

[Cite as *Holloman v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-2957.]

MARTIN HOLLOMAN

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00448JD

Judge Patrick M. McGrath  
Magistrate Gary Peterson

DECISION

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{¶1} Plaintiff Martin Holloman brought this action for negligence against defendant Ohio Department of Rehabilitation and Correction (ODRC) after he fell and suffered injuries at Pickaway Correctional Institution (PCI). Prior to trial, the parties stipulated that ODRC breached a duty of care owed to plaintiff and proximately caused plaintiff some harm. The case went to trial before the magistrate on the issue of damages. Following the trial, the magistrate issued a decision recommending the court render judgment in favor of plaintiff in the amount of \$10,025.00. ODRC timely filed objections. Plaintiff filed a motion for an extension of time to respond, but ultimately filed a response within ten days of ODRC's filing of objections. Therefore, plaintiff's motion for an extension of time is DENIED as moot. ODRC's objections and plaintiff's response are now before the court for consideration. For the reasons set forth below, the court overrules ODRC's objections and adopts the magistrate's decision as its own.

### **Factual Background**

{¶2} Plaintiff was an inmate in the custody and control of ODRC. He was incarcerated at PCI from approximately July 2016 to October 2016. About two years prior to his incarceration, plaintiff was in a car accident in Georgia. He sustained a back injury and was suffering from chronic back problems when he arrived at PCI. Upon his arrival,

plaintiff was examined by Dr. Sonya Peppers, a physician administrator at PCI. Dr. Peppers noted that plaintiff had a preexisting back injury and suffered pain and some diminished movement in his left leg. She determined that plaintiff suffered from back pain (lumbago) and sciatic nerve impingement (sciatica). Dr. Peppers prescribed plaintiff a cane and placed him on a bottom range and bottom bunk restriction.

{¶3} Plaintiff's original housing assignment at PCI was in B1, a first-floor dormitory. Despite the bottom range housing restriction put in place by Dr. Peppers, plaintiff was later reassigned to A2, a second-floor dormitory. Plaintiff transferred to A2 on August 4, 2016. During the transfer, PCI staff ordered plaintiff to carry his metal locker box up a staircase. The locker box held plaintiff's personal possessions, and plaintiff estimates it weighed 25 to 30 pounds. As plaintiff was climbing the stairs, his leg gave out, and he fell down the staircase. Plaintiff's locker box landed on top of him. He was taken to the PCI infirmary on a golf cart.

{¶4} Dr. Peppers examined and treated plaintiff in the infirmary. Medical examination notes indicate plaintiff had bruising and swelling on the back of his head and complained of pain in his back and pain, numbness, and tingling in his left leg. Dr. Peppers ordered X-rays of plaintiff's back and chest, which did not show any fractures. She determined that the fall exacerbated plaintiff's preexisting sciatica and treated plaintiff with ice, muscle relaxers, anti-inflammatory medications, and pain medications. She prescribed plaintiff a rollator and various medications. Some of the medications were treated as controlled substances by PCI, and plaintiff was required to go to the medical bay to receive them. Other medications were treated as "carry" medications that plaintiff could keep with him.

{¶5} Plaintiff testified that he experienced severe pain and stiffness in his back for two to three days after the fall and rarely left his dormitory during that time. He admitted that he visited PCI's second-floor law library the day after his fall, but stated another inmate

helped him by pushing him to the staircase while he sat on the seat of his rollator and helping him climb the staircase. Plaintiff missed follow-up appointments at the infirmary on August 6, 8, and 10, 2016. He stated he did not go to the infirmary because he did not have anyone to help physically escort him. Plaintiff did go to the infirmary on August 12, 2016, where he was examined and treated by Dr. Sharrie Ray. Dr. Ray observed improvement of plaintiff's head injury and a reduction of swelling but noted that plaintiff had pain and numbness in his left leg and tenderness in his lower back. She also noted that some of the medications prescribed to plaintiff upset his stomach. Dr. Ray prescribed him some additional medications.

{¶6} PCI medical administration records indicate plaintiff took only some of the controlled medication that Dr. Peppers and Dr. Ray prescribed. Plaintiff stated that he did not always take his controlled medication because he had to walk to wait in line at the infirmary and did not always have another inmate available to assist him. Dr. Peppers testified that PCI medical staff does not assign other inmates to assist inmate patients with rollators. Medical evaluation notes also indicate that plaintiff visited the infirmary three more times between August 12, 2016 and his release in October 2016. All three visits were unrelated to plaintiff's back injury and plaintiff apparently did not mention back pain during those visits. Plaintiff testified that he did not believe he would receive any additional treatment beyond the rollator and the medication already prescribed. Dr. Peppers testified that plaintiff could have received additional shots or medication to relax the muscles and treat pain.

{¶7} Plaintiff testified that he continues to experience stiffness and pain in his back. He is physically disabled and no longer able to work. He continues to receive medical treatment, physical therapy, and aqua therapy for his back issues. Plaintiff did not present any expert testimony concerning the cause of his current back ailments.

{¶8} The magistrate found that plaintiff's fall at PCI caused severe pain and stiffness in plaintiff's back and exacerbated his preexisting sciatica. The magistrate determined that the pain associated with the fall likely diminished by the time of plaintiff's release in October 2016. Furthermore, the magistrate found that plaintiff did not establish that his current back pain and disability are causally related to the fall. Ultimately, the magistrate recommended plaintiff receive \$10,000 in damages to compensate for past pain and suffering and an additional \$25 to compensate for the filing fee in this case. Defendant objects that the recommended damages are excessive.

### **Standard of Review**

{¶9} Civ.R. 53(D)(3)(b)(i) provides, "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." "Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification." Civ.R. 53(D)(4)(b). Objections "shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). They must be supported "by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if the transcript is not available." Civ.R. 53(D)(3)(b)(iii). The court granted plaintiff leave to support his objections with an affidavit of evidence instead of the transcript. (Entry, February 4, 2019.)

{¶10} The court "shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues, and appropriately applied the law." Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts "a de novo review of the facts and conclusions in the magistrate's decision." *Ramsey v. Ramsey*, 10th Dist. No. 13AP-840, 2014-Ohio-1921, ¶ 16-17. (Internal citations omitted.)

**Defendant's Objection**

{¶11} In its sole objection, ODRC asserts that the amount of damages recommended by the magistrate is excessive when compared to the amount of damages awarded by the court in cases where a plaintiff suffered comparable or more severe injuries. ODRC contends the magistrate erred in recommending the court award plaintiff damages greater than the damages awarded in those comparison cases. The court does not agree and finds the magistrate's recommendation appropriate.

{¶12} "As a general rule, the appropriate measure of damages in a tort action is the amount which will compensate and make the plaintiff whole." *N. Coast Premier Soccer, LLC v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-589, 2013-Ohio-1677, ¶ 17. "[N]o specific yardstick, or mathematical rule exists for determining pain and suffering." *Hohn v. Ohio Dept. of Mental Retardation & Developmental Disabilities*, 10th Dist. Franklin No. 93AP-106, 1993 Ohio App. LEXIS 6023, \*10 (Dec. 14, 1993). Thus, when determining the appropriate amount of damages for pain and suffering:

a court may consider awards given in comparable cases as a point of reference, see *Hancock v. Norfolk & Western Ry. Co.* (1987), 39 Ohio App. 77, 85, 529 N.E.2d 937, but ultimately must evaluate each case in light of its own particular facts. *Id.* Given the difficulty in calculating pain and suffering damages, reviewing courts generally defer such determinations to the trier of fact [*Fantozzi v. Sandusky Cement Prod. Co.*, 64 Ohio St.3d 601, 612 (1992)], and are reluctant to substitute their judgment. *Hancock, supra*, at 85. Indeed, in no other element of damages is there so wide a latitude for awards as in pain and suffering. *Drayton v. Jiffee Chemical Corp.* (C.A.6, 1978), 591, F.2d 352, 370.

*Hohn* at \*10-11.

{¶13} ODRC contends the court should modify the magistrate's recommended damages based on three specific cases: *Good v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2012-08885JD, 2016-Ohio-8327; *Robinson v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2012-06041JD, 2015-Ohio-5628; and *Woodrow v. Ohio Dept. of Rehab. &*

*Corr.*, Ct. of Cl. No. 2014-00471JD, 2017-Ohio-8278. In *Good*, this court awarded an inmate plaintiff in the custody of ODRC \$6,000 in pain and suffering damages for injuries sustained after falling down stairs. ODRC maintains that plaintiff in this case should receive less than the plaintiff in *Good* because the plaintiff in *Good* was taken to the hospital, spent two days in the infirmary, and urinated blood for several weeks. In *Robinson*, the court awarded \$8,500 to an inmate plaintiff who injured his lower back after falling out of a top bunk. ODRC maintains the *Robinson* plaintiff suffered more severe injuries than plaintiff in this case because the *Robinson* plaintiff sought treatment several months after his fall. In *Woodrow*, the court awarded \$9,500 in pain and suffering damages to an inmate plaintiff who fell five feet and landed on a steel recreation cage. ODRC maintains that plaintiff in this case should receive a lesser amount of damages than the *Woodrow* plaintiff because the *Woodrow* plaintiff lost consciousness and complained of back pain for several months after his injuries. While ODRC does not specify the amount of damages it believes plaintiff should receive in this case, it asks the court to modify the magistrate's recommendation to "an amount more consistent with this Court's previous decisions in the *Good*, *Robinson*, and *Woodrow* cases." (Objections at 6-7.)

{¶14} The court is not persuaded that a reduction of the magistrate's recommended damages is warranted based on the prior decisions in *Good*, *Robinson*, and *Woodrow*. As noted above, while the court may consider awards in comparable cases, pain and suffering damages are to be evaluated in light of the particular facts of each case, with wide latitude in granting awards. The court finds that the magistrate carefully evaluated the facts of this case, including the fact that plaintiff did not continue to seek treatment for his back pain after August 12, 2016. The magistrate noted that plaintiff was dissatisfied with the medications he received, some of which upset his stomach. The magistrate also noted that plaintiff sought the assistance of other inmates to push him in his rollator, and sometimes missed treatments because he lacked such

assistance. The court finds that the magistrate was within the boundaries of proper discretion in determining plaintiff's pain and suffering damages, considering the specific facts of this case and the wide latitude afforded in assessing such damages.

{¶15} Additionally, the court finds this case factually distinguishable from *Good*, *Robinson*, and *Woodrow* because in this case the magistrate found credible evidence that, in addition to the injuries directly and solely attributable to plaintiff's fall, plaintiff suffered an exacerbation of a preexisting condition. Specifically, Dr. Peppers testified that plaintiff's injuries from the fall exacerbated his preexisting sciatica, which already caused plaintiff some stiffness and difficulty walking. Although the plaintiff in *Good* had preexisting nerve pain and irritation, no doctor testified in that case that the plaintiff's condition was exacerbated by his fall, and the magistrate made no such finding. The plaintiff in *Robinson* had a preexisting seizure condition, but there was no evidence that this condition was at all affected by his fall. The plaintiff in *Woodrow* did not present any evidence of a preexisting condition.

{¶16} "[W]hen a tortfeasor proximately cause[s] the plaintiff's damages, the tortfeasor is liable for any superfluous damages resulting from the plaintiff's abnormal frailty or pre-existing condition." *Boroff v. Meijer Stores Ltd. Partnership*, 10th Dist. Franklin No. 06AP-1150, 2007-Ohio-1495, ¶ 13, citing Restatement of the Law 3d, Torts, Section 31 (2005). Thus, ODRC is liable for the exacerbation of plaintiff's sciatica. ODRC was not liable for any such exacerbations of preexisting conditions in the cases cited by ODRC. In light of this distinction, the magistrate had a reasonable basis for assessing a slightly higher amount of damages in this case.

### **Conclusion**

{¶17} Upon an independent, de novo review of the record, the magistrate's decision, and ODRC's objection, the court finds that the magistrate properly determined the factual issues and applied the law in this case. Therefore, defendant's objection is

OVERRULED. The court shall adopt the magistrate's decision and recommendation as its own, including all findings of fact and conclusions of law. Judgment shall be rendered in favor plaintiff in the amount of \$10,025.00.

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PATRICK M. MCGRATH  
Judge



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Plaintiff

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JUDGMENT ENTRY

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{¶18} Upon review of the records, the magistrate's decision, and the objections, the court finds that the magistrate properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. Judgment is rendered in favor of plaintiff in the amount of \$10,025.00. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH  
Judge

Filed June 10, 2019  
Sent to S.C. Reporter 7/22/19