

[Cite as *Israfil v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5643.]

MUMIN ISRAFIL

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00720

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brought this action alleging that when he left his room to exercise in a hallway at the Franklin Medical Center (FMC) on the evening of February 15, 2013, a corrections officer pushed his wheelchair back in the room in a negligent manner such that he struck the door and was injured. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At trial, plaintiff testified that he was transported from the Toledo Correctional Institution (ToCI) to FMC earlier in February 2013 in order to receive medical attention for chronic lower back pain, neck pain, and ambulatory difficulty that had led to his use of a wheelchair. Plaintiff stated that a nurse at FMC informed him not long before the incident at issue in this case that a physician at the facility had ordered that he should try to walk with the aid of a walker in the hallway outside his room for exercise.

{¶3} Plaintiff testified that he exercised in the hallway at least once after the discussion with the nurse, and it seemed from his testimony that this occurred earlier in the day on February 15, 2013, several hours before the incident. As plaintiff explained, he did not feel like he could walk at that point, but he wanted to at least exercise his arms by rolling his wheelchair along the hallway. Plaintiff stated that a white male

corrections officer with a bald head, whose name he did not know, had been on duty in the hallway while he exercised, and he told that officer about the doctor's order. Plaintiff explained that the corrections officers' desk was situated nearby, across the hallway from his room.

{¶4} Plaintiff stated that when he came out of his room later that day to exercise again in the hallway, the officer who had been posted at the desk earlier was down the hallway and there were two different corrections officers at the desk. Plaintiff did not know the names of those officers, but it was established at trial that they were Corrections Officers Candace Jordan and Marvin Stanback.

{¶5} Plaintiff testified that when he started wheeling himself out of his room and told Jordan and Stanback that he wanted to exercise, Jordan told him "no." Plaintiff stated that he told Jordan he had a doctor's order to exercise, and that he then turned to say something to the unknown officer down the hallway who knew about it, at which point Jordan told him "don't do that." Plaintiff testified that he told Jordan to hold on for a moment while he went and got his walker out of his room, at which time Stanback got up and said "get your ass in there," and then abruptly shoved the wheelchair, with plaintiff still seated in it, back in the room. Plaintiff stated that Stanback pushed the wheelchair hard enough that he thought he was going to come out of the chair, and that he collided with the door as Stanback pushed him back in the room such that the door struck his left shoulder, arm, and hand. Plaintiff stated that his hand had been resting on the left rear wheel, as that was how he could propel and steer the chair, and his hand was apparently pinched between the door and the wheel.

{¶6} Plaintiff testified that once back in the room, he was helped out of the wheelchair and onto his bed by one of his roommates, an inmate with the last name of Beauchamp. Plaintiff stated that after he got into his bed, he pulled the cord on an alert device to signal that he needed medical assistance, and soon after he saw a female corrections officer and a black female nurse at the door looking into the room, he

overheard a remark to the effect that he was fine and did not need help, and it appeared that the officer deterred the nurse from entering the room. Plaintiff stated that the door was eventually opened later on and someone asked him what was going on, and he could see a male officer through the door shaking his head as if to signal that plaintiff should not say anything. Plaintiff testified that he said he was hurt and needed help and was told that someone would be back to see him, apparently after the shift change that evening, but he never received medical attention that night.

{¶7} Plaintiff testified that two days later, on February 17, 2013, he submitted a Notification of Grievance form to the Inspector of FMC, Michelle Silvus. (Plaintiff's Exhibit 1.) Plaintiff complained therein of pain and stiffness that he attributed to his body being jerked violently in the incident, and he also reported that his left arm had been pinched between the door and the wheelchair, and he noted that he had not received medical attention for these complaints. Plaintiff testified that neither Silvus nor any other FMC officials spoke with him about his grievance or in connection with any investigation.

{¶8} Plaintiff testified that he remained at FMC for a week or two after the incident occurred, but did not speak with any of the medical staff there about what happened. According to plaintiff, he did discuss his injuries with some of the medical professionals at ToCI. Plaintiff stated in particular that after experiencing pain in his left hand for an extended period of time, he began to notice swelling and pus in one of the fingers, so he decided he needed to be examined and he consequently saw a nurse in the infirmary on April 10, 2013. Plaintiff stated that the nurse swabbed the affected area and took a culture sample to be sent out for lab work. Plaintiff offered a medical record, specifically a "Skin Complaints" form, out of his inmate medical file corresponding to this visit. (Plaintiff's Exhibit 9.) Plaintiff also testified that he talked to the Health Care Administrator at ToCI, a Mr. Burken, about his injuries on or about March 14, 2013.

{¶9} Corrections Officer Marvin Stanback testified that he has been employed with defendant since 1994, and he explained that what is now known as FMC “Zone A,” where the incident at issue in this case occurred, was formerly known as the Corrections Medical Center (CMC) until approximately 2012. Stanback testified that all the inmates housed in FMC Zone A have medical issues, and many of the inmates are wheelchair bound.

{¶10} Stanback testified that he normally works during the first shift as a clinic escort officer, escorting inmates to and from the clinic for medical appointments, often by wheelchair. Stanback stated that the shift hours changed slightly at some point and he could not recall when, but that the hours of the first shift during the time in question were either 6:30 a.m. to 2:30 p.m., or 7:00 a.m. to 3:00 p.m. According to Stanback, on the day this incident occurred, he had worked his normal first shift assignment and then worked overtime during the second shift, which ran from either 2:30 p.m. to 10:30 p.m. or 3:00 p.m. to 11:00 p.m. Stanback stated that during the second shift he had been assigned to the food service or visitation departments or some other area of the facility that closed during the evening hours, and he thus no longer needed to remain there. Stanback testified that he found out that Corrections Officer Jordan had gone to the third floor to relieve another officer who was on a break, so he decided to go up and check on her.

{¶11} Stanback recalled that around 8:00 p.m., while he was at the desk on the third floor with Jordan, plaintiff opened his door and wheeled himself out into the hallway. According to Stanback, plaintiff told Jordan that he wanted to wheel himself up and down the hallway for exercise and explained to Jordan that he had an a doctor’s order authorizing him to do so. Stanback testified that Jordan told plaintiff to go back in his room, however, and explained to plaintiff that she was just filling in briefly for another officer who was on break and that she would apprise that officer of the matter as soon as he returned. As Stanback recalled, the last name of the other officer was Vastine.

{¶12} Stanback testified that Jordan ordered plaintiff to go back inside his room several times, but that he did not do so, and eventually, after Stanback also ordered plaintiff back in the room, plaintiff told Stanback to put him back in. Stanback stated that he then walked over and, using the handles of the wheelchair, guided plaintiff back into the room. Stanback stated that the door, which opened out into the hallway, was held open by his foot as he pushed the chair and he did not see the door make contact with plaintiff. Stanback, who stated that the door was metal and about four feet wide, also stated that the doorway was wide enough to fit a hospital bed through it, and he recalled that the door closed on its own after he pushed plaintiff back into the room. Stanback testified that he had no further interaction with plaintiff and that, from the point when plaintiff went back in the room, he does not recall Jordan doing anything other than sitting at the desk. According to Stanback, he and Jordan did not remain at the desk much longer, and he has no recollection about plaintiff activating the alert system to summon a nurse. Stanback stated that he did not prepare a report of any kind because this incident seemed fairly routine to him and plaintiff had not acted in a threatening manner or otherwise done anything serious enough that would warrant charging him with a rules infraction.

{¶13} Candace Jordan testified that she was employed with defendant from 1999 to 2015, serving nearly all that time as a corrections officer at FMC and CMC. Jordan stated that she normally worked the first shift, which she said was 6:30 a.m. to 2:30 p.m. at that time. Jordan stated that on the day in question, in addition to her regular shift, she also worked overtime during the second shift, from 2:30 p.m. to 10:30 p.m. Jordan's recollection was that the incident with plaintiff occurred around the beginning of the second shift that day, when she came to temporarily relieve an officer on the third floor. Jones stated that the third floor housed inmates who, for the most part, were expected to be at FMC for a short time.

{¶14} Jordan stated that it was her responsibility to make sure that the floor was secure when she was on duty there. According to Jordan, soon after she got to the desk she observed plaintiff in his wheelchair outside his room. Jordan testified that she told plaintiff to return to his room, but he did not do so and instead tried to explain something to her, but she is not sure what he was talking about. Jordan stated that after she and Stanback each gave plaintiff a direct order to return to his cell, he said “put me in.” Jordan testified that Stanback, who was at the desk with her at this time, then walked over and put his hands on the handles of the wheelchair, he opened the door further and held it open with his shoulder, and he pushed the wheelchair back into the room. Jordan related that she did not see any part of plaintiff’s body hit the door or the door jamb, and there appeared to be nothing out of the ordinary in the way that Stanback had wheeled plaintiff back into the room. Jordan stated that she does not know whether Stanback completely shut the door after putting plaintiff back in the room, nor whether Stanback locked the door, but she stated that the doors to the inmates’ rooms in this hallway were generally kept unlocked until about 10:30 p.m.

{¶15} According to Jordan, plaintiff did not make any complaints to her about what happened, she has no knowledge of plaintiff pushing the call button in his room to request medical assistance, and she denied any suggestion that she deterred or prevented medical staff from seeing plaintiff afterward. Jordan stated that she did not fill out a report of any kind because she did not think that anything out of the ordinary had taken place. Jordan also stated that plaintiff did not threaten anyone and he was essentially compliant in that he submitted to being wheeled back in the room.

{¶16} Michelle Silvus testified that she has been employed with defendant since 1998, and that she served as the Inspector/Investigator for FMC during the time period at issue in this case. Silvus stated that under defendant’s inmate grievance system, an inmate is supposed to first submit an Informal Complaint Resolution form, and once the prison employee or official to whom the complaint is submitted has had an opportunity

to respond, the inmate may file a Notification of Grievance form, which is sent to the institutional inspector for investigation. According to Silvus, when she received plaintiff's Notification of Grievance, dated February 17, 2013 (Plaintiff's Exhibit 1), she obtained and reviewed the digital video recording from a security camera positioned in the hallway near plaintiff's room. Silvus explained that attempts during the course of this litigation to copy the digital recording directly onto a DVD were not successful, but that she was nevertheless able to make a copy by using a video camera to record the video as it appeared on her computer monitor, and at trial Silvus authenticated a DVD copy of that recording. (Joint Exhibit A.) Silvus stated that, as she recalls, plaintiff had returned to ToCI before she had an opportunity to interview him in the course of her investigation, but she did interview Jordan and Stanback, and she also spoke with one of plaintiff's roommates. Silvus testified that as a result of her investigation, she issued a Disposition of Grievance on March 7, 2013, as well as a separate report to the warden issued that same day. (Plaintiff's Exhibits 2, 3.)

{¶17} As previously stated, plaintiff brought this action asserting a claim of negligence. "To prevail in a negligence action, the plaintiff must show (1) the existence of a duty, (2) a breach of that duty, and (3) an injury proximately resulting from the breach." *Price v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9, quoting *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶ 21. "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 care' is the degree of caution and foresight that an ordinary prudent person would employ in similar circumstances." *Taylor v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15. "The state, however, is not an insurer of inmate safety and owes the duty of ordinary care only to inmates who are

foreseeably at risk.” *Franks v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-442, 2013-Ohio-1519, ¶ 17.

{¶18} Upon review of the evidence presented at trial, the magistrate finds as follows. Defendant temporarily transferred plaintiff from ToCI to FMC in order for him to receive medical attention related to back and neck problems and a related ambulatory impairment that led to him using a wheelchair. The medical staff at FMC instructed plaintiff to exercise by ambulating in the hallway outside his room. On February 15, 2013, at approximately 8:00 p.m., plaintiff opened the door of his room and rolled his wheelchair into the hallway. Corrections Officers Jordan and Stanback were seated at a desk situated nearby on the opposite side of the hallway. Jordan was at the desk temporarily relieving the officer assigned to the desk that shift, Corrections Officer Vastine, who had gone to take a break, and Stanback had stopped by to check on Jordan. Jordan and Stanback had each been on duty since approximately 6:30 a.m., having worked a double shift.

{¶19} Plaintiff told Jordan and Stanback that he wanted to roll his wheelchair along the hallway for exercise and that he had a doctor’s order allowing him to exercise there. Jordan told plaintiff to go back in his room and wait for Vastine to return. Plaintiff did not go back in his room, despite receiving direct orders from the officers to do so. Eventually, Stanback got out of his chair, walked over and grabbed the handles of the wheelchair, turned the wheelchair to its left to directly face the doorway, and pushed the wheelchair inside the room.

{¶20} Plaintiff’s left arm was hanging over the left side of the wheelchair when it was maneuvered by Stanback, and when Stanback swung the wheelchair to its left he caused plaintiff’s left arm and side to impact the large metal door to the room, which was opened out into the hallway at that point, and plaintiff’s left hand and fingers were pinched between the chair and the door. As evidenced by plaintiff’s testimony and the footage from the security camera, Stanback’s maneuvering of the chair was unduly



abrupt and forceful. Stanback shifted his body weight first onto his left foot when he turned the wheelchair to face the doorway, and he leaned his body weight forward when he pushed the wheelchair and let go of the handles as it rolled into the room. The security camera footage shows plaintiff's upper body being jerked suddenly as Stanback maneuvered the wheelchair, and it substantially corroborates plaintiff's account of the incident.

{¶21} Both Jordan and Stanback testified that they did not notice any contact with the door or anything else unusual about the incident, but aspects of their testimony cast doubt upon their recollections. For example, while each of them testified that they remembered in considerable detail how Stanback carefully held the door open and guided the wheelchair, it is curious that neither of them had any recollection whatsoever of Jordan getting up from the desk and securing the door after Stanback pushed plaintiff's wheelchair back in the room, yet the security camera footage shows that Jordan did so almost immediately afterward, this in spite of her testimony that the doors were generally supposed to remain unlocked until about the end of the second shift.

{¶22} The magistrate finds that Stanback did not intend for plaintiff or the wheelchair to strike the door, nor did Stanback otherwise intend any physical harm to plaintiff. And, under the circumstances in which plaintiff failed to obey direct orders to return to his room, Stanback was justified in moving plaintiff's wheelchair back in the room to secure his compliance with those orders. Nevertheless, plaintiff remained calm and did not threaten anyone's safety, and the circumstances do not attach any justification or privilege to Stanback's unduly rough and forceful movement of the wheelchair and his causing plaintiff to collide with the door. Rather, the totality of the evidence demonstrates that Stanback's actions amounted to negligence, as he failed to exercise reasonable care in moving the wheelchair. As a result of that negligence, plaintiff's left arm and hand struck the door and were pinched between the door and wheelchair, and plaintiff—who was at FMC for back and neck problems—was also

abruptly jerked about in the wheelchair. For purposes of the liability phase of the trial it was sufficiently shown that plaintiff consequently sustained some harm, and the sole proximate cause of that harm was Stanback's negligence.

{¶23} Based on the foregoing, the magistrate finds that plaintiff proved his claim of negligence by a preponderance of the evidence. Accordingly, judgment is recommended in favor plaintiff.

{¶24} *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).*

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ROBERT VAN SCHOYCK  
Magistrate

cc:

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

Timothy M. Miller  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

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