[Cite as *Gill v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-3086.]

ALI GILL Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2021-00048JD Magistrate Gary Peterson DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant, brings this action for negligence arising out of an incident where he fell and suffered injuries. The issues of liability and damages were not bifurcated, and the case proceeded to trial.

Findings of Fact

{¶2} On September 20, 2020, plaintiff proceeded to recreation at the Grafton Correctional Institution (GCI). Due to the Covid-19 pandemic, plaintiff was required to wear a face mask. Plaintiff sat down by a light pole near a pavilion in the recreation yard. Defendant's Exhibit B. After saying a prayer, plaintiff proceeded to leave the recreation yard. Plaintiff testified at trial that his cane got caught on some unlevel rocks that were about 4 inches higher than the surrounding elevation of the walkway. Plaintiff never complained to defendant about the walkways prior to this incident. Plaintiff maintained that his face mask obstructed his vision, which he described as impaired in one eye and blind in the other eye; however, plaintiff has not been determined to need a seeing eye dog or a cane for his vision. Plaintiff also stated that the obstruction that he tripped over was right by the pavilion but was obstructed by grass; however, plaintiff admitted that he fell on the concrete and not on the grass. After plaintiff fell, he lost consciousness. Plaintiff thereafter was transported to a local hospital where he received medical treatment.

{¶3} Despite plaintiff's claim that he tripped on uneven rocks/concrete, it is more likely that his knee or hip gave out while he was walking. Indeed, plaintiff reported to the hospital staff that he was walking in the yard and his leg gave out causing him to fall backwards and hit his head. Defendant's Exhibit D, pg. 337. Plaintiff returned to the institution after about 5 hours and remained in defendant's quarantine unit for the next 21 days. On September 21, 2020, plaintiff reported to Jena Cottrell, a nurse practitioner at GCI, that his hip and knee gave out causing him to fall. Defendant's Exhibit D, pg. 391. Plaintiff acknowledged that he previously fell in 2019 due to an incident involving his blood pressure.

{¶4} Carl Taylor and Harry Barr, both inmates at GCI who know plaintiff, reported that the walkways at GCI need repair. Neither Taylor nor Barr saw plaintiff fall. Taylor and Barr both reported that the walkway around the pavilion was replaced in late 2021 or early 2022.

{¶5} James Snowden, a nurse at GCI, responded to plaintiff's fall. When Snowden arrived, plaintiff was lying on the ground on his back. Plaintiff was on the walkway between the basketball court and the yard, not by the pavilion as plaintiff claimed. Defendant's Exhibit B. Snowden attempted to wake plaintiff, but Snowden was unable to get plaintiff to respond. While Snowden was checking plaintiff's vitals, plaintiff woke up. At that point, plaintiff began to respond. Plaintiff's blood pressure was high, his respirations were even, and his heartrate was a little high, but otherwise strong. After 20 minutes, plaintiff began to move, but his blood pressure remained elevated.

{¶6} Myron Costin, the building construction superintendent at GCI oversees all construction projects at GCI. Costin and his team perform snow removal on all walkways during the winter as well as lawn mowing during the summer. Costin was never made aware of any heaving of the sidewalk or other defect in the recreation area where plaintiff fell. Costin explained that if one of the gators (utility vehicles) performing snow removal hit an upheaval of greater than 2 inches, it would cause the gator to come to a stop and

that no such event ever occurred. The sidewalk in the recreation area was later replaced using covid relief money and that area was converted into an outdoor workout area. Defendant's Exhibit C.

Conclusions of Law and Analysis

{¶7} To prevail on a claim for negligence, plaintiff must prove by a preponderance of the evidence that "(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, and (3) the breach of the duty proximately caused the plaintiff's injury." *Jenkins v. Ohio Dept. of Rehab & Corr.,* 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 6. "Typically under Ohio law, premises liability is dependent upon the injured person's status as an invitee, licensee, or a trespasser. * * * However, with respect to custodial relationships between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions about which the state knows or should know." *Cordell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 08AP-749, 2009-Ohio-1555, ¶ 6, citing *Dean v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 97API12-1614, 1998 Ohio App. LEXIS 4451 (Sept. 24, 1998).

{¶8} "Although the state is not an insurer of the safety of its prisoners, once the state becomes aware of a dangerous condition in the prison, it is required to take the reasonable care necessary to make certain that the prisoner is not injured." *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1186, 2010-Ohio-4737, ¶ 23. It is plaintiff's burden to show that defendant had notice of the condition of the walkway when he fell. *See Powers v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 03AP-504, 2003-Ohio-6566, ¶ 10, citing *Presley v. Norwood*, 36 Ohio St.2d 29, 31, 303 N.E.2d 81 (1973); *Manross v. Ohio Dept. of Rehab. & Corr.*, 62 Ohio Misc.2d 273, 275, 598 N.E.2d 226 (Ct. of Cl.1991). "Notice may be actual or constructive, the distinction being the manner in which the notice is obtained rather than the amount of information obtained." *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606,

2012-Ohio-1017, ¶ 9. "Actual notice is notice obtained by actual communication to a party." *Barnett* at ¶ 23. "Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice." *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14.

{¶9} The magistrate finds that plaintiff failed to prove his claim of negligence by a preponderance of the evidence. Plaintiff failed to prove that he tripped over an obstacle/defect in the walkway about which defendant had actual or constructive notice. Despite plaintiff's testimony that he tripped over a 4-inch obstruction in the walkway, it is more likely that plaintiff's knee or hip gave out causing him to fall. Plaintiff reported to two different medical professionals on two different occasions that he fell as a result of his knee or hip giving out; plaintiff did not report that he tripped over an obstruction in the walkway. Additionally, plaintiff testified that he fell right by the pavilion, but Snowden credibly testified that plaintiff was lying on the ground on the walkway by the basketball courts, not by the pavilion. Furthermore, plaintiff acknowledged that he fell on an additional occasion due to an issue with his blood pressure and his blood pressure after he fell on September 20, 2020, was high.

{¶10} Moreover, Costin credibly explained that if one of the gators performing snow removal encountered an elevation change like the one described by plaintiff, it would have prevented the gator from continuing to clear the sidewalk of snow. As Costin testified, no such event ever occurred. Other than plaintiff's own testimony, which lacks credibility due to the inaccuracies and inconsistencies listed above, no other witnesses identified any obstruction or defect in the area where plaintiff fell. As set forth above, the magistrate finds that plaintiff failed to prove that he tripped over an obstruction or defect in the walkway.

{¶11} Even if there was a defect in the walkway and plaintiff tripped over that defect, defendant had no notice of such a defect. Costin was never informed of any potential defect in the walkway, and plaintiff acknowledged that he never complained or

reported a defect in the walkway by the pavilion to any of defendant's staff prior to his fall. While Taylor and Barr vaguely testified that the walkways at GCI were generally in a state of disrepair, neither saw plaintiff fall nor reported any hazard to defendant in the area where plaintiff fell prior to his fall. There is no evidence regarding the length of time that such an alleged defect existed and there is no evidence that defendant should have discovered the alleged defect. The magistrate acknowledges that the concrete around the pavilion was replaced after plaintiff fell, but it was established that the concrete was replaced using covid relief funds to create an outdoor workout area rather than to repair the walkways. In short, even if there was a defect or hazard in the walkway and plaintiff tripped over that defect, plaintiff failed to establish that defendant had constructive or actual notice about any such defect in the walkway.

{¶12} Based upon the foregoing, the magistrate recommends that judgment be entered 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).*

GARY PETERSON
Magistrate

Filed July 15, 2022
Sent to S.C. Reporter 9/2/22