

[Cite as *Trimble v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-4317.]

CRYSTAL TRIMBLE

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00170

Magistrate Sophia Chang

DECISION OF THE MAGISTRATE

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{¶1} Plaintiff, a former inmate at Dayton Correctional Institution (DCI), brought this action for negligence. At all relevant times, plaintiff was in the custody and control of defendant Ohio Department of Rehabilitation and Correction (ODRC). The issues of liability and damages were bifurcated and the case proceeded to trial on liability.

{¶2} At trial, plaintiff testified that at the time of the incident, she had been an institutional painter for two years. On May 27, 2014, plaintiff had finished her painting duties and began cleaning the rollers and brushes in the laundry room sink. Plaintiff further testified that when she grabbed the hose connected to the faucet and turned on the water, she screamed and let go of the hose because the rubber on the hose became too hot. Although she had used the sink on several occasions before to clean her painting supplies, plaintiff stated that the water that day was extra hot and that the water went down her left leg and gym shoe. She testified that she immediately turned the water off and tried to get her sock and shoe off because it felt like it was burning. Plaintiff stated that she had not complained about the temperature of the water prior to the incident or spoken with the plumber, and that it was her belief that the plumber was the only one who controlled the temperature of the water and that the controls were in the utility room. As a result of the incident, plaintiff received burns on her legs and was seen by medical at DCI. (Plaintiff's Exhibit 2). Subsequently, plaintiff also filed an informal complaint to the unit manager regarding the incident. (Plaintiff's Exhibit 1).

However, because plaintiff never received the paperwork back, she did not file an official grievance.

{¶3} Cheryl Mace (Mace), plaintiff's painting partner and a witness to the incident, testified that the hose on the faucet went wild and down plaintiff's right leg. She also said that the water had been hot enough to burn her hands for about a week prior to the incident. However, she also stated that she had used the laundry room sink more than twice that week and that she would have warned plaintiff if she knew it was going to be that hot. Although Mace further testified that she and other inmates had mentioned the water temperature to a maintenance man, who told them to talk to inmate plumber Erica Rowe instead, she later testified that she did not personally complain about the hot water because she liked it that way.

{¶4} Trina Adams (Adams), a fellow inmate at DCI, testified that the water was very hot on the day of the incident but did not talk to anyone about the temperature or know of anyone else who did. She also testified that plaintiff was the only one who was injured by the hot water, that the water was not always terribly hot, and that she personally liked the water hot. Adams also stated that she would always turn on the cold water to offset the hot water so that it would not be so hot as to burn her.

{¶5} Erica Rowe (Rowe), the inmate plumber at DCI at the time of the incident, testified through her deposition that there were monthly checks of water temperatures and that a check had been done in the first couple of weeks in May. Rowe also testified that she and four other inmate plumbers worked for Terry Hall, a staff plumber, and that any of them could have been the one who checked the temperature as well as other rotating plumbers. Rowe did not know of any inmate who complained that the water was too hot and testified that she did not have any conversations with inmates complaining about the water temperature prior to the incident. Rowe further testified that the reason for the temperature of the water that day was due to a defective mixing valve attached to the boiler, which was ordered after the incident and replaced. (Defendant's Exhibit A).

{¶6} “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. “However, ‘once [the state] becomes aware of a dangerous condition[,] it must take reasonable care to prevent injury to the inmate.’” *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606, 2012-Ohio-1017, ¶ 8, citing *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 02AP-1109, 2003-Ohio-3533, ¶ 20.

{¶7} “The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained.” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14. “Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual.” *Id.* “Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice.” *Id.*, citing *In re Estate of Fahle*, 90 Ohio App. 195, 197 (6th Dist.1950).

{¶8} Based on the foregoing, the magistrate finds that plaintiff, while cleaning her painting supplies, turned on the water and grabbed the hose attached to the faucet. The hose became too hot for plaintiff to continue to hold onto the hose, and as a result, the hose fell down by her left leg and caused burns. The evidence also shows that plaintiff was seen by medical staff at DCI and that she filed an informal complaint about the temperature of the water after the incident. Prior to the incident, defendant, through its staff or inmate plumbers, conducted monthly checks of the water temperature, including for the month of May 2014. After the incident, an inspection revealed that the mixing valve on the side of the boiler which helped regulate the water temperature was defective and was replaced.

{¶9} The magistrate also finds that plaintiff has failed to prove that defendant had any notice, actual or constructive, of any defect of the mixing valve or that the water temperature was too hot. Based on the testimony, no complaints were made to defendant prior to the incident regarding the water temperature, and there was no evidence presented to indicate that defendant was aware, or should have been aware of either a defect of the mixing valve or the temperature of the water. Rather, the testimony indicates that the inmates preferred the hot water and were aware of methods to moderate the water temperature.

{¶10} Plaintiff argues that the doctrine of res ipsa loquitur is applicable in this case because the water temperature controls were in the exclusive control of defendant and as such, there is an inference of negligence on defendant. The doctrine of res ipsa loquitur “permits an inference of negligence on the part of the defendant to be drawn from the factual circumstances surrounding the injury to the plaintiff. \* \* \* ‘To warrant application of the rule a plaintiff must adduce evidence in support of two conclusions: (1) That 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.” *Hickey v. Otis Elevator Co.*, 163 Ohio App.3d 765, 772, 2005-Ohio-4279, 840 N.E.2d 637 (10th Dist.), quoting *Hake v. George Wiedemann Brewing Co.*, 23 Ohio St.2d 65, 66-67, 262 N.E.2d 703 (1970).

{¶11} Upon review of the evidence, the magistrate cannot find that the water temperature controls were under the exclusive control of defendant because there was no testimony regarding access to the controls other than plaintiff’s belief that the plumber was the only one who had access. Moreover, Rowe testified that there were many plumbers in and out of DCI, including four inmate plumbers other than herself. It is not clear to the court, nor has plaintiff shown, that these inmate plumbers did not have access to the controls in addition to the staff plumbers.

{¶12} Based upon the foregoing, the magistrate concludes that plaintiff has failed to prove her claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶13} *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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SOPHIA CHANG  
Magistrate

cc:

Richard F. Swope

Eric A. Walker

Case No. 2016-00170

-6-

DECISION

6480 East Main Street, Suite 102  
Reynoldsburg, Ohio 43068

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

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