[Cite as *Hand v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5615.]

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

JEFFREY A. HAND

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2011-07192

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 a November 23, 2010 accident in which he sustained injury while operating a farm tractor at the Grafton Correctional Institution (GCI). The issues of liability and damages were bifurcated and the case proceeded to trial before a magistrate on the issue of liability. The magistrate recommended judgment in favor of defendant. The court adopted the magistrate's decision and rendered judgment accordingly. On October 8, 2013, the Tenth District Court of Appeals issued a decision reversing the judgment and remanding the matter for further proceedings. *See Hand v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-946, 2013-Ohio-4341.

{¶2} Upon remand, the undersigned magistrate was appointed to the case. With the agreement of the parties and the consent of the magistrate, the parties filed briefs and presented oral argument on the issue of liability, whereupon the case was submitted for decision. Having become familiarized with the record of the May 3, 2012 trial on the issue of liability, and not taking into consideration that portion of witness Thomas Thompson's testimony that was determined on appeal to be inadmissible, the magistrate recommends judgment for defendant for the reasons set forth below.

{¶3} Plaintiff testified that he was transferred to GCI in December 2007, and that in approximately May 2008 defendant assigned him to work on the prison farm, where he performed various tasks associated with livestock and field crop operations. Plaintiff stated that on the day of the accident, November 23, 2010, he was tasked with hauling bales of cornstalks out of a field and storing them on another area of the farm. Plaintiff testified that he initially drove to the field with a two-wheel drive tractor pulling a wagon, and that another inmate on a different tractor loaded the bales onto the wagon. According to plaintiff, wet conditions in the field made it difficult for the tractor to maintain traction, so after hauling out a wagonload of bales and dropping them off at the storage site, he drove to the "tractor shed" and swapped out the two-wheel drive model in favor of a four-wheel drive.

{¶4} According to plaintiff, all the tractors at the farm "needed work" for various reasons. With respect to the four-wheel drive John Deere model that he took out of the shed, plaintiff testified that he believed it was from the late 1980s and had a few problems, including problems with the lights and the battery sometimes needing to be charged, but that the only mechanical issue he knew about involved the clutch. Plaintiff explained that engaging the clutch after changing gears tended to cause the tractor to lurch or jerk such that the driver would rock back in the seat, and that there was a degree of "play" with respect to the point at which pressing or letting off the clutch pedal would disengage or engage the clutch, such that the pedal needed to be pressed about halfway to the floorboard before it would operate. Plaintiff stated, though, that this was a long-running issue and that he had operated this tractor hundreds of times and never encountered a major problem. Plaintiff also recalled discussing the issue at some point with Correctional Farm Coordinator Paul Dillon or another staff member.

{¶5} According to plaintiff, when he operated the tractor on the day in question, it performed the same as it always did and nothing indicated to him that he should not operate it. Plaintiff testified that he drove the tractor, pulling the empty wagon behind,

from the shed to State Route 83 and traveled down the highway to pick up more bales of cornstalks at the field. Plaintiff stated that while traveling on State Route 83, he had the tractor in third gear, which he also referred to as "highway gear." Plaintiff stated that when he approached the farm road onto which he needed to make a left turn, he pushed the clutch pedal with his left foot, reduced the throttle with a hand-operated control to the right of the steering wheel rather than the throttle pedal operated by the right foot, downshifted to second gear "right before the turn," and then entered the turn. Plaintiff also stated that he pressed the brake pedal with his right foot in order to slow down a little as he entered the turn, and he estimated his speed to have been about 6 or 7 miles per hour. Plaintiff did not indicate in his testimony whether he had the tractor in four-wheel drive or two-wheel drive mode at this time.

{¶6} Plaintiff testified that during the turn, while still on the paved surface of State Route 83, the tractor lurched into gear and the front wheels raised up so high that the tractor "stood straight up." Plaintiff stated that the tractor proceeded on its rear wheels down the slope from the highway onto the farm road, where it fell over on its left side. Photographs of the accident scene show the tractor swiveled around to its left to the point that it was nearly pointed back at the highway when it tipped over, forming the shape of a jackknife or "V" with the wagon, which remained upright. (Plaintiff's Exhibits 1-15.) Plaintiff stated that he was wearing a seatbelt and that the tractor was equipped with a protective roll bar, but that he sustained a broken right femur. Plaintiff could not remember if he attempted any corrective action during the incident, such as reducing the throttle, braking, or steering.

{¶7} Terry Cradlebaugh testified that at the time of trial he had been incarcerated at GCI for five years, and that he had worked on the farm as an equipment mechanic and operator for a few months leading up to the accident. Cradlebaugh stated that before his incarceration, he worked as a heavy equipment mechanic for more than 25

years, including 15 years working for the city of Akron maintenance department, and that his professional experience included servicing tractors.

{¶8} Cradlebaugh remembered servicing the tractor in question several times, including working on the clutch. According to Cradlebaugh, the clutch on this tractor had a tendency to "engage and disengage," and on several occasions he made adjustments to the clutch to address the problem. Cradlebaugh testified that he felt the tractor was due for a new clutch and pressure plate, and that when he mentioned this to Dillon and possibly another farm employee four or five months before the accident he was told that budget problems had made it difficult to purchase new parts, but he also stated that the concern he raised was about the operability of the tractor, not safety. Cradlebaugh stated that the tractor was placed out of service for a period of time after he raised the issue, but when it was put back in service the problem remained. Cradlebaugh stated that there were about three people who serviced the tractors around the time of the accident, and that he could not say what sort of work others may have performed on this tractor. Cradlebaugh also stated that the last time he worked on the tractor was when he made an adjustment to the clutch in August 2010. According to Cradlebaugh, all the tractors received maintenance checks once a month.

{¶9} Jeffrey Woods testified that at the time of trial he had been incarcerated at GCI for about two years, and that he had worked on the farm at the time of the accident. According to Woods, all the tractors on the farm were "raggedy or beat up" and "junk," but he could not identify any specific problem with the tractor at issue. Woods stated that on a few occasions he helped a mechanic work on some of the tractors, but that he does not know if he ever worked on this particular tractor.

{¶10} Michael Whalen testified that at the time of trial he had been incarcerated at GCI for approximately a year and a half. Whalen stated that he worked on the farm briefly in 2011, but had not worked on the farm or driven any of the tractors prior to the November 23, 2010 accident.

{¶11} Paul Dillon testified that at the time of the accident he worked for defendant as a Correctional Farm Coordinator at GCI, which involved instructing inmates on how to use machinery, raise livestock and field crops, and perform minor maintenance duties. Dillon recalled plaintiff telling him about a clutch needing service at some point prior to the accident. Dillon also allowed that Cradlebaugh may have told him about a clutch problem, but that he cannot remember when or which tractor it involved. Dillon acknowledged that some of the tractors were in need of repair, but he explained that there were limited funds for purchasing parts at that time because the farm was slated to close, and indeed it eventually did close, at which time he transferred to a similar position at the Mansfield Correctional Institution. Still, Dillon stated that when equipment problems were reported to staff, inmates were assigned to perform repairs as the budget would permit, and if necessary he placed equipment out of service.

{¶12} Thomas Thompson testified that he worked as a Correctional Farm Coordinator at GCI from 1997 until the closure of the farm in 2012, at which point he transferred to a corrections officer position. Thompson stated that his former job involved teaching inmates about animal husbandry, equipment operations, and other facets of agriculture. Thompson related that when inmates were assigned to work on the farm, they were given a safety manual to read, they were shown instructional videos, they received first-hand instruction on how to operate equipment, and before they operated equipment themselves they needed to sign a document confirming that they understood how to properly operate it. Thompson stated that plaintiff received such training. Thompson also stated that all inmates assigned to the farm were instructed to report mechanical problems with equipment to staff, and that if they did not feel comfortable or qualified to operate a piece of equipment they were to notify staff and not operate the equipment.

{¶13} Thompson testified that the tractor at issue in this case was a model year 2003 John Deere 5400. According to Thompson, he had operated the tractor and never experienced a problem with the clutch, and no one had reported a problem of any kind about the tractor to him. Thompson recalled that on the day in question plaintiff and other inmates had been assigned to haul recently baled cornstalks from the fields to a central area of the farm for storage. Thompson explained that the wagon plaintiff hauled would hold eight round bales at a time, which were loaded and unloaded by a spear attachment on another tractor or front-end loader. Thompson stated that he was working that day with the inmates who were unloading the bales, and that as soon as he heard about the accident he went to the scene, where several other employees had already arrived.

{¶14} "To recover on a negligence claim, a plaintiff must prove by a preponderance of the evidence (1) that a defendant owed the plaintiff a duty, (2) that a defendant breached that duty, and (3) that the breach of the duty proximately caused a plaintiff's injury." *Ford v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 05AP-357, 2006-Ohio-2531, ¶ 10. "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." *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. "The state's duty of reasonable care does not render it an insurer of inmate safety." *Allen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-619, 2015-Ohio-383, ¶ 17. "Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know." *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16. "Where an inmate also performs labor for the state, the state's duty must be defined in the context of those additional factors which

characterize the particular work performed." *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1186, 2010-Ohio-4737, ¶ 18. "The inmate also bears a responsibility 'to use reasonable care to ensure his own safety.'" *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-941, 2011-Ohio-3314, ¶ 20, quoting *Macklin v. Ohio Dept. of Rehab. & Corr.,* 10th Dist. Franklin No. 01AP-293, 2002-Ohio-5069, ¶ 21.

{¶15} Upon review of the evidence adduced at trial, the magistrate finds that plaintiff did not demonstrate that defendant breached its duty of reasonable care. The magistrate finds that the tractor involved in the accident was about seven years old and had some wear and tear, but as far as mechanical problems were concerned, aside from the battery occasionally needing to be charged in order to start the engine, the evidence established only that there was some variability as to how far the clutch pedal needed to be pushed or released to disengage or engage the clutch, and that when the pedal was released and the gears were engaged the tractor had a tendency to jerk forward such that the driver would rock back in the seat. The magistrate finds that this was an ongoing issue that defendant had notice of insofar as Dillon had been informed of it. However, the magistrate finds that the clutch issue was not shown to have posed an unreasonable risk of harm to those operating the tractor based upon plaintiff's description of the issue as it existed prior to the accident as well as the absence of evidence tending to show that defendant's knowledge of the issue should have alerted defendant to any risk that the issue might lead to something more serious, like the tractor doing what plaintiff claims that it did during the accident.

{¶16} Furthermore, the magistrate finds that defendant took reasonable preventive measures in that it had mechanics periodically adjust the clutch to alleviate the problem, the tractor was placed out of service if necessary until the clutch could be serviced, and the tractor underwent regular maintenance checks. The magistrate finds that while the problem with the clutch remained an ongoing issue, the concerns

Cradlebaugh raised with Dillon were not about safety, but rather simply keeping the tractor operable, and even though plaintiff operated the tractor numerous times he stated that he never experienced any problem more substantial than the tractor jerking when it was put in or out of gear, and that nothing made him think he should not operate the tractor. Accordingly, the magistrate finds that defendant was not shown to have breached its duty to prevent plaintiff from being injured by a dangerous condition about which it knew or should have known.

{¶17} Even if plaintiff had been able to prove that defendant breached its duty of care, the magistrate finds that he failed to establish that the injury he sustained in the accident was proximately caused by any such negligence. Plaintiff argues in his brief that the doctrine of res ipsa loquitur should be applied to impose liability upon defendant, but the magistrate concludes that the doctrine cannot be applied. The doctrine may only be applied where the evidence shows both that "(1) the instrumentality causing the injury was, at the time of the injury, or at the time of the creation of the condition causing the injury, under the exclusive management and control of the defendant, and (2) that the injury occurred under such circumstances that in the ordinary course of events it would not have occurred if ordinary care had been observed." *Wittensoldner v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 13AP-475, 2013-Ohio-5303, ¶ 20.

{¶18} The magistrate finds that the tractor was not under defendant's exclusive control at the time of the injury, as it was being operated by plaintiff, nor was it established beyond a speculative degree what condition caused the accident, let alone that the unknown condition arose when the tractor was in defendant's exclusive control. And, the magistrate finds that it is just as reasonable to infer from the facts that the accident resulted from negligence on the part of plaintiff in his operation of the tractor and wagon—for example, through excessive speed, improper braking, turning at too sharp an angle, failing to lower the throttle and keep it lowered, failing to downshift out

of highway gear, pressing the wrong pedal, or some combination thereof—as it is to infer that the cause was negligence on the part of defendant.

{¶19} More importantly, regardless of any possible negligence on the part of plaintiff, the magistrate finds that any possible negligence by defendant in its handling of the clutch issue was not proven by the greater weight of the evidence to be causally related to the accident, nor did plaintiff otherwise prove, in spite of his general assertions about the tractors being poorly maintained, that any particular act or omission by defendant proximately caused the accident. The effects of the ongoing clutch issue had been consistent and never resulted in anything like the sequence of events plaintiff described as occurring during the accident. Nor was there testimony from a mechanical engineer, accident reconstructionist or anyone else explaining how, if it is assumed that plaintiff had downshifted and was only going six or seven miles per hour with a low throttle and his foot on the brake pedal, and the clutch unintentionally engaged the gears, that this could have caused the tractor to stand straight up on its rear wheels like plaintiff described, spin back around toward the highway, and tip over, which is all the more difficult to understand given that plaintiff stated he was prepared to intentionally put the tractor in gear himself once he completed the turn onto the farm road, which he was just shy of when the accident sequence began. Indeed, even if it is assumed that plaintiff operated the tractor properly and that the accident did result from a mechanical issue, the magistrate finds that the evidence is not sufficient to show that it was the clutch issue as opposed to some other unidentified mechanical issue that defendant did not have notice of.

{¶20} Based upon 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.

{¶21} *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:

James P. Dinsmore
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

Filed May 21, 2015
Sent to S.C. Reporter 1/27/16