

[Cite as *Woodrow v. Ohio Dept. of Rehab. & Corr.*, 2015-Ohio-5657.]

JERRY D. WOODROW

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00471

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action for negligence arising out of an accident in which he fell and was injured while adjusting a window at the Chillicothe Correctional Institution (CCI) on July 21, 2013. Plaintiff was an inmate in defendant's custody and control at the time, but has since been released. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff testified that the accident occurred at a point in time when he was assigned to a cell in the segregation unit at CCI, where he had been given a work assignment to serve as a range porter. As plaintiff explained, a range porter was responsible for certain tasks only on the range where he lived, such as passing out food trays and cleaning, as opposed to a floor porter, who had the ability to move and work more freely throughout the unit. Plaintiff testified that on the day in question, he finished his shift as a range porter somewhere around 7:00 p.m. and asked Corrections Officer Michael Hall for assistance in putting away the cleaning supplies that he had been using. As plaintiff explained, normally a floor porter would come take the supplies from him and put them away because he was not supposed to leave his range, but on this occasion Hall told him he had permission to put the supplies away himself. As plaintiff recalled, in addition to Hall, there were a couple of other officers in the unit at that time who were engaged in helping some inmates either move in or move out of the unit.

Plaintiff recounted that Hall opened up a gate to let him into the storage area, and as he returned Hall told him to go up on top of a recreation cage located in the housing unit and retrieve a book that had been thrown or dropped atop the cage, which is basically a rectangular space enclosed in heavy-gauge wire mesh, situated between the outer masonry wall of the unit and a block of cells.

{¶3} According to plaintiff, he initially declined Hall's request because he wanted to have enough time to get back to his cell and write a letter before the lights were turned off for the night. Plaintiff also testified that when he was not performing his duties as a range porter, he was supposed to be in his cell. Plaintiff testified that he started to walk away then, but Hall became aggravated and told him that it was a "direct order" that he retrieve the book, and that if he wanted to keep his job as a range porter he should comply, and, as plaintiff explained, he feared that if he did not do as Hall said he could be issued a ticket charging him with a rules violation for failing to comply with a direct order. Plaintiff stated that he asked Hall how he was supposed to get on top of the cage, and that Hall told him to step up on some milk crates that were nearby; a photograph of the cage admitted into evidence depicts the milk crates stacked up against the cage. (Plaintiff's Exhibit 1; Defendant's Exhibit A-2.) According to plaintiff, Hall at this point told him that once he got on top of the cage, he should also open a window that was supposed to be operable by a mechanical crankshaft system accessible from the ground floor, but as plaintiff explained the system was in some disrepair and would not open all of the windows; plaintiff also stated that he had never seen any maintenance performed on the system. According to plaintiff, it had been hot that day, inmates were complaining about the high temperature inside the housing unit, and Hall, who plaintiff recalled had been busy a little earlier letting inmates in and out of the showers, was visibly sweating and had also been complaining about the heat.

{¶4} Plaintiff testified that he asked Hall how to reach the windows and that Hall told him to climb on the metal pipes that ran along the wall. As depicted in photographs

authenticated by plaintiff, along the outer masonry wall there are several columns of windows spanning nearly the entire height of the building and within each column are four middle-hung windows, which, when swung open, point in at the top and out at the bottom; the recreation cage bordered the wall, and, on the other side of the recreation cage, separated from the wall by the width of the recreation cage, are three ranges of cells, the bottom range being on the ground floor adjacent to the cage, the middle range being level with the top of the recreation cage, and the top range being positioned several feet higher than the top of the recreation cage. (Plaintiff's Exhibits 1-4.) Plaintiff testified that once he got on top of the recreation cage, he climbed up along the wall like Hall told him to and opened up one of the windows on the second-highest tier, but when he started to climb down he slipped and fell backward onto the top of the recreation cage, a fall of about ten feet in his estimation.

{¶5} Plaintiff testified that the next thing he can remember was another inmate, who had climbed on top of the recreation cage, touching him on the arm and trying to help him get up. Plaintiff recounted that his vision was badly blurred, he was bleeding from a wound on his right arm, he vomited, his back hurt, and it took the assistance of two inmates and a corrections officer to help get him down from the top of the recreation cage. Plaintiff stated that once they got him down, they put him in a chair and wrapped a towel around his right arm to stop the bleeding. Plaintiff stated that a nurse arrived and examined him, and she told him that he needed to go to the infirmary to get a tetanus shot due to the wound on his arm, and she also informed him that he had a knot on the back of his head. Plaintiff also stated that the nurse asked Hall if plaintiff was supposed to be up on top of the recreation cage where the accident occurred, and that Hall lowered his head and said nothing. According to plaintiff, he was placed in restraints and transported to the infirmary in a rolling office chair. Plaintiff stated that he received pain medication and other treatment at the infirmary and a nurse prepared a Medical Exam Report, and he then returned to his cell. (Plaintiff's Exhibit 7.)

{¶6} Plaintiff stated that Hall presented him with an Inmate Accident Report after he returned and asked him to write a statement. (Plaintiff's Exhibit 6.) Plaintiff wrote the following: "He had me get book and open windows and I feel [sic] on to metal cage." According to plaintiff, Hall then asked if that was really what he wanted to write, and Hall also said "You're going to do me like that?"

{¶7} Plaintiff recalled that he had a headache all night, vomited, and could not sleep, and that he received further medical attention from the prison medical staff the next day in response to his complaints.

{¶8} Inmate Larry Ayers testified by way of deposition.¹ Ayers testified that he had been living in the segregation unit for a month or two when the accident occurred and began working as a range porter about one week before the accident. Ayers related that inmates living on the upper ranges of the unit routinely threw objects onto the top of the recreation cage, and porters climbed atop the cage nearly every day to retrieve the objects, and he added that the inmates on the upper ranges acted deliberately in some instances to try and lure a porter to climb atop the cage in order to douse him with urine or spoiled milk.

{¶9} Ayers also related that the mechanical system for opening the windows did not work well and that inmates, usually porters, were sent to climb atop the recreation cage at times to open or close windows. According to Ayers, the way that inmates got on top of the recreation cage was to climb up from a cart or a stack of milk crates, and once on top of the cage they would climb up on metal bars that were part of the mechanical system with which the windows were supposed to be able to be adjusted, but which was only semi-functional. Ayers stated that he was never ordered to adjust the windows, but that he had observed staff order other porters to do so, and he also stated that, while he had left his range to retrieve some laundry when this accident took place, as a range porter he normally was not outside his range or otherwise in a position

¹The objections raised in the deposition transcript at pages 11 and 23 are OVERRULED.

where he would be asked to climb atop the recreation cage for any reason. Ayers also stated that inmates were not supposed to be up there without permission, and getting caught up there without permission was an offense that could result in losing the work assignment. Ayers stated that he was not aware of an inmate ever going on top of the recreation cage to open or close windows without being ordered to do so by a staff member. Ayers also explained that a work assignment as a porter was desirable because inmates in the segregation unit were confined nearly all day in their cells, but porters could be out of their cells while they worked.

{¶10} Ayers testified that on the evening when the accident occurred, it was cold inside the segregation unit and inmates were yelling about it. Ayers stated that he was tending to some laundry on the ground floor next to the recreation cage when he saw plaintiff get up on top of the cage. Ayers recalled that plaintiff was wearing flip-flops and looked like he had just showered. Ayers stated that he watched plaintiff climb up to reach a window, reaching a point to where his feet were at least eight feet above the top of the recreation cage. According to Ayers, a number of the inmates who could see plaintiff from their cells got stirred up and hollered at him, for as Ayers explained, there is little interaction or excitement in the segregation unit and something like this normally drew a lot of attention.

{¶11} Ayers stated that he was busy with the laundry and was not looking at plaintiff when the fall occurred, but he heard the impact and, looking up through the wire mesh, he saw plaintiff lying on top of the recreation cage. According to Ayers, plaintiff had blood on his elbow and a lump on the back of his head, and he complained that his back hurt. Ayers testified that there were three corrections officers on duty in the unit at that time, and some or all of them came running over, as did other porters. Ayers related that the officers told him and the other porters to go up and help plaintiff down to the ground, and after they had done so, the officers ordered all the porters into their cells and locked down the unit. Ayers explained that his cell was on the opposite side of

the block from where this occurred and he could not see anything that happened once inside his cell.

{¶12} Inmate William Devinney testified by way of deposition.² Devinney testified that his cell was next to plaintiff's, on the bottom range of the unit, facing the middle of the recreation cage. Devinney recalled that he had been assigned to the segregation unit since March 9, 2013, and on several occasions he observed inmates climb up on top of the cage to retrieve debris, such as toilet paper, that had been thrown down there by inmates on the top range. Devinney also recalled seeing inmates climb up from the top of the cage and open or close windows when temperatures in the unit, which was not air-conditioned, became hot or cold, or when there was heavy rain, but he stated that this practice stopped after plaintiff's accident and that the windows were left open for the rest of the time he was in the unit that summer. Devinney explained that the mechanical system for adjusting the array of windows along the wall did not work properly and some of them could only be adjusted manually. Devinney remembered that it was hot on the evening when the accident occurred, and he also recounted that one of the corrections officers who regularly worked in the unit would walk around sometimes at night with a thermal scanner and measure the temperature.

{¶13} Devinney stated that on the night of the accident he heard a male corrections officer who appeared to be in his mid-thirties and who regularly worked the second shift ask plaintiff to climb up onto the cage. Devinney stated that at first he could not see plaintiff or the officer, but that he could hear what was said. Devinney further stated that after plaintiff got on top of the cage the officer asked him to climb up farther and open a window, and when plaintiff asked in response whether he was allowed to be up that far the officer told him to just do it. Devinney testified that he was able to see plaintiff at that time, standing on top of the cage, and he also saw plaintiff walk across the top of the cage toward the window in question and start climbing up to

²The objection raised in the deposition transcript at page 16 is OVERRULED.

reach it. According to Devinney, plaintiff got high enough along the wall that he could no longer see plaintiff.

{¶14} Devinney stated that plaintiff must have been 10 to 12 feet above the top of the recreation cage when he fell, and he stated that plaintiff yelled when he landed on his back. According to Devinney, he saw the same corrections officer who had been directing plaintiff now standing at the end of the cage telling plaintiff to climb down; Devinney estimated that there were two to four officers total working in the unit at that time. Devinney stated that he thought one or more inmates as well as medical personnel helped plaintiff down to the ground, and he estimated that it had taken about two or three minutes for the medical personnel to arrive. Devinney recalled that plaintiff returned to his cell approximately two hours later.

{¶15} Inmate Timmy Estle testified by way of deposition.³ Estle testified that from his cell on the middle range of the housing unit, he observed plaintiff climb up toward one of the uppermost windows to adjust it, and then plaintiff slipped and fell backward about 13 feet onto the top of the recreation cage. Estle stated that the fall made a loud noise, that plaintiff was visibly in pain, and that there was blood on plaintiff's elbow and head. Estle testified that there were approximately three corrections officers working in the housing unit that night and that after one of them approached plaintiff, it was about three minutes later when medical staff arrived.

{¶16} Estle, who recalled that he had been living in the segregation unit for about a month and a half at that point, testified that he had seen porters adjust windows occasionally and that he believes he had seen plaintiff do so once or twice. Estle also testified that he was not aware of any ladders being available or other means of adjusting the windows that would not open by way of the mechanical system other than climbing on the pipes or the framework of the mechanical system.

³The objection raised in the deposition transcript at page 12 is SUSTAINED.

{¶17} Corrections Officer Michael Hall testified that at the time of trial, in 2015, he had been employed with defendant for four and a half years, and that when the accident occurred on July 21, 2013, his regular assignment was to work the second shift in the segregation unit, from 2:00 p.m. to 10:00 p.m. Hall testified that the mechanical system for opening the windows in the unit, which was controlled with a tool that corrections officers had access to, was old and that some of the gears were worn out such that it would not adjust certain windows. According to Hall, the system was in this condition as long as he worked in the unit and he was not aware of any efforts to fix it.

{¶18} Hall stated that the windows at the bottom of each column, whether they were operable with the mechanical system or not, could be adjusted manually and they were adjusted with some frequency depending on the weather. As described by Hall and as depicted in the photographs admitted into evidence, one quarter of the windows were at ground level, and the rest were too high to reach from that level. According to Hall, the windows that could not be reached from the ground level were normally opened and closed once a year, in the spring and fall, and those that could not be adjusted with the mechanical system could be adjusted by the CCI maintenance department with the use of a ladder. Hall stated, though, that he was never aware of any requests for the maintenance department to open or close any windows at any time while he worked in the segregation unit.

{¶19} Hall, who stated that it gets “very hot” in the segregation unit when the weather is warm, also testified that he never ordered porters or other inmates to climb atop the recreation cage and adjust the windows that could not be adjusted with the mechanical system, and he denied ever seeing an inmate do so. As Hall stated, an inmate on top of the recreation cage would be considered out of place and could be issued a ticket for a rules violation. Hall also stated that, while inmates on the top range were known to throw trash on top of the recreation cage at times, those items could generally be retrieved by pulling them through the wire mesh that covered the cage. On

cross-examination, however, Hall admitted that the holes in the wire mesh were only perhaps two inches across and that an item like a book may not be able to be pulled through.

{¶20} Hall testified that the accident occurred late in his shift, around 8:00 p.m., after showers for the unit population had concluded. As Hall explained, at that time plaintiff and other porters were still moving about outside their cells, putting away their cleaning supplies, showering, tending to laundry, and preparing to be locked down for the night. According to Hall, plaintiff approached and asked if he could “get a book.” Hall stated that the CCI library keeps a cart full of books in the recreation cage and that he assumed plaintiff wanted to retrieve a book from that cart, which he explained is not unusual for porters because they are able to distribute library books to other inmates. According to Hall, he gave plaintiff permission to do so and then sat down at the desk, which was on the opposite side of the block and did not enable him to see the recreation cage or the windows in question. It was Hall’s testimony that he did not order plaintiff to climb on top of the recreation cage or to adjust any windows, and that he had no indication whatsoever that plaintiff would do either of those things.

{¶21} Hall recalled that he remained at the desk until another porter, an inmate by the name of Logsdon, shouted to him that plaintiff had fallen. Hall stated that he immediately walked over to the recreation cage, where he saw plaintiff lying on top of the cage, bleeding from one of his arms, in a dazed state. According to Hall, he asked plaintiff if he was okay and plaintiff replied “no.” Hall testified that he then told one of the other two corrections officers on duty at that time to contact the CCI infirmary and summon medical assistance, and he stated that he did this within no more than one minute after Logsdon alerted him to the accident. Hall stated that he then instructed a couple of porters to help plaintiff down from atop the cage.

{¶22} Hall testified that after plaintiff was helped off the recreation cage, he was placed in a chair to wait for medical staff, who arrived within no more than five minutes

after being summoned. Hall recounted that he told the nurse plaintiff had fallen on top of the recreation cage and was complaining of back and head pain, but that he did not tell her specifically how or from where plaintiff had fallen. Hall stated that the nurse removed a towel that had been placed on plaintiff's arm to stop the bleeding, assessed his injuries, and asked him how he felt, and decided that he needed to go to the infirmary. Hall testified that he then radioed for an officer to escort plaintiff to the infirmary. Hall recalled that plaintiff did not feel like he could stand because of his back pain, so plaintiff was kept in the rolling office chair he had been placed in and, pursuant to defendant's policies concerning the movement of segregation inmates outside their unit, he was secured with handcuffs, leg irons, and a belly chain before being escorted to the infirmary. Hall related that all the remaining porters were ordered to lock down in their cells around this time.

{¶23} Hall testified that CCI has a designated inmate, known as the "blood man," who has specialized training in blood cleanup and can bring a box of chemicals with him to perform such work. Hall stated that he called for the blood man because he observed blood on the top of the recreation cage, as well as blood that had dripped through the wire mesh and into a laundry basket below. While plaintiff testified that he vomited at some point, Hall stated that he did not observe any vomit and therefore did not call for the "bioporter," who is a different inmate with specialized training in the cleanup of bodily fluids other than blood.

{¶24} Hall testified that he prepared both an Incident Report and an Inmate Accident Report. (Defendant's Exhibit B; Plaintiff's Exhibits 5, 6.) Hall acknowledged that he did not write anything in these reports to document the fact that plaintiff was atop the recreation cage when he fell. Hall also stated that he considered plaintiff to have violated institutional rules by being "out of place" while atop the recreation cage, but that he did not issue plaintiff a ticket because he felt plaintiff suffered enough due to his injuries and he knew plaintiff was supposed to be transferred to another prison soon.

{¶25} Hall stated that when he prepared the Inmate Accident Report he went cell to cell on the middle range that looks out onto the top of the recreation cage to see if any inmates would provide a witness statement, and he also asked inmate Logsdon if he would make a statement, but none of the inmates wanted to say anything or get involved in any way. Hall further stated that when plaintiff returned from the infirmary, he approached plaintiff to get his assistance in completing the Inmate Accident Report; specifically, Hall stated that he asked plaintiff how the accident occurred and wrote down what plaintiff said, and then he handed the document to plaintiff to provide a handwritten description in his own words. Although the Inmate Accident Report states, in Hall's handwriting, that plaintiff was "cleaning the rec cage," and further states in plaintiff's handwriting that Hall ordered plaintiff to retrieve a book from the cage and open the windows, Hall denied that he gave plaintiff any such orders. The portion of the document labeled "Employee's Statement as to Cause of Accident," where Hall could provide his version of events, merely states that "I/M Woodrow fell."

{¶26} Hall testified that a log book is kept in the unit to document the events that go on there, but that the log book reporting was handled by the "first officer" in the unit, whereas he served as the "second officer," so he does not know what information, if any, was entered into the log. Hall also testified that he is not aware of any documentation of any kind surrounding this accident, notwithstanding the statement plaintiff wrote in the Inmate Accident Report, that included the fact that plaintiff was on top of the recreation cage when the accident occurred.

{¶27} Brandon Steele, the Building Maintenance Superintendent at CCI, testified that he oversees all maintenance operations for the institution, where he has worked for 15 years. Steele testified that the maintenance department is contacted periodically, typically in the spring and fall, to open or close windows at the institution, but that there are no records kept to document which windows and when, and in terms of any other service or maintenance being performed on the windows in the segregation housing unit

Steele could not say when any such work was last performed and he had no recollection of ever working on those windows himself. Steele related that most of the buildings comprising CCI were built in the late 1920s or early 1930s, and that he does not have any knowledge about whether the windows have ever been replaced since then.

{¶28} As previously stated, plaintiff brings this action for negligence. Plaintiff's theories of negligence are twofold, asserting first that defendant is liable for the injuries he suffered in the fall, and also asserting that defendant was "negligent in delaying medical treatment for Plaintiff's injuries."

{¶29} "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. "While the state is not an insurer of the safety of inmates, the state generally owes a duty of reasonable care and protection from harm to inmates under its custody." *Price v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9. "Prisoners, however, are also required to use reasonable care to ensure their own safety." *Nott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-842, 2010-Ohio-1588, ¶ 8. "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.

{¶30} With respect to the allegation of delayed medical treatment, at the close of plaintiff's case-in-chief defendant moved for dismissal of this claim under Civ.R. 41(B)(2) on the ground that this is a claim of medical malpractice unsupported by the expert testimony that is necessary in order to sustain such claims. See *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 131 (1976). The motion was granted, in part, to the extent that the claim may be construed as one alleging acts or omissions by the nursing staff that breached a standard of care within the medical community. The claim was not dismissed, however, with respect to any alleged delays on the part of non-medical staff at CCI.

{¶31} Upon review of the evidence, however, the magistrate finds that plaintiff did not establish any unreasonable delay in terms of the medical treatment he received following the accident. Corrections Officer Hall instructed another officer to summon the medical department promptly after learning of the accident, a nurse arrived at the scene within a few minutes after that and assessed plaintiff, and plaintiff was then placed in the required restraints and promptly escorted to the infirmary, where he received a more thorough examination, pain medication, and a tetanus shot. The Incident Report and Inmate Accident Report prepared by Hall indicate that the accident occurred at approximately 8:00 p.m., and the nurse who saw plaintiff in the infirmary signed the Medical Exam Report at 8:25 p.m. Moreover, when plaintiff expressed medical complaints the following day, he received further treatment. While plaintiff felt that he waited too long to be helped down from the cage and to see a nurse, the sequence of events likely seemed longer to him than it actually was due to his acute condition, and the evidence simply does not support this claim. Furthermore, credible evidence was not presented to establish any harm proximately caused by the alleged delay in plaintiff's medical treatment. Accordingly, plaintiff did not meet his burden in proving this claim of negligence.

{¶32} Turning to plaintiff's other claim for negligence, the magistrate makes the following findings. Near the end of his shift as a range porter in the segregation unit on July 21, 2013, plaintiff was ordered by Corrections Officer Hall to climb on top of the recreation cage and retrieve a book that another inmate had tossed on top of the cage. Plaintiff, who was trying to finish up his work responsibilities and return to his cell to write a letter, objected to or at least questioned what Hall wanted him to do. Hall insisted that plaintiff retrieve the book and explained to him how to use a stack of milk crates to help climb onto the cage. Furthermore, hot summer weather had made the air temperature in the unit very warm, and Hall separately instructed plaintiff then to open a window that was neither capable of being adjusted with the malfunctioning mechanical system nor able to be reached from the ground floor. Plaintiff did as he was instructed, climbing up on pipes and the framework of the mechanical system to reach a window that was one level below the top tier of windows, but after opening the window he slipped and fell backward onto the top of the recreation cage, resulting in injuries.

{¶33} The magistrate finds that by ordering plaintiff to climb up the pipes and framework that far above the recreation cage and open the window, Hall exposed plaintiff to the foreseeable danger of falling and did not exercise reasonable care for plaintiff's safety, thereby breaching the duty of care owed to plaintiff. Indeed, as defendant argued at trial, albeit in asserting that plaintiff himself was negligent, climbing up along the wall in the manner that plaintiff did in this case was not safe. The magistrate finds that plaintiff cannot be apportioned any fault, however, given that his actions were in furtherance of Hall's instructions, which plaintiff was required to follow.

{¶34} Indeed, it is improbable that plaintiff would have acted on his own to climb on top of the recreation cage and then also climb up the wall considering that as a range porter he was not supposed to leave his range and was never responsible for removing debris from or otherwise cleaning the cage, therefore he would be deemed out of place under institutional rules and would consequently put himself at risk of being

disciplined, especially when there were three corrections officers monitoring the unit and plaintiff's presence in that area was likely to draw attention from the segregation inmates who, aside from a few porters, were all in their cells. Beyond potential discipline, not to mention the risk of injury associated with this dangerous task, plaintiff had even more to lose considering that having a job as a porter in the segregation unit afforded greater freedom than what the rest of the segregation inmates had, and it is unlikely he would have risked losing his job to voluntarily retrieve a book he knew nothing about and open the window when he seemingly had nothing to gain by doing so. Plaintiff was also trying to wrap up his work responsibilities for the evening and return to his cell as soon as possible so he could write a letter before the lights went out.

{¶35} Moreover, Hall's testimony that plaintiff came to him asking permission to get a book from the library cart, and that he had no idea plaintiff was going to climb on top of the recreation cage and open a window, was not persuasive. Plaintiff handwrote a statement in the Inmate Accident Report where he stated what he was doing when the fall occurred and why he was doing it, i.e. that Hall ordered him to do so, yet Hall did not write anything at all to dispute that accusation or offer any alternative account of what happened in either the Inmate Accident Report or the Incident Report. It is doubtful that Hall would have allowed plaintiff's statement to go uncontested if it were not true. Tellingly, the information Hall wrote in those documents omitted important details, such as how or from where plaintiff fell, nor does that information indicate in any way that plaintiff had been someplace where he should not have been or done something that he was not supposed to. In short, the documentation corroborates plaintiff's version of events more than Hall's version. Further corroboration is found within the testimony of inmate Devinney, who heard a corrections officer fitting the description of Hall give plaintiff two different orders, first to climb atop the cage for some reason, and then to also adjust a window.

{¶36} Additionally, Hall was unconvincing on certain matters that touch upon the veracity of his version of events, including his testifying initially that anything that was thrown on top of the recreation cage could be pulled through the wire mesh without having a porter go on top of the cage, when it is clear that an item as large as a book could not be pulled through the wire mesh over the cage and the greater weight of the evidence shows that floor porters were directed to use the milk crates and climb on top of the cage from time to time to remove discarded items. Similarly, while it was also shown that the segregation unit gets very warm and is only ventilated by opening windows, several of which would not open via the mechanical system and were too high to reach from the ground floor, Hall testified that those windows were adjusted only by the maintenance department upon the request of the unit staff, yet Hall stated that he was not aware of any such requests ever being made and the Building Maintenance Superintendent was not able to offer any specific evidence as to when, if ever, the maintenance department had adjusted these windows. To the contrary, the testimony of inmates Ayers, Devinney, and Estle was consistent in establishing that, at least up until the time of the accident, they had all seen floor porters or other inmates, not maintenance staff, adjusting windows from atop the recreation cage. Indeed, the evidence shows it was more likely than not that inmates had been adjusting malfunctioning windows from atop the cage. And while defendant asserted that plaintiff's testimony contained some inaccuracies, particularly his testimony about being unconscious and vomiting after the fall, it is apparent that at a minimum plaintiff was dazed, as Hall described, if not momentarily unconsciousness, and whether it was at the scene or later in his cell where plaintiff vomited, he credibly testified that he was nauseated and vomited at some point that night.

{¶37} Finally, plaintiff advanced the argument at trial that defendant should be held liable under the independent theory that its employees acted in violation of R.C. 2921.44(C), which is a criminal statute pertaining to the misdemeanor offense of

dereliction of duty. Even if plaintiff had properly asserted this theory of relief in his complaint, however, the court of claims does not have jurisdiction to determine defendant's civil liability for violation of R.C. 2921.44(C). *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-1048, 2015-Ohio-2668, ¶ 12, citing *Allen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-619, 2015-Ohio-383, ¶ 15.

{¶38} Based on the foregoing, the magistrate concludes that plaintiff has proven his claim of negligence by a preponderance of the evidence with respect to the harm proximately caused by the July 21, 2013 accident, but that he did not prove his claim of negligence with respect to the alleged delay in his medical treatment after the accident. It is recommended that judgment be entered accordingly.

{¶39} *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 September 15, 2015
Sent To S.C. Reporter 2/24/16