[Cite as *Williams v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-1898.]

MICHAEL WILLIAMS Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2019-00884JD Magistrate Scott Sheets DECISION OF THE MAGISTRATE

{¶1} Plaintiff Michael Williams is an inmate in defendant's custody. Plaintiff seeks money damages for injuries he alleges were sustained when his wheelchair tipped over while defendant's employees transported him in a van on January 31, 2018. In addition to plaintiff, correction officers Rodney Jones and Douglas Gallant, Nurses Amy Wilson, Angela Speakman and Samantha Williams and Dr. Arthur Hale all testified at trial. Plaintiff offered the testimony of Kai Taylor-Deak in rebuttal and the deposition of inmate Raymond Weston was admitted into evidence. Finally, multiple documentary exhibits were also admitted into evidence including reports generated from the incident and some of plaintiff's medical records. For the following reasons, the magistrate hereby recommends judgment for plaintiff.

Findings of Fact

{¶2} The magistrate makes the following factual findings. Plaintiff is an inmate in defendant's custody who, due to double amputation and prosthetic legs, is mostly confined to a wheelchair. On January 31, 2018, defendant's employees, corrections officers Douglas Gallant (Gallant) and Rodney Jones (Jones), transported plaintiff and another inmate, Raymond Weston (Weston), from Franklin Medical Center to the Frazier Medical Center at PCI where plaintiff was to undergo dialysis treatment. Plaintiff, Gallant, Jones, and Weston all testified to the above facts, for which no contradictory evidence was offered.

{¶3} The van in which Gallant and Jones transported the inmates used Q-Restraints (the restraints) to secure wheelchairs to the van's floor to prevent them from moving during transport. The restraints are comprised of four retractable straps attached to the van's floor. There are hooks attached to the ends of the straps. To extend and/or loosen the straps, a button on the straps at or near the van's floor must be pressed while the straps themselves are pulled out. Without the button being pressed, the straps retract automatically similarly to an automobile's seatbelts. With the button pressed, the straps' tension is released. After the straps are extended, the hooks are attached to the wheelchair and the straps retract tightly back to the floor, thereby securing the wheelchair to the van's floor. Two straps are attached to the front of the wheelchair and the other two are attached to the back. Gallant and Jones testified to the above. In addition, the restraints are depicted in Exhibits 5 and 6.

{¶4} Gallant and Jones had extensive experience transporting inmates and using the restraints to secure inmates. When working together, the two developed a customary procedure to secure inmates. They would use teamwork to operate and attach the restraints and would check to make sure inmates in wheelchairs were secure before transporting them by shaking the chair front to back and left to right to make sure it was secure. Gallant and Jones both testified to the above facts and no evidence was offered to dispute the custom to which both testified.

{¶5} However, on January 31, 2018, the specific actions of both Gallant and Jones are unknown. It is unknown who secured the front or back of plaintiff's chair or who checked to make sure plaintiff's chair was secure. Whether Gallant and Jones drove the van on the day of the incident is also unknown. Gallant, Jones, and plaintiff all testified that they could not remember who did what on the day of the incident.

{¶6} Gallant and/or Jones secured the two inmates' wheelchairs using the restraints. Plaintiff sat behind Weston. Though the wheels of plaintiff's wheelchair were locked and the restraints were attached, at least initially, plaintiff's wheelchair tipped

backward while en route to Frazier, causing plaintiff to hit his head on the van's liftgate. The van was not involved in an accident. Plaintiff had no way to right himself and traveled for some length of time on his back after his fall and after hitting his head. The van eventually arrived at Frazier where, after being seen by medical staff, plaintiff underwent his dialysis treatment. Gallant, Jones, and plaintiff all testified regarding the application of the restraints and plaintiff's fall. Plaintiff testified regarding the ride before his fall and presented no evidence regarding an accident. Dr. Hale and Nurse Williams testified to plaintiff's treatment on the day of the accident. The liftgate is depicted in photographs which were admitted into evidence.

{¶7} The exact cause of plaintiff's fall is unknown. However, plaintiff did not cause his own fall. Plaintiff presented no evidence establishing how the restraints came loose or how plaintiff's wheelchair tipped backwards despite the restraints being attached. Though Gallant and Jones both opined at trial that plaintiff must have loosened his restraints and/or caused himself to fall, no evidence was presented to support their theory. In fact, Gallant and Jones did not witness the fall or observe anything before Weston alerted them that plaintiff had fallen. Likewise, Weston did not observe the fall or know how it happened. Also relevant is the fact that plaintiff has prosthetic legs and that his right hand was handcuffed to his wheelchair making it reasonable to infer that plaintiff would have a difficult time pressing and releasing the restraints' buttons which are located on the van's floor.

{¶8} In addition, both Gallant and Jones completed reports on the day of plaintiff's fall wherein they make no mention that they suspected plaintiff caused himself to fall backwards and hit his head. Instead, these reports state, "during drive to frazier inmate williams (sic) went backwards in his wheelchair and hit his head." These incident reports were admitted into evidence as Exhibits 2 and 3. Likewise, an inmate accident report, dated the same date as the accident, states, "during drive inmate went back in wheelchair and hit back of head" and "during drive inmate Weston * * * yelled to

me that inmate Williams had went back and hit his head." Within a section labeled "Employee's Statement as to Cause of Accident," it states, "wheelchair wheels where (sic) locked and adjustable restraint was on wheelchair." Though the author of the inmate accident report was not established, the fact that the report uses the phrase "yelled to me" leads to the reasonable inference that its author was Gallant or Jones since they were the only two of defendant's employees involved in plaintiff's transport on January 31, 2018. The inmate accident report was admitted into evidence as Exhibit 1.

{¶9} Finally, plaintiff himself testified that his wheelchair, after not moving initially during the trip, began to slide before quickly falling backwards such that he had no time to grab anything to stop his fall. He further testified that he did not know how his wheelchair fell backwards. The undersigned found plaintiff credible on this issue based on his appearance and demeanor while testifying, the substance and directness of his answers and the lack of any evidence contradicting his testimony as to his fall on January 31, 2018.

{¶10} Plaintiff played no role in securing his own wheelchair in the van; only Gallant and Jones operated the restraints. Further, had the restraints been attached properly and plaintiff's wheelchair properly secured, plaintiff's fall would not have occurred. Gallant, Jones, and plaintiff all testified that only Gallant and Jones were involved in operating and securing the restraints. Further, Jones, who like Gallant had extensive experience transporting inmates and using the restraints, testified that when the restraints are properly attached, a wheelchair cannot tip.

{¶11} Medical personnel at PCI examined plaintiff upon his arrival. Due to the fall, plaintiff hit his head on the van's liftgate, resulting in a contusion to his head, specifically a three-centimeter lump on the back of his head. Plaintiff did not lose consciousness and the lump on his head did not bleed. On the day of the accident, plaintiff complained of a headache and rated his pain as a 4 out of 10; he received an

ice pack and was advised to use over the counter pain relievers. Nurses Wilson, Speakman, and Williams testified to the above as did Dr. Hale. Plaintiff's medical records also contain notations reflecting the above.

{¶12} Plaintiff did not suffer permanent or continuing injuries because of the fall. Though plaintiff testified that he experiences continuing headaches and back pain that began after his fall and that he takes 2-3 Tylenol a day for pain, plaintiff is not a doctor and his opinion regarding the cause and/or extent of his own injuries is entitled to minimal weight. Plaintiff presented no medical expert testimony that he has been diagnosed with any permanent injury or condition or that he requires continuing care due to the January 31, 2018 fall. In fact, the testimony of the nurses and Dr. Hale as well as the medical records admitted into evidence establish a minor injury. Finally, plaintiff has a complex medical history including double amputation and kidney failure which plaintiff did not address in claiming that the fall, as opposed to his chronic health problems, cause him continuing pain.

{¶13} Plaintiff pays $5 for a bottle of Tylenol containing 100 pills. He paid nothing for medical treatment related to the fall. Plaintiff testified to the price he pays for Tylenol but presented no evidence of any payment for medical services or treatment.

Conclusions of Law

{¶14} Plaintiff's complaint states a claim for negligence. As stated in *Franks v. Ohio Dep't of Rehab. & Corr*., 10th Dist. No. 12AP-442, 2013-Ohio-1519, ¶ 17:

> To maintain his ordinary negligence claim, appellant must show (1) the existence of a duty owed to him by the defendant, (2) a breach of that duty, and (3) injury proximately resulting from that breach. *Strother v. Hutchinson*, 67 Ohio St.2d 282, 285, 423 N.E.2d 467 (1981). "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." *Woods v. Ohio Dept. of Rehab. & Corr*., 130 Ohio

> App. 3d 742, 745, 721 N.E.2d 143 (10th Dist.1998), citing *McCoy v. Engle*, 42 Ohio App.3d 204, 207, 537 N.E.2d 665 (1987). The state, however, is not an insurer of inmate safety and owes the duty of ordinary care only to inmates who are foreseeably at risk. *Id*. at 745, citing *McAfee v. Overberg*, 51 Ohio Misc. 86, 367 N.E.2d 942 (Ct. of Cl. 1977). Because the state's compliance with its duty of care owed to prisoners will turn on the foreseeability of the eventual injuries, *Jeffers v. Olexo*, 43 Ohio St.3d 140, 539 N.E.2d 614 (1989), breach must be assessed in light of the individual factual circumstances. *Clemets v. Heston*, 20 Ohio App.3d 132, 20 Ohio B. 166, 485 N.E.2d 287 (6th Dist.1985). "Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances." *Woods* at 745, citing *Smith v. United Properties, Inc*., 2 Ohio St.2d 310, 209 N.E.2d 142 (1965).

{¶15} Plaintiff bore the burden of proving his claim by a preponderance of the evidence. As stated in *Brothers v. Morrone-O'Keefe Dev. Co., LLC,* 10th Dist. No. 06AP-713, 2007-Ohio-1942, 2007 Ohio App. Lexis 1762, ¶ 49: "[a] preponderance of the evidence is 'the greater weight of the evidence * * * [it] means evidence that is more probable, more persuasive, or of greater probative value."

{¶16} Plaintiff presented sufficient evidence to warrant the application of *res ipsa loquitur.* Though negligence normally should not be inferred from the mere occurrence of an accident, "under the evidentiary doctrine of res ipsa loquitur * * * the trier of fact is permitted to infer negligence where circumstantial evidence surrounding the injury clearly points to the negligence of the defendant." *Fields v. Federated Dep't Stores, Inc*., 1993 Ohio App. LEXIS 3756, *7-8, (10th Dist., July 29, 1993). The applicability of *res ipsa loquitur* is a question of law. To warrant its application, plaintiff needed to present evidence that the restraints, the instrumentality which caused plaintiff's injury, were under defendant's exclusive management and control and that plaintiff's injury

would not have occurred if ordinary care had been observed. *Id.* citing *Hake v. Wiedemann Brewing Co.* (1970), 23 Ohio St.2d 65, 66-67, 262 N.E.2d 703. Gallant, Jones, and plaintiff's testimony established both elements. Lacking evidentiary support and being speculative, Gallant and Jones' opinion that plaintiff loosened the restraints and caused his own fall does not change the analysis or the applicability of *res ipsa loquitur*. *See Fields* at *11-12.

{¶17} To establish proximate cause relative to injuries that are "internal and elusive, and are not sufficiently observable, understandable, and comprehensible" plaintiff needed to present expert testimony. *See Wright v. City of Columbus,* 10th Dist. No. 05AP-432, 2006-Ohio-759, ¶ 17-19.

Conclusion

{¶18} The court finds that plaintiff proved his claims by a preponderance of the evidence. Plaintiff fell and sustained injury while being transported by defendant's employees who were solely responsible for plaintiff's transport and for securing plaintiff safely in the van. Defendant owed plaintiff a duty of reasonable care during this transport that encompasses an obligation to ensure plaintiff was secured and/or transported in a safe manner. Though the exact circumstances of plaintiff's fall remain unknown, the applicability of *res ipsa loquitur* permits the court to infer negligence based on circumstantial evidence and the court does so infer based on the circumstances surrounding plaintiff's fall. The fact that plaintiff's wheelchair tipped backwards during transport speaks for itself. Gallant and Jones operated the restraints and were solely responsible for securing plaintiff. Further, the fall would not have occurred had plaintiff been properly secured. Though Gallant and Jones opined that plaintiff must have caused his own fall, the evidence does not support their theory. Instead, the evidence indicates that the restraints somehow failed during transport resulting in plaintiff's fall. As a result, plaintiff sustained a head injury that caused pain and a temporary lump on plaintiff's head.

{¶19} In sum, defendant owed plaintiff a duty of reasonable care that it breached when plaintiff's wheelchair was not properly secured. This breach proximately caused plaintiff's fall and resulting head injury. Judgment is, therefore, appropriate for plaintiff. However, plaintiff's injuries required limited medical treatment including the application of ice and the use of Tylenol. Other than purchasing Tylenol, plaintiff paid nothing for his treatment. Thus, plaintiff's injuries did not result in much, if any, economic loss. They were also temporary in nature. However, plaintiff did suffer a wound to his head as well as pain and discomfort associated with both the fall and the wound. As such, the magistrate values plaintiff's injuries at $1,000.00.

{¶20} For the reasons stated above, the magistrate recommends judgment in plaintiff's favor in the amount of $1,000.00.

{¶21} *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).*

SCOTT SHEETS
Magistrate

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