earlier, he underwent a procedure to drain a scrotal/perineal cyst that had been causing him some ambulatory difficulty, but he stated that he had no difficulty walking by the time the accident occurred. According to plaintiff, he was wearing a pair of sandals at the time, which he said inmates were allowed to wear until 8:00 a.m.

{¶7} Michael Gover, an inmate in defendant's custody and control pursuant to convictions for murder and tampering with evidence, testified by way of deposition that he and plaintiff lived on opposite sides of the upper range in Housing Unit 7 at the time of the accident and that they lifted weights together regularly. Gover testified that after eating breakfast in the chow hall on the day of the accident, he walked back toward his cell around 7:00 a.m. While Gover allowed that it is "very unusual" for a corrections officer to clean a floor, he stated that when he passed through the day room toward the stairs leading to the upper range, he observed a corrections officer whose name he cannot recall using a bottle with a trigger on it to spray some kind of chemical on the floor, a few feet from the officers' desk and about nine or ten feet from Gover's path. According to Gover, the overhead lights in that area were either dim or completely off, and although the floor had a shiny appearance where it was being sprayed, it would have been difficult to discern the actual substance on the floor.

{¶8} Gover recalled that he continued on toward the stairs, where he then passed plaintiff, who had just come down the stairs and was walking in the opposite direction. Gover testified that when he reached the top of the stairs, he looked back down at the bottom range and saw plaintiff lying on the ground in the area where he

had seen the officer spraying the chemical no more than 30 seconds earlier. According to Gover, the officer turned all the lights on at that point.

{¶9} Gover testified that plaintiff came upstairs a short time later, that he told plaintiff about seeing the officer spraying something on the floor, and that plaintiff consequently went to his cell and retrieved a piece of cloth or something similar and went downstairs for a moment. Gover recalled seeing an inmate porter cleaning up the area afterward. Gover testified that he later prepared a written statement at plaintiff's request and prepared a separate statement at the request of the institutional inspector. Gover also testified that plaintiff had a limp after the accident, but he acknowledged that plaintiff had problems with a knee beforehand, and he believes it was the left knee that was problematic both before and after the accident.

{¶10} Rhett Depew, an inmate in defendant's custody and control pursuant to a conviction for murder, testified by way of deposition that he lived in the same housing unit as plaintiff when the accident occurred. Depew testified that he was somewhere outside his cell on the lower range around lunchtime, although he could not recall what he was doing, when he observed a relief officer whose name he does not know use a spray bottle to liberally spray an unknown substance on a roughly six by eight foot section of the tile floor in the vicinity of the officers' desk. According to Depew, the officer only sprayed the floor and did not scrub it or otherwise appear to clean it. Depew testified that from his position about 30 feet away, the substance on the floor was not discernable. Depew also testified that he could not say whether all the lights were on at that time, but that there were always some lights on in that central area of the housing unit.

{¶11} Depew stated that he was still outside his cell five to ten minutes after he witnessed the officer doing this when he heard a noise, glanced over and saw plaintiff lying on the ground, holding his leg and visibly in pain, near the yellow line painted on the floor around the officers' desk. Depew stated that the same officer he had seen

earlier asked plaintiff if he was all right, but plaintiff declined medical treatment and left the area after being helped up off the ground by someone. Depew recalled that an inmate porter was called afterward to clean that area of the floor. Depew stated that he worked as a porter himself and mopped floors in the course of that job, and, according to him, porters usually mopped in that area multiple times every day, during the first and second shifts. Depew also stated that he remembered all the cleaning chemicals being kept inside the officers' desk rather than a closet or box. Finally, Depew testified that at some point after the accident, he prepared a written statement at plaintiff's request.

{¶12} Corrections Officer Anthony Campbell testified that he has been employed with defendant for ten years, and that at the time of the accident he worked at various posts throughout the institution as a "relief officer," a role that entailed working in Housing Unit 7A about once a month. Campbell testified that he worked the first shift, from 6:00 a.m. to 2:00 p.m., in that unit on the day in question and has some recollection of the incident. Campbell stated that he saw plaintiff fall in front of the officers' desk and he then inquired into plaintiff's well-being, but plaintiff did not want to go to the infirmary. Campbell further stated that he looked at the floor and saw that it was wet as if it had been mopped or otherwise cleaned. Campbell testified that he never mops or cleans floors and that there were no cleaning supplies kept at the desk. According to Campbell, inmate porters always clean the floors, and all the cleaning chemicals were kept in a locked box that can only be accessed by a corrections officer. Campbell specifically remembered helping an inmate porter, whose name he could not remember, get a trigger-operated bottle of glass cleaner from the chemical storage locker earlier that morning.

{¶13} Campbell testified that he prepared an incident report afterward (Plaintiff's Exhibit 8) and notified a supervisor, who instructed him to send plaintiff to the infirmary to be examined for injuries. Consequently, Campbell wrote a pass for plaintiff to visit

the infirmary. (Plaintiff's Exhibit 11.) In the incident report, Campbell noted that plaintiff was wearing "shower shoes" and that he told plaintiff it was a violation of institutional rules to wear shower shoes outside of one's cell or the showers. Although the incident report does not refer to the condition of the floor or any inmate porters having cleaned the floor, Campbell explained that he prepared the report immediately after the accident, before anyone had accused him of spraying the floor. Campbell stated that the institutional inspector, in the course of investigating plaintiff's grievance, requested a statement from him. In the statement that he consequently prepared, dated September 18, 2012, Campbell related, among other things, that the floor in that area had been recently cleaned by an inmate porter who first sprayed it with glass cleaner and then mopped it up, and that an orange mop bucket had been sitting on the ground in the immediate vicinity of plaintiff's fall when it occurred. (Plaintiff's Exhibit 9.)

At trial, Campbell also stated that the orange mop bucket has the words 'wet floor' written on it. Finally, Campbell testified that he never saw plaintiff return downstairs with gauze and wipe up any of the substance off the floor.

{¶14} Bryan Smith testified by way of deposition that he has been employed at RCI for 27 years, and since 1993 has served as the Safety Coordinator for the institution, a role that includes monitoring all inspections performed by RCI staff and outside agencies, and investigating inmate and employee injuries. Smith testified that one of the routine inspections under his supervision is a weekly "Fire/Safety/Sanitation" inspection, and he authenticated copies of the inspection reports prepared by Sergeant Harley Hinton in the course of inspecting Housing Unit 7 on the day before the accident, July 26, 2012, as well as on August 2, 2012. (Defendant's Exhibits A, B.) Among the things that Hinton documented in these reports was that "wet floor signage" was being properly utilized and that the floors were clean.

{¶15} Robert Whitten testified that he has worked for defendant since 1991, and since 2002 has served as the Inspector of Institutional Services for RCI. Whitten

stated that his job duties include investigating and responding to inmate grievances, and that he became involved in this matter upon receiving plaintiff's grievance. (Plaintiff's Exhibit 4.) Whitten stated that at that point he initiated an investigation in which he interviewed plaintiff and other witnesses, checked plaintiff's medical records, and checked the aforementioned inspection reports prepared by Sergeant Hinton, and ultimately he issued a written report. (Defendant's Exhibit F.) According to Whitten, plaintiff never mentioned during the investigation that he had supposedly wiped up some of the substance from the floor with gauze, and Whitten never determined what the substance was. Whitten also stated that he was unable to determine the identity of any inmate porter who worked in the relevant area on the morning in question.

{¶16} Whitten authenticated a portion of the RCI Inmate Handbook that addresses inmate dress regulations and appearance. (Defendant's Exhibit G.) The handbook provides, in part, that "[s]hower shoes are only authorized to be worn to and from the shower and in the inmate's cell." Whitten acknowledged, however, that he did not look at the footwear worn by plaintiff when he fell, which plaintiff contends were not "shower shoes."

{¶17} "[I]n order to establish actionable negligence, one seeking recovery must show the existence of a duty, the breach of the duty, and injury resulting proximately therefrom." *Strother v. Hutchinson*, 67 Ohio St.2d 282, 285 (1981); see also *Mayle v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-541, 2010-Ohio-2774, ¶ 16.

"Typically under Ohio law, premises liability is dependent upon the injured person's status as an invitee, licensee, or a trespasser. * * * However, with respect to custodial relationships 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." *Cordell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-749, 2009-Ohio-1555, ¶ 6; see also *Moore v. Ohio Dept. of Rehab. & Corr.*, 89 Ohio App.3d 107, 112 (10th Dist.1993).

“Prison officials are not insurers of an inmate’s safety; however, they generally owe inmates a duty of reasonable care and protection from harm.” *Washington v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-136, 2010-Ohio-4323, ¶ 14. “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. Franklin No. 01AP-688 (Dec. 18, 2001).

{¶18} Upon review of the evidence presented at trial, the magistrate finds that at approximately 7:00 a.m. on July 27, 2012, plaintiff slipped and fell on a wet floor in his housing unit. The magistrate finds, however, that the evidence does not demonstrate that the wet condition of the floor was caused by Corrections Officer Campbell or any other employee of defendant. Campbell testified that he did not spray or clean the floor, he never cleans the floor, he had already helped an inmate porter retrieve cleaning chemicals from storage earlier that morning, and cleaning chemicals are not kept at the officers’ desk. Inmate Gover admitted that it would have been highly unusual for a corrections officer to clean a floor, and inmate Depew, who worked as a porter himself, testified that this particular area of the floor was “mopped several times a day” by inmate porters. (Depew Deposition, p. 24, line 20.) The evidence does not demonstrate any likely reason why Campbell would have sprayed the floor with some unknown chemical, left it on the floor without wiping or rinsing it off, and gone back to his desk. If the floor had needed cleaning, inmate porters were available, as evidenced by the fact that a porter arrived to clean up the scene of plaintiff’s fall soon after it occurred.

{¶19} The magistrate finds that Depew and Gover’s testimony about seeing Campbell spray the floor is inconsistent and lacks credibility. For example, Depew, who is in prison for murder, testified that plaintiff fell five to ten minutes after Campbell supposedly sprayed the floor, whereas Gover, who is in prison for murder and tampering with evidence, testified that the fall occurred no more than 30 seconds

afterward. Furthermore, Gover testified twice that he saw plaintiff fall, but later admitted that he did not see plaintiff fall. (Gover Deposition, p. 8, line 12; p. 13, line 14; p. 18, line 22.) Depew testified that the fall occurred around lunchtime while plaintiff was on his way to use the telephone even though it is clear that plaintiff actually fell around 7:00 a.m. while carrying cleaning supplies to his cell. Depew also testified that all the cleaning chemicals were stored at the officers' desk, even though it is clear from the totality of the evidence that they were actually stored elsewhere in a locked compartment. In short, the magistrate is not persuaded by the testimony of Depew and Gover, who were the only witnesses that claimed to have seen Campbell spray the floor.

{¶20} The magistrate also finds that the evidence does not demonstrate that Campbell or any other employee of defendant knew or should have known of any unreasonable risk associated with the floor. The evidence demonstrates that inmate porters regularly cleaned the floors and were required by defendant to use "wet floor signage" when doing so, and defendant conducted regular inspections to monitor the porters' work and identify potential safety hazards. In this case, the magistrate finds that the evidence does not establish that Campbell was aware that the floor was wet prior to plaintiff's fall, but that even if he had been aware, a mop bucket bearing the words 'wet floor' was situated in the vicinity sufficient to warn those on the premises of any attendant hazard.

{¶21} Based on the foregoing, the magistrate finds that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶22} *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).

ROBERT VAN SCHOYCK
Magistrate

cc:

Mark R. Wilson
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Richard F. Swope
6480 East Main Street, Suite 102
Reynoldsburg, Ohio 43068

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