



Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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PAUL JOHNSON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2012-08907

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

FILED
COURT OF CLAIMS
OF OHIO
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Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Allen Correctional Institution (ACI). Plaintiff was assigned as a "utility worker" in the institution kitchen where he performed various duties under the supervision of food service coordinators. On August 14, 2012, plaintiff was working in the bakery with another inmate, Joseph Samber, who was operating an electric slicer to cut blocks of cheese for use in preparing cheese sandwiches. Plaintiff testified that Samber had a "misunderstanding" with Theresa Fetters, the food service coordinator who was supervising the inmates, which caused Samber to stop using the slicer. Plaintiff admitted that he knew training was required before an inmate was allowed to use kitchen equipment. According to plaintiff, he informed Fetters that he was not properly trained to use the slicer; however, she gave him a direct order to use the machine to slice cheese for the sandwiches. Plaintiff described the cheese he was provided as blocks of "government" cheese that were approximately one foot long.

Plaintiff identified a picture of a slicer which he believed was similar to the one that he had operated and he explained that there were at least two somewhat different models that were used in the bakery. (Plaintiff's Exhibit 10.) Plaintiff testified that Samber told him to put the cheese blocks on the slicer, but he did not otherwise train plaintiff on the use of

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the machine. Plaintiff stated that he had never used such equipment before the day of the incident. Plaintiff related that the machine he used continued to run after the block of cheese had been sliced and that he did not turn the machine off before placing another block of cheese onto the slicer. Plaintiff testified that he had sliced a couple of blocks of cheese and he was placing a new block of cheese on the slicer when fingers on his left hand contacted the blade of the slicer.

Inmate Samber testified by way of deposition that, at the time of the incident, plaintiff had recently started working in the bakery and that at the beginning of their work shift, Samber was operating the slicer and plaintiff was removing sliced cheese from a pan to assemble the sandwiches. Samber stated that Fetters was in the bakery watching the inmates work when she gave plaintiff "the go ahead" to finish slicing the blocks of cheese. Samber testified that plaintiff told Fetters he was not trained to use the slicer, but Fetters gave plaintiff a direct order to perform the task, whereupon Samber instructed plaintiff on operating the machine. According to Samber, he watched plaintiff use the slicer for a short period of time before Samber left for another assignment. Soon thereafter, Samber turned and noticed that plaintiff was bleeding; however he did not observe the accident. Samber testified that he notified Fetters of the accident and that when he returned to the slicer to turn off the machine, he found two finger tips which he placed in a cup of ice. Samber related that plaintiff became angry when Corrections Officers (COs) made him wait for CO Governor Thompson to escort him to the institution infirmary.

Samber described the slicer that was used on the day of the incident as a Hobart brand deli-style slicer that was equipped with two "guards;" one underneath the cutting blade to direct the sliced food away from the blade, and another above the blade which exposed only a small portion of the cutting blade. Samber explained that the slicer was equipped with another metal device which was used to push the cheese block downward toward the blade. Samber testified that he instructed plaintiff to keep his hands away from

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the blade and he estimated that the accident occurred not more than three minutes after plaintiff began using the machine.

CO Thompson testified by deposition that, on the day at issue, he was working in the kitchen as a relief officer when plaintiff approached him and informed him that he had cut his fingers. Thompson related that he noticed plaintiff was bleeding and before he escorted plaintiff to the infirmary, he directed another inmate to place plaintiff's severed finger tips on ice. According to Thompson, he asked plaintiff how the accident happened and plaintiff responded that he had cut his fingers on the slicer and that he could not blame anyone other than himself for the accident because he was not authorized to use the machine. Thompson testified that he escorted plaintiff to the infirmary for treatment. During cross-examination, Thompson testified that he did not observe plaintiff using the slicer, that he did not recall seeing a food service coordinator in the bakery at the time of the accident, and that he was not aware that plaintiff had been assigned to the kitchen.

Theresa Feters, the kitchen coordinator who was on duty at the time of the incident, testified by deposition that she worked as a contract employee for "Diversity Group," and that she was trained and supervised by defendant's employees to serve in place of defendant's food service workers who were on leave. At the time of the incident, Feters had been working at ACI for approximately one month. Feters testified that she received a two-hour training session on defendant's policies and procedures, followed by on-the-job training. Feters stated that she did not receive specific training regarding supervising inmates using the slicer. Her primary duties included supervising inmates who cooked and cleaned in the kitchen. Feters recalled that plaintiff began operating the slicer after Samber gave her "a hard time" and she estimated that she was approximately 30 feet away from plaintiff when the incident occurred. Feters testified that she noticed plaintiff was using the slicer without a guard in place and that she instructed him several times to use the guard. Feters described the guard as a device that was designed to "flip up" to allow the user to load food onto the slicer, but plaintiff did not replace the guard when he

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operated the machine. Fetters testified that she did not know either plaintiff's job assignment or whether he had been trained to use the slicer. According to Fetters, if plaintiff had flipped the guard down after he placed the block of cheese on the slicer, his fingers could not have come into contact with the blade. Fetters testified that she was not watching plaintiff when he cut his fingers.

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 Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). "Prison officials are not insurers of an inmate's safety; however, they generally owe inmates a duty of reasonable care and protection from harm." *Washington v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-136, 2010-Ohio-4323, ¶ 14. "Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances." *Antenori v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-688 (Dec. 18, 2001). "Where an inmate also performs labor for the state, the state's duty must be defined in the context of those additional factors which characterize the particular work performed." *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16.

Although Fetters was employed by a private contractor, there is no dispute that she worked under the direction and control of defendant's employees, that she was expected to follow defendant's policies, rules, and procedures, and that she had the authority both to give direct orders to plaintiff and to issue citations in the event that he disobeyed her orders or otherwise violated defendant's rules. Therefore, the court finds that Fetters was an agent of defendant during the time in question. See *Wright v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-153, 2014-Ohio-4359.

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Fetters testified that her duties included supervising inmate workers and, she specifically admitted that she was responsible for ensuring that inmates who operated the slicer used the proper guards. Fetters acknowledged that she observed plaintiff using the slicer without the pivoting guard and that the proper use of the guard would have protected against the injury plaintiff sustained. Based upon the evidence, the court finds that Fetters allowed plaintiff to operate the slicer in a hazardous manner and that such operation created a foreseeable and unreasonable risk of harm to plaintiff. Accordingly, the court finds that defendant breached its duty of reasonable care to protect plaintiff from harm by failing to properly supervise him and allowing him to use the slicer without the guard in place.

However, the court further finds that plaintiff was aware of the potential risk associated with operating the slicer and that he understood he was not authorized to use such equipment without proper training. Although Samber's demonstration was brief, plaintiff admitted that Samber showed him how to properly operate the slicer. As discussed above, Samber testified that he specifically warned plaintiff to keep his hands away from the blade. By placing his hand near the blade while the slicer was operating, plaintiff failed to use reasonable care to ensure his own safety. Accordingly, the court must determine whether the contributory fault of plaintiff exceeds the fault of defendant, pursuant to Ohio's comparative fault statute, R.C. 2315.33.

Based upon the totality of the evidence, the court finds that the degree of fault attributable to plaintiff for failing to use reasonable care to ensure his own safety is 40 percent. Accordingly, judgment is recommended in favor of plaintiff with a 40 percent reduction in any award for damages.

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

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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).



ANDERSON M. RENICK
Magistrate

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