



# Court of Claims of Ohio

The Ohio Judicial Center  
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PAUL JOHNSON

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2012-08907

Judge Patrick M. McGrath  
Magistrate Anderson M. Renick

JUDGMENT ENTRY

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On January 9, 2015, a trial was held for the purpose of determining liability only. On February 24, 2015, the magistrate issued a decision recommending judgment in favor of plaintiff with a 40% reduction in any award for damages due to plaintiff's contributory fault.

Civ.R. 53(D)(3)(b)(i) states, in part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." On March 10, 2015, defendant raised the following fourteen (14) objections (lettered A-N):

Objection A: The Magistrate erred in admitting plaintiff's exhibits 1, 2, 3, 4, and 5 (over defendant's objection) as they were clearly hearsay and inadmissible.

First, the excerpts of the transcript provided by defendant do not include the objections with regard to these documents. Therefore, the court is unable to ascertain the reason offered for overruling said objections. However, "[i]t is well established that the decision to admit or exclude evidence is within the sound discretion of the trial court and that an appellate court will not disturb that decision absent an abuse of discretion." *America's Floor Source, L.L.C. v. Joshua Homes*, 191 Ohio App.3d 493, 2010-Ohio-6296, ¶ 27 (10th Dist.). Upon review, the court finds no such abuse of discretion. Consistent with plaintiff's argument, these documents are admissible under Evid.R. 801(D)(2) and

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Evid.R. 803(6)(8) as admissions of defendant and/or records of regularly conducted business activity. Therefore, defendant's first objection is OVERRULED.

Objection B: The Magistrate erred in overlooking, misinterpreting, or ignoring Teresa Fetters' testimony that the plaintiff was told not to use the slicer without the safety guard in place.

The magistrate did not ignore or overlook Teresa Fetters' testimony regarding whether or not she told him not to use the slicer without the guard. Rather, he specifically cited her deposition testimony in which she confirmed she told plaintiff to replace the guard several times. The court finds the magistrate did not misinterpret this testimony. He considered the testimony for what it was; an admission that she was aware plaintiff was using the slicer without the guard, told him repeatedly not to use the slicer without the guard, but did not actually stop him from continuing. Therefore, defendant's second objection is OVERRULED.

Objection C: The Magistrate erred in deciding that plaintiff (a convicted felon) was more credible in his testimony that he was given a direct order to use the cheese slicer when Teresa Fetters testified to the contrary.

"[T]he trial court is in a much better position than we to evaluate the authenticity of evidence and assess the credibility and veracity of witnesses." *America's Floor Source, L.L.C.* at ¶ 27. See also *State v. Scott*, 2010-Ohio-5869, ¶ 17 (10th Dist.); *State v. Eisenman*, 2011-Ohio-2810, ¶ 20 (10th Dist.). As such, the court will give deference to the experienced magistrate in his finding that plaintiff's testimony was credible as it related to whether or not Ms. Fetters gave him a direct order to use the cheese slicer. Further, plaintiff's testimony is corroborated by the testimony of inmate Samber who claims he heard Ms. Fetters give plaintiff a direct order. Therefore, defendant's third objection is OVERRULED.

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Objection D: The Magistrate erred in assigning any credibility to plaintiff's testimony when he repeatedly contradicted his prior sworn testimony at trial.

Upon careful consideration of plaintiff's testimony, the court agrees with plaintiff's assertion that his allegedly contradictory statements were due to confusion regarding the questions posed by defendant during cross-examination as opposed to a lack of credibility. Again, the court gives deference to the magistrate in making the determination regarding credibility and the court finds no abuse of discretion. Therefore, defendant's fourth objection is OVERRULED.

Objection E: The Magistrate erred in finding credibility to convicted murderer inmate Samber who testified that plaintiff only used the slicer for "not more than three minutes," when this is contradicted by plaintiff's own trial testimony of using the slicer for 15-20 minutes before his injury.

Again, the court gives deference to the magistrate's decision, as he was in the best position to determine the credibility of this witness. The record indicates the magistrate was aware of this contradiction, and considered it, along with the rest of the testimony in deciding whether or not inmate Samber was a credible witness. Further, the magistrate's decision seems to indicate the inconsistencies in elapsed time had little to no impact on his decision in regards to liability. Therefore, defendant's fifth objection is OVERRULED.

Objection F: The magistrate erred in overlooking, misinterpreting, or ignoring evidence that the plaintiff admitted his own fault for the accident to Correctional Officer Governor Thompson.

The magistrate did not overlook or ignore the testimony of Correctional Officer Thompson. In fact, he cites it in his decision. The plaintiff's alleged statement shortly after this traumatic experience with regard to his fault is not, by itself, determinative of his liability. The magistrate found that plaintiff was aware of the potential risk associated with operating the slicer and "[b]y placing his hand near the blade while the slicer was operating, plaintiff failed to use reasonable care to ensure his own safety." (Magistrate's Decision, pg. 5). Therefore, pursuant to R.C. 2315.33, the magistrate found that the degree of fault

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contributable to plaintiff's own actions is forty (40) percent. Determining liability, and the degree of such, is a matter for the trier of fact. Plaintiff's statement of his own blameworthiness is not sufficient for the purpose of deciding the percentage of liability assigned to individual actors. Therefore, defendant's sixth objection is OVERRULED.

Objection G: The magistrate erred in overlooking, misinterpreting, or ignoring evidence that plaintiff knew, prior to the accident, to keep his hands away from the moving slicer blade as that had been explained to him by inmate Samber prior to the accident.

The fact that plaintiff was not trained to use the slicer seems incontrovertible. Inmate Samber's brief explanation regarding the proper use of the slicer is clearly not an adequate substitution for thorough training. In fact, Ms. Fetters testified that even she did not receive specific training regarding supervising inmates using the slicer. The fact that plaintiff was informed that he needed to keep his hands away from the blade, yet he failed to do so, was taken into account by the magistrate when he properly assigned 40% of the fault to plaintiff. Therefore, defendant's seventh objection is OVERRULED.

Objections H-N: The magistrate erred in not finding plaintiff at least 51% at fault for his injuries considering his admissions; the magistrate's decision was against the manifest weight of the evidence; the magistrate erred in finding defendant breached a duty owed to plaintiff and its acts or omissions proximately caused plaintiff's injury.

The court finds that the magistrate's decision is not against the manifest weight of the evidence and the percentage of fault attributed to plaintiff is consistent with the testimony. Further, the court finds the magistrate properly determined the factual issues and applied the law related to the breach of a duty owed to plaintiff and the proximate cause of plaintiff's injury. The decision is also consistent with findings of this court in similar matters. See *Morgan v. Ohio Dept. of Rehab. & Corr.*, 2011-Ohio-4852 (Ct. of Cl.); *Martin v. Ohio Dept. of Rehab. & Corr.*, 2007-Ohio-5421 (Ct. of Cl.). Therefore, defendant's eighth through fourteenth objections are OVERRULED.

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Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of plaintiff. The case will be set for trial on the issue of damages which shall be reduced by 40 percent, to account for plaintiff's contributory negligence.



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PATRICK M. MCGRATH  
Judge

cc:

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