

Court of Claims of Ohio

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ZACKARIAH ROBINSON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2012-06041

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action for negligence concerning separate incidents in which he had seizures and fell, first from a top bunk at the Corrections Reception Center (CRC) on March 9, 2012, and again later on a set of stairs at the Ross Correctional Institution (RiCI) on April 22, 2013.

The issues of liability and damages were bifurcated, trial was held on the issue of liability, and the magistrate recommended judgment in favor of plaintiff as to the March 9, 2012 incident only. The court adopted the magistrate's decision and entered judgment accordingly. The case then proceeded to trial on the issue of damages.

{¶2} At the damages trial, plaintiff testified that after going to bed in the upper bunk on the night of March 9, 2012, the next thing he remembers is waking up at some point in the night on the concrete floor to which he had fallen, having vomited and urinated on himself, with corrections officers standing around him and a nurse who worked the third-shift taking his vitals. Plaintiff testified that the nurse administered him his prescription anti-seizure medications and spoke to the officers about switching his bed assignment, but did not take him to the infirmary, and he stayed in his cell the rest of the night.

{¶3} Plaintiff testified that a first-shift nurse came by the next morning and took him to the infirmary, examined him, gave him Tylenol, and increased the dosage of his anti-seizure medications. According to plaintiff, the day after the accident his head, back, and right hip hurt badly, with his pain being 10 on a scale of 1 to 10. A Medical Exam Report from March 12, 2012, reflects that plaintiff was seen on that date by a nurse for complaints of back pain and a bump on the back of his head from the fall. (Plaintiff's Damages Exhibit 2.) Plaintiff stated, though, that he was assigned to the segregation unit throughout this period of time, from about March 8 to 23, 2012, and that while his symptoms remained much the same, with pain like he had never before felt in his life, he did not feel he received adequate medical attention until he was released to the general population.

{¶4} Plaintiff testified that after his release from segregation, his pain had subsided only slightly, to about 8 on a scale of 1 to 10, with his back and right hip being the main issues. According to plaintiff, the pain was still extreme and he was deeply afraid that he may have suffered a permanent neurological deficit. An Informal Complaint Resolution form that plaintiff submitted on March 22, 2012, referred to back and hip problems and a lump on the back of his head. (Plaintiff's Liability Exhibit 2.) Interdisciplinary Progress Notes dated March 28, 2012, appear to show that plaintiff was seen by a nurse on that date with complaints of back and hip pain, rated at 9 and 7, respectively, on a scale of 1 to 10. (Plaintiff's Damages Exhibit 4.) Medical orders written that same date also reflect complaints of back pain and show that plaintiff was prescribed Flexeril, Tylenol, and Naprosyn. (Plaintiff's Damages Exhibit 28.)

{¶5} Plaintiff stated that he recalls being seen by an unknown nurse with a Russian accent twice in those first few days after his release from segregation, and that she scheduled him for an appointment with a physician who worked at the prison, Dr. Ajmal Shamim. Plaintiff recalled Dr. Shamim examining him, performing some tests,

prescribing medication, and ordering x-rays or other diagnostic imaging, and he stated that he eventually did undergo x-rays. Plaintiff testified that not long after his initial visit with Dr. Shamim, he felt a pop in his back as he stood up from a chair, resulting in a sharp lower back pain that prevented him from standing up straight and caused him to return to the infirmary in a wheelchair. Plaintiff stated that Dr. Shamim saw him again and prescribed another medication, as well as bed rest.

{¶6} Plaintiff testified that for quite a while he remained hunched over and could not stand up straight because of the sharp pain in his lower back. On April 22, 2012, plaintiff submitted a Health Services Request form stating “I have a back problem and my legs keep going out. I don’t know whats going on I need some understanding. My lower back still hurts sometimes to the point I lay in all day.” (Plaintiff’s Damages Exhibit 40.) Plaintiff stated that he indeed continued to receive medical attention, seeing nurses, nurse practitioners, and another physician, and that through the use of prescription medication and a “hot and cold cream,” he was able to stand fully upright with only slight pain by the time he was injured in another accident on May 18, 2012, which is discussed below. Medical records show that he was still being seen and treated by medical staff at the prison for his back pain prior to suffering that other accident at least as late as May 2, 2012. (Plaintiff’s Damages Exhibit 18.)

{¶7} Plaintiff explained that on May 18, 2012, he went to the gymnasium to talk to some other inmates because it was one of the only places where they could gather and socialize, and another such place, the library, was closed that day. Plaintiff, who explained that there were no bleachers and that a basketball game was underway, stated that he was standing with his back to the basketball court, talking to another inmate when one of the players accidentally ran into him, causing him to collide with the wall and fall to the ground. According to plaintiff, his lower back hurt and he felt additional pain on his side. Plaintiff testified that he went to the infirmary afterward,

where a nurse examined him and provided some pain medication and muscle cream. The corresponding Medical Exam Report from that visit, which documents plaintiff complaining that his back pain was an 8 on a scale of 1 to 10, states among other things that plaintiff told the nurse he was playing basketball when the accident occurred.

(Plaintiff's Damages Exhibit 1A.) Plaintiff testified, however, that he was not playing basketball, that he never played basketball at CRC, and that he told the nurse the same story he testified to at trial. Plaintiff stated, in fact, that the only athletic activity he engaged in at CRC after falling from the bed was in late summer 2012 after a nurse told him he could walk or jog around the track. Plaintiff further stated that the weather was getting cooler by that time, so he only jogged or walked on a few occasions, generally making one lap around the quarter-mile track, and he no longer jogged after he was transferred to RiCI in October 2012, because there was no track there.

{¶8} Plaintiff testified that at some point in the late spring or early summer of 2012, the medical staff at CRC arranged for him to get a back brace, and he stated that he found it beneficial. Medical records show that plaintiff continued to seek out and be seen by medical personnel at various times that summer for complaints of lower back and right hip pain, and his use of the back brace was documented. (Plaintiff's Damages Exhibits 20-21, 25, 41, 42.) Regarding the back brace, plaintiff explained that he primarily wore it when he laid down in bed, and that whereas his lower back pain was about a 5 or 6 on a scale of 1 to 10 without it, the regular use of the brace brought his pain down to a 1 or 2. Plaintiff went on to explain that by the time he transferred to RiCI, his lower back and right hip pain had subsided to an extent and was more manageable, and his range of motion was improved. Plaintiff also stated, however, that even though the medical staff who interviewed him upon his admission to RiCI did not raise any issue with his back brace, it was later seized by a corrections

officer during a random shakedown on the basis that he had no paperwork showing that it was approved.

{¶9} According to plaintiff, the April 22, 2013 fall down the stairs at RiCI, for which defendant is not liable, resulted in harm that included injuries to his head, shoulder, wrist, side, and lower back. Regarding the back pain, plaintiff stated that he experienced a new, intense kind of pain that radiated from his lower back down to his legs after this fall. Plaintiff stated that before this fall, his back pain had subsided somewhat, such that it was tolerable but still required him to use muscle cream, pain medication, and the back brace, and the main issue remaining by that time was stiffness in the mornings.

{¶10} On cross-examination, plaintiff acknowledged that he tried out for a basketball team at RiCI known as the 7B Tornadoes on May 28, 2013. Plaintiff stated, however, that he had not done anything more than stretching beforehand to prepare for the event, which was essentially an informal pickup game on the outdoor basketball court, and that he was injured almost immediately and therefore had to quit and go to the infirmary. Plaintiff, who stated that he wore his back brace at the tryout, explained that when he jumped up for a rebound, another player collided with him, causing him to fall awkwardly and sustain a wound over his right eye and swelling in his right arm. Plaintiff stated that medical personnel came to the scene. The Medical Exam Report prepared by the nurse who examined plaintiff in the infirmary was admitted as Plaintiff's Damages Exhibit 24.

{¶11} Plaintiff also acknowledged on cross-examination that he was involved in a physical altercation with his cellmate at RiCI in May 2013. According to plaintiff, when he confronted the cellmate about stealing his peanut butter, the cellmate punched him in the eye, at which point he fought back and basically engaged in a prolonged wrestling match with the cellmate. A form prepared by medical personnel at a routine

chronic care appointment on May 30, 2013, includes an apparent reference to the altercation, which is described as having occurred two days earlier. (Defendant's Damages Exhibit A.)

{¶12} Plaintiff testified that he continued to receive treatment for back pain throughout his time at RiCI, as well as at the North Central Correctional Complex, where he was transferred on April 9, 2014. Indeed, medical records include references to plaintiff complaining to the medical staff at RiCI about back pain on August 21, 2013 (Plaintiff's Damages Exhibit 26) and multiple times in March 2014. (Plaintiff's Damages Exhibits 34, 35, 37, 39.) A Musculoskeletal System assessment form, however, dated October 24, 2013, provides that plaintiff complained of back pain associated with yet another fall that had occurred earlier that week. (Plaintiff's Damages Exhibit 27.)

{¶13} According to plaintiff, who stated that he was 24 years old at the time of the March 9, 2012 accident, he still experiences occasional lower back pain, about two or three times a month he experiences a more severe pain that radiates down to the buttocks and legs, and he takes a once-daily prescription pain medication for his back pain. Plaintiff testified that he never had back problems of any kind before the March 9, 2012 accident. Plaintiff acknowledged, though, that while in the custody of the Allen County Sheriff's Department prior to his October 17, 2011 conveyance into defendant's custody, he suffered seizures and fell on two occasions, suffering a cut on his head, a sprained finger and wrist, and a twisted ankle, but he stated that his back was not harmed. Plaintiff testified that he is scheduled to be released in 2020.

{¶14} Ajmal Shamim, M.D. testified by way of deposition.¹ (Plaintiff's Damages Exhibit 1.) Dr. Shamim testified that he is licensed to practice medicine in the state of Ohio and is board-certified in internal medicine. Dr. Shamim stated that he has worked

for defendant since 2010, and that around the time of plaintiff's fall from the bunk at CRC, he was assigned to work at that institution.

{¶15} Dr. Shamim, having reviewed plaintiff's medical records, testified that he was originally scheduled to see plaintiff on March 26, 2012, but for unknown reasons plaintiff did not make the appointment and it was rescheduled for March 29, 2012. According to Dr. Shamim, in the meantime a nurse practitioner saw plaintiff and prescribed him a steroid (Prednisone) and a muscle relaxer (Flexeril). Dr. Shamim testified that when he saw plaintiff on March 29, 2012, plaintiff chiefly complained of back pain, hip pain, and a headache all resulting from his fall out of the bunk. Dr. Shamim testified that plaintiff walked with a hunched back because of the back pain, and looked to be anxious and in pain. Dr. Shamim stated that he thoroughly examined plaintiff, including performing examinations of plaintiff's back and neurological function, and he found significant muscle strain, stiffness, and obvious tenderness in the lumbar and thoracic areas of the spine. Dr. Shamim also stated that plaintiff's right hip had a decreased range of motion and was tender on the lateral aspect. Dr. Shamim testified that, based upon his training and experience, his professional opinion is that the conditions he observed in plaintiff that day were the direct and proximate result of the fall from the bunk. Dr. Shamim stated that he continued the prescription for Prednisone and increased the dosage of Flexeril, and also prescribed Tylenol with codeine for relief of plaintiff's spinal pain. Dr. Shamim related that he also ordered x-rays, which came back as normal, although he stated that x-rays depict boney structures in the body rather than muscles and nerves.

{¶16} Dr. Shamim testified that he also decided to arrange for a follow up visit with plaintiff the next working day, which was Monday, April 2, 2012. According to Dr. Shamim, plaintiff had improved by that time but was still experiencing some pain and

¹The objections raised in the deposition transcript at page 19/line 1, page 21/line 23, and

was hunched over when walking. Dr. Shamim stated that he added an anti-inflammatory (Naprosyn) and a pain medication (Ultram) to plaintiff's regimen, but stopped the codeine because plaintiff complained that it made him drowsy. Dr. Shamim testified that he saw plaintiff again the following day, April 3, 2012, for an emergency situation that occurred when plaintiff attempted to stand up from a chair and felt a pop in his back, which was followed by numbness in the legs that caused plaintiff to complain that he feared he was paralyzed. Dr. Shamim stated that when he saw plaintiff, plaintiff was hunched over, crying, and appeared as if he were having a panic attack. Dr. Shamim stated that he decided to admit plaintiff to the infirmary for observation. Interdisciplinary Progress Notes dated April 3, 2012, correspond to the examination, and Physician's Orders from that same date document plaintiff's admission to the infirmary. (Plaintiff's Damages Exhibits 13, 29.) Nursing notes from plaintiff's stay in the infirmary were admitted as Plaintiff's Damages Exhibit 43. Dr. Shamim testified that plaintiff was discharged from the infirmary on April 4, 2012, and that although plaintiff was in much better condition by that point, he still walked with a slight hunch. Interdisciplinary Progress Notes corresponding to plaintiff's discharge from the infirmary were admitted as Plaintiff's Damages Exhibits 14.

{¶17} Dr. Shamim recalled seeing plaintiff one more time for a routine chronic care appointment related to plaintiff's history of seizures, at which time plaintiff was still hunched over to some degree and complained of back pain, and Dr. Shamim stated that he instructed plaintiff to perform some range of motion exercises, and also told him to try to stand up straight. A Chronic Care Clinic Follow-Up form, as well as physician's orders, all dated April 10, 2012, indicate that it was on that date when Dr. Shamim saw plaintiff, and that plaintiff complained of back pain at that time. (Plaintiff's Damages Exhibits 7, 30-31.) Dr. Shamim testified that he never had any further contact with

plaintiff after the chronic care appointment, but that the medical records show that other medical staff at CRC continued to see plaintiff for complaints of back pain, and it was recommended to plaintiff that he take Naprosyn and Ibuprofen as needed. Indeed, records show that plaintiff complained of back pain to the medical staff at CRC on a few more occasions prior to the May 18, 2012 accident in the gymnasium, including April 26, 2012 (Plaintiff's Damages Exhibit 12), April 30, 2012 (Plaintiff's Damages Exhibit 8), and May 2, 2012 (Plaintiff's Damages Exhibit 18). Regarding the May 18, 2012 accident in the gymnasium, Dr. Shamim testified that he could not causally relate any harm plaintiff suffered in that accident to the injuries plaintiff sustained in the fall from the bunk.

{¶18} Based on the totality of the evidence, the magistrate finds that plaintiff's fall from the upper bunk bed to the concrete floor at CRC on March 9, 2012, caused him to sustain a painful wound to the back of his head, as well as soft tissue injuries in his lower back and right hip resulting in severe pain. The magistrate finds that prison nursing staff treated plaintiff at the scene and provided some additional treatment in the days following, but that he was still in severe pain and could not stand up straight by the time he was released from the segregation unit on or about March 23, 2012.

{¶19} The magistrate finds that after plaintiff was released from segregation, he sought and received further medical attention for his injuries, which were clearly substantiated in the medical records associated with his treatment. The magistrate finds that a nurse practitioner prescribed plaintiff a steroid and a muscle relaxer on March 28, 2012, one day before plaintiff was seen by Dr. Shamim, whose examination revealed significant muscle strain, stiffness, and obvious tenderness in the lumbar and thoracic sections of the spine, as well as tenderness and decreased range of motion in the right hip, all caused by the fall. Dr. Shamim increased the dosage of the muscle relaxer, continued the steroid prescription, and also prescribed Tylenol with codeine for

pain relief, and he was concerned enough that he arranged for a follow-up examination the next day.

{¶20} The magistrate finds that plaintiff suffered an aggravation of the original lower back injury on April 3, 2012, while attempting to get up from a seated position, causing extreme pain to the point that his legs were numb, he feared he might be paralyzed, and, as Dr. Shamim recalled, he was in a state of panic. The magistrate finds that Dr. Shamim admitted plaintiff to the infirmary for observation, and although he improved such that he was discharged the next day, there remained a sharp pain in his lower back, his physical activity remained limited in accordance with the instructions of his medical providers, and he continued to complain to medical staff and receive treatment into May 2012.

{¶21} The magistrate finds that by May 2012, plaintiff's head wound was healed, his right hip had improved greatly to the point that it was healed or nearly healed, and his lower back was improving with rest, medication, and physical therapy exercises, but still caused him some pain. The magistrate finds that while plaintiff's lower back injury was temporary in nature, his pain and suffering were heightened and prolonged by the aggravation he suffered on April 3, 2012. The magistrate finds that this aggravation was a natural consequence of the lower back injury he suffered in the fall from the bed and would not have occurred absent that impairment, such that it proximately resulted from defendant's act of negligence.

{¶22} In contrast, with respect to the May 18, 2012 accident in the gymnasium, the magistrate accepts plaintiff's version of events but finds that defendant is not liable for the harm that followed. Rather, the magistrate finds that any harm resulting from this accident was directly and proximately caused by plaintiff's intervening negligence in standing next to the basketball court with his back to the game and not paying attention.

Moreover, while plaintiff characterizes his injuries from this accident as the normal

sequela of the original back injury, the nature of this accident was that a basketball player running about the court collided into plaintiff's blind side, sending him into a wall and then the floor with such force that he would have been injured regardless of his original back injury, and indeed it caused a new and distinct injury to his side in addition to back pain.

{¶23} Similarly, the magistrate finds that defendant's liability does not extend to any back pain or other harm plaintiff suffered from his fall down the stairs at RiCI on April 22, 2013, nor to the back pain that he claims to still suffer from at present. In short, the magistrate finds that the injuries plaintiff sustained as a proximate result of defendant's negligence amounted to temporary, soft-tissue injuries only, and that while he was caused to suffer great pain and suffering for several weeks in March and April 2012, especially in his lower back, it is clear that by the time he was independently injured in the May 18, 2012 accident in the gymnasium, breaking the sequence of causation, his condition was greatly improved such that he could stand up straight, his pain had diminished, and he no longer required the frequent medical attention he had received earlier. The magistrate finds that to attribute any pain suffered by plaintiff after the May 18, 2012 accident is speculative, and therefore no damages may be had for that time onward.

{¶24} Finally, the magistrate finds that there is no evidence that plaintiff, having been in defendant's custody at all times relevant, incurred any medical expenses.

{¶25} Based upon the totality of the evidence, the court finds that plaintiff is entitled to recover damages for past pain and suffering in the amount of \$8,500. Accordingly, it is recommended that judgment be entered for plaintiff in that amount.

{¶26} *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

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Filed April 10, 2015
Sent to S.C. Reporter 2/3/16