

[Cite as *Hartson v. Ohio Dept. of Rehab. & Corr.*, 1992-Ohio-275.]
IN THE COURT OF CLAIMS OF OHIO

RICHARD M. HARTSON, #A147-294 :
Plaintiff : CASE NO. 91-05388
v. : DECISION
DEPARTMENT OF REHABILITATION : Judge Russell Leach
AND CORRECTION :
Defendant :

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This action came on for trial on July 27, 1992, at the Mansfield Correctional Institution. Plaintiff, Richard M. Hartson, is an inmate in the custody and control of defendant, Ohio Department of Rehabilitation and Correction, pursuant to R.C. 5120.16.

Plaintiff filed this action alleging that defendant was negligent in failing to provide him with a safe and adequate bunk bed in which to sleep and such breach was the direct and proximate cause of his injuries. More specifically, plaintiff alleges that defendant was negligent in failing to provide a ladder or other means of aid such as a stirrup in getting safely on and off the top bunk bed. Conversely, defendant denies that it was negligent and asserts that plaintiff's own actions were the sole and proximate cause of his injuries.

The court, having considered the totality of the evidence and testimony, renders the following findings of fact and conclusions of law.

The facts presented at trial proved that plaintiff, an inmate at the Mansfield Correctional Institution, was assigned to the top bunk bed in Unit-4C, Cell-213. On April 19, 1991, at approximately 10:30 p.m., plaintiff was lying on his assigned bunk bed when he felt the need to use the cell commode. Plaintiff proceeded to get down from the top bunk by placing his foot on the cell sink which was on the opposite wall from the bunk bed. Testimony from inmate Mark Hudson, plaintiff's cell mate, indicated that the sink was located a distance of approximately four feet from the top bunk bed.

Plaintiff's foot slipped on the sink sending him falling to the floor. In the process of falling, plaintiff's left hand became caught on the metal frame portion of the top bunk bed cutting open his left hand and left middle finger.

Upon witnessing the accident, inmate Hudson alerted the unit officer. Plaintiff was taken to the prison infirmary where he was examined by the staff duty nurse, Sharlene Brennan.

Nurse Brennan determined that plaintiff's injuries warranted the attention of a physician. As a result, plaintiff was transported to the emergency room of the Mansfield General Hospital where he was examined by the attending physician, Gary

Greer, M.D. Dr. Greer recommended that plaintiff be examined by a specialist at the Ohio State University Hospital for possible nerve damage to plaintiff's hand and finger.

Plaintiff was subsequently transported to Ohio State University Hospital where he was examined and treated by a physician specialist. Plaintiff's injuries to his left hand and finger required approximately fourteen stitches.

Plaintiff asserts that as a result of his injuries, he experienced difficulty in performing his basic daily chores such as brushing his teeth, tying his shoes, buttoning his shirt and writing letters. Furthermore, plaintiff claims that he is forced to rely on his fellow inmates to volunteer assistance to help him perform these basic chores.

Plaintiff's complaint is construed to set forth a single cognizable action, which is one sounding in negligence. In a claim predicated on negligence, the plaintiff has the burden of proving by a preponderance of the evidence, the existence of a duty, the breach of that duty, and injury resulting proximately therefrom. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282.

The duty of defendant is one of ordinary care in the furtherance of a custodian or prisoner relationship. *Jenkins v. Krieger* (1981), 67 Ohio St. 2d 314. While cognizant of a "special relationship" between an inmate and his

custodian, no higher standard of care is derived from his relationship,

Scebbi v. Dept. of Rehab. and Corr. (March 21, 1989), Ct. of Claims No.

87-09439, unreported. In other words, defendant has a duty to maintain its

premises in a reasonably safe condition. The requisite standard of care is

that which is reasonable and ordinary for the health, care and well-being of

the prisoner. ***Clements v. Heston*** (1985), 20 Ohio App. 3d 132.

Plaintiff asserts that defendant was negligent in failing to provide a ladder or stirrup for the top bunk bed in his cell. In order to find defendant negligent, the court would have to conclude that the failure to provide a ladder or stirrup posed an unreasonable risk of harm to the plaintiff.

The evidence presented at trial proved that there exists no standard which requires the defendant to provide a ladder for inmates to get on and off top bunk beds. Furthermore, the court finds that the bed provided by defendant was reasonable and did not pose an unreasonable risk of harm to plaintiff. Consequently, defendant did not breach any duty owed to plaintiff.

Ohio's comparative negligence statute, R.C. 2315.19, bars plaintiff from recovery if his actions were a greater cause (more than fifty percent) of his

injuries that any acts of defendant. The court further finds that any alleged breach by defendant was less of a causative factor than was plaintiff's own negligence. More specifically, plaintiff's use of the cell sink, which was approximately four feet away, as a means of getting off the top bunk was more than fifty percent of the proximate cause of his injuries.

For the reasons stated above, the court will render judgment for the defendant.

RUSSELL LEACH
Judge

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Upon consideration of all the evidence and for the reasons set forth in the decision rendered concurrently herewith, it is ORDERED that judgment is rendered in favor of defendant and against plaintiff. Court costs are absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

RUSSELL LEACH

Judge

Entry cc:

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Filed 8-31-92

Jr. Vol. 323, Pg. 176/To S.C. reporter 10-19-2001