

[Cite as *King v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-3223.]

IN THE COURT OF CLAIMS OF OHIO

JEFF KING :  
Plaintiff : CASE NO. 99-12766  
v. : DECISION  
DEPARTMENT OF REHABILITATION : Judge J. Warren Bettis  
AND CORRECTION :  
Defendant :  
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{¶1} On May 15, 2001, this court rendered judgment for plaintiff on the sole issue of liability. The court found that defendant had breached its duty of care to plaintiff when one of its employees sprayed pesticide in close proximity to plaintiff. On January 17, 2002, the case came on for trial on the issue of damages proximately caused by defendant's negligence.

{¶2} Plaintiff's medical expert, Brian Griffin, M.D., testified that he was board-certified in emergency medicine and pain management. He stated that he conducted a physical examination of plaintiff, during which plaintiff complained of chronic headaches, numbness of his scalp and left leg, difficulty sleeping, and feeling depressed. Dr. Griffin's diagnosis was that plaintiff suffered from atypical migraine, cervical headache, insomnia and depression. He opined that the precipitating event

for plaintiff's condition was his significant exposure to insecticide, and that plaintiff's condition would not improve. He recommended future treatment in the form of physical therapy, behavior modification and pharmaceuticals. He estimated that the cost of future pharmaceuticals would be from \$100-300 per month. He also stated that plaintiff could have a surgical procedure to burn the C-2 nerve, a nerve that Dr. Griffin stated was the origin of plaintiff's headaches. The procedure would cost \$20,000.

{¶3} Upon cross-examination, Dr. Griffin stated that he was not aware that plaintiff had inhaled only one breath of Ultracide on only one occasion and that plaintiff had taken a shower immediately after the incident. He further testified that, as the label shows, Ultracide is 99.015 percent inert, meaning inactive and not toxic to humans. In addition, although pyriproxyfen is listed under "active ingredients," it makes up only 0.1 percent of Ultracide and has not been established to be toxic to humans. In fact, pyriproxyfen is sprayed on citrus fruits. Dr. Griffin further stated that pyrethrins, listed as 0.05 percent of Ultracide, are also nontoxic to humans unless taken in large amounts.

{¶4} Plaintiff testified that after his exposure to one inhalation of Ultracide, he began to suffer headaches and that they continue to the present time. He currently takes prescription pain medication to treat the headaches that occur four to six times per

week. He also stated that at the time of the incident, he was wearing a short-sleeved shirt, pants, and shoes, and that he was not sprayed in his eyes or ears, just his mouth. He described his headaches as feeling like a sensation of pressure in his head, but not a throbbing or pulsing sensation. He further testified that he was never refused medical treatment while in defendant's custody.

{¶5} Defendant's expert, Howard Tucker, M.D., testified that he was board-certified in adult and child neurology, and that he treated patients with migraine headaches. When he examined plaintiff, plaintiff complained of pressure-type headaches and numbness on the right side of his head and his left leg. He opined that plaintiff did not suffer from migraine headaches (*i.e.*, violent, throbbing headaches) but, rather, muscle contraction headaches. He also opined that none of plaintiff's headaches were a result of the exposure to Ultracide, that plaintiff did not suffer left leg numbness as a result of the Ultracide exposure, and that his symptoms were more consistent with a lateral nerve problem under the major femoral nerve. He also stated that one cannot suffer numbness from a toxin, and that none of plaintiff's symptoms were caused by the exposure to Ultracide.

{¶6} Proximate cause is established where the negligent act "in a natural and continuous sequence produces a result which would not have taken place without the act." *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 287.

{¶7} Based upon the evidence presented at the liability trial, as stated in this court's May 15, 2001, decision, and at the trial on the issue of damages, the court finds that plaintiff has failed to prove by a preponderance of the evidence that any of his alleged injuries were proximately caused by defendant's negligence. The court finds the testimony of Drs. Tucker and Kelley to be more credible and persuasive than that of Drs. Griffin and Williams. Plaintiff has not proven that a causal connection exists between his one-time exposure to Ultracide and the injuries that he had allegedly sustained. Accordingly, the court finds that plaintiff is entitled to \$0 in damages.

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J. WARREN BETTIS  
Judge

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