

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROBERT MASON

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2009-01352-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Robert Mason, an inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), filed this action alleging he suffered personal injury on January 7, 2009, while leaving the SOCF dining room after dinner. Specifically, plaintiff claimed his rib, shoulder, and arm were injured when he was struck by a metal cart being pushed into the SOCF kitchen by an employee of defendant, Cecil Smith, a Correctional Food Services Coordinator (“CFSC”). The metal cart, known as a “hot box” is an insulated metal cart on wheels designed for food storage and to keep the food stored inside warm. The “hot box” stands 71" tall, is 29 ½" deep, and is 27 ½" wide. Plaintiff recalled the incident forming the basis of this claim noting “my cell-block range was instructed to rise from dining tables and exit the inmate-dining room, on my way to the dish-wash-window, to turn in my tray, an unknown Food Service Coordinator (Cecil Smith), while returning from collecting Food-cart-‘Hot Box(es),’ etc. ran into me with one of the ‘tall’ metal boxes.” Plaintiff contended Cecil Smith acted negligently in maneuvering the “hot box” around the institution dining room “not being mindful of inmates walking toward the dish-wash-room window.” Plaintiff claimed as a result of

being struck by the “hot box” he experienced “extreme rib, shoulder, arm pain, injur(ies), suffering, . . . experiencing difficulty and pain breathing, lifting arm, lying down, sleeping and emotional duress, due to sharp pains, (and) aches.” Consequently, plaintiff filed this complaint seeking personal injury damages in the amount of \$2,500.00. Payment of the \$25.00 filing fee was waived.

{¶ 2} Plaintiff filed a written statement from a witness to the January 7, 2009 incident, fellow inmate Ronald Napier. Napier wrote “while exiting the inmate dining hall, I was walking 3 feet behind (plaintiff) when I witnessed a Food Service Coordinator ‘run into’ (plaintiff) with one of the large metal food carts.” Napier noted he heard plaintiff make requests to SOCF staff to contact the SOCF medical department to give him medical attention. Furthermore, Napier related he observed plaintiff on the dates of January 7, 2009 and January 8, 2009, “wincing and holding his ribs and bending over in pain.”

{¶ 3} Defendant contended plaintiff has failed to offer sufficient evidence to prove “he suffered the claimed loss as a direct result of negligence attributable to” SOCF personnel. Defendant acknowledged a food “hot box” pushed by CFSC Cecil Smith in the SOCF dining room collided with plaintiff on January 7, 2009. Defendant explained Smith, as he was pushing the “hot box” could see plaintiff walking towards him carrying a food tray in a dining room area “10' to 12' wide.” Defendant further explained Smith “had positioned the food box to one side of this area maximizing space for others to walk past him.” Despite Smith’s efforts to maneuver the “hot box” to clear a space, the “hot box” did bump plaintiff’s right arm or shoulder. Defendant suggested plaintiff made no attempt to avoid contact with the “hot box” even though he could see the appliance being pushed toward him. Defendant claimed the act of being struck by the moving food service device “did no more than jostle the plaintiff.” Defendant related that plaintiff upon being struck “did not stumble, fall, or even drop” the tray he was carrying. Defendant asserted plaintiff declined any medical attention immediately after the incident but subsequently requested such attention upon arriving at his housing unit. From the facts presented, defendant argued plaintiff has not proven he was injured or that any negligence on the part of SOCF staff caused an injury to him, but conversely plaintiff’s own negligence caused the “collision” between him and the “hot box.”

{¶ 4} Plaintiff was examined at the SOCF infirmary upon requesting medical

attention. Defendant submitted a copy of the Medical Exam Report compiled by SOCF nurse, Wanda Bevins, who conducted an examination of plaintiff when he arrived complaining of “pain (in his) right anterior rib.” In the Medical Exam Report, Bevins recorded she did not observe any “redness or edema or deformity (in plaintiff’s) right rib area” and his respiration was “nonlabored.” Overall plaintiff’s examination for injury was unremarkable and he was given a Tylenol for his subjective pain complaint with instructions to follow-up with institutional medical services if he realized the need for additional treatment. However, defendant’s evidence has established plaintiff did not seek any additional medical treatment since the initial exam date of January 7, 2009.¹ Defendant also submitted an affidavit from SOCF Health Care Administrator, Rhonda Stalnaker, regarding her evaluation (via medical record review) of the extent of injury claimed by plaintiff. Essentially, Stalnaker supported the findings of Nurse Bevins concerning any medical complaint involving plaintiff. Furthermore, Stalnaker advised that as of February 23, 2009 plaintiff had made no attempt to seek additional health care treatment since his January 7, 2009 medical examination.

{¶ 5} Defendant submitted copies of both an Inmate Accident Report and an affidavit from Cecil V. Smith compiled in connection with the January 7, 2009 incident. In the Inmate Accident Report, Smith described the incident, stating “I Cecil V. Smith (CFSC) was pushing Hot box through 10 R east line as I was pushing (plaintiff) happened to step into my lane and my hot box bumped him in the right shoulder and arm.” Additionally, Smith recalled plaintiff was talking to another inmate immediately before he was struck by the hot box. In his affidavit Smith noted the following recollections of the events of January 7, 2009:

{¶ 6} “I was returning to the kitchen from one of the satellite feeding areas, pushing the hot box as I walked across the inmate dining room. When I first saw the plaintiff he was between two tables looking directly at me. The distance from where I entered to the dining room to the point where Mr. Mason bumped into the ‘hot box’ was approximately 50 to 60 feet.

{¶ 7} “As I was proceeding to the kitchen, Mr. Mason, carrying his food tray with the remnants of his meal, was walking facing me as he proceeded toward the exit.

¹ Plaintiff filed this complaint within a week of the January 7, 2009 incident and defendant filed an investigation report of this claim on March 6, 2009.

{¶ 8} “The area through which we were passing was approximately 10 to 12 feet wide. I walked to one side allowing ample room for others to pass. As Mr. Mason and I passed each other, the food cart bumped Mr. Mason’s arm.

{¶ 9} “The impact was slight, merely jostling Mr. Mason’s right arm. Mr. Mason suffered no visible ill effects. He did not stumble or fall; he did not drop his food tray or anything on it. The only visible sign of the collision was that a Styrofoam cup containing the remnants of a fruit drink tipped over on his tray.

{¶ 10} “I asked Mr. Mason if he was all right or if he needed medical attention. Mr. Mason declined the offer to medical treatment, laughed, and stated he was fine as he walked away from the area. At no time did I witness Mr. Mason showing any sign of pain or physical discomfort.”

{¶ 11} Defendant suggested plaintiff was struck by the “hot box” due to the fact he was not paying attention and essentially walked into the food carrying appliance. Defendant stated the “hot box” “was clearly visible, there was ample space and time to avoid it [y]et (plaintiff) walked right into it.” Based on this assertion defendant contended plaintiff’s negligence of not paying attention constituted more than 50% of the total negligence involved in this action and consequently plaintiff cannot prevail.

{¶ 12} Plaintiff filed a response denying he was walking toward the “hot box” when he was struck. Also, plaintiff stated he reported to SOCF medical staff on January 8, 2009, the day after the incident and complained of pain in his ribs. Plaintiff further stated his rib cage was bandaged at the time and he was told by SOCF staff “he would be seeing a doctor in a few days which he has not seen a doctor yet.” Plaintiff pointed out the inmate dining room at SOCF has surveillance cameras and any video recordings would surely show how the January 7, 2008 incident occurred. Plaintiff insisted negligence on the part of defendant’s employee was the sole cause of his being struck by the “hot box.”

{¶ 13} In order for plaintiff to prevail upon his claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant’s acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. Ohio law imposes upon the state

a duty of reasonable care and protection of its inmates. *McCoy v. Engle* (1987), 42 Ohio App. 3d 204, 207-208, 537 N.E. 2d 665. Reasonable care is defined as the degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. *Woods v. Ohio Dept. of Rehab. & Corr.* (1998), 130 Ohio App. 3d 742, 745, 721 N.E. 2d 143. However, the state is not an insurer of inmate's safety. *Moore v. Ohio Dept. of Rehab. & Corr.* (1993), 89 Ohio App. 3d 107, 112, 623 N.E. 2d 1214.

{¶ 14} “Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . .” *Pacher v. Invisible Fence of Dayton*, 154 Ohio App. 3d 744, 2003-Ohio-5333, 798 N.E. 2d 1121, ¶41, citing *Miller v. Paulson* (1994), 97 Ohio App. 3d 217, 221, 646 N.E. 2d 521; *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E. 2d 265. “If an injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone.” *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327. The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 39 O.O. 2d 366, 227 N.E. 2d 212, paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill* (1964), 176 Ohio St. 61, 26 O.O. 2d 366, 197 N.E. 2d 548. The court does not find plaintiff's assertions persuasive regarding the cause of the “collision” between him and the “hot box.” The trier of fact finds the evidence tends to point to the fact plaintiff walked into the food carrying device as it was being pushed by Cecil Smith. Therefore, the court finds plaintiff failed to use reasonable care for his own safety while exiting the SOCF dining hall. The court finds that plaintiff knew or should have known of the presence of the “hot box” and then taken reasonable precautions to avoid the appliance as it was being pushed around the SOCF dining hall. Assuming SOCF employee Smith acted negligently in maneuvering the “hot box” around the dining area, plaintiff's failure to exercise reasonable care for his own safety outweighs

any negligence on the part of defendant. See R.C. 2315.33. Furthermore, considering plaintiff had shown greater negligence on the part of defendant he has failed to present sufficient evidence to prove he was injured and consequently suffered damages from being struck by the "hot box."

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROBERT MASON

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2009-01352-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Robert Mason, #503-208
P.O. Box 45699
Lucasville, Ohio 45699

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
6/2
Filed 6/24/09
Sent to S.C. reporter 10/29/09