

[Cite as *Briscoe v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-4133.]

IN THE COURT OF CLAIMS OF OHIO

HARRY BRISCOE :  
Plaintiff : CASE NO. 2000-10758  
v. : MAGISTRATE DECISION  
OHIO DEPARTMENT OF : Magistrate Lewis F. Pettigrew  
REHABILITATION AND CORRECTION :  
Defendant :  
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{¶1} Plaintiff brought this action against defendant alleging negligence. The case was tried to a magistrate of the court on the issue of liability.

{¶2} At all times relevant hereto, plaintiff was an inmate at defendant’s Ohio State Penitentiary (OSP) in Youngstown, Ohio. OSP is a “super-max” security level facility, meaning that inmates are confined to individual cells twenty-three hours per day and are not allowed to leave their cells without being handcuffed behind their backs in the presence of a supervisor.

{¶3} On October 27, 1999, plaintiff was released from his cell to take a shower. As procedure dictates, plaintiff was escorted to the shower room in cuffs that were removed just before plaintiff entered the shower. The shower room contains a single stainless-steel shower stall that is approximately the size and shape of a standard portable toilet.

{¶4} In order to enter the shower stall, the inmate is required to step up approximately eighteen inches. A shower head and a soap dish are affixed to the stainless-steel wall inside the shower stall and a drain is located on the floor. The shower stall is not equipped with a grab bar or shower curtain because of the risk of inmate suicide and for other security reasons. Because there is no shower curtain, some water does spray onto the shower room floor.

{¶5} In order to exit the shower, the inmate is required to step down to the floor. Although there is no shower mat for the inmate to step onto, the cement floor of the shower room is coated with a non-skid paint. According to testimony, inmates also utilize a 2” vertical panel protruding from each side of the stall doorway as a means to steady themselves when they step out of the stall. Inmates are permitted to wear rubber shower shoes.

{¶6} Plaintiff alleges that his foot slipped on the floor as he was exiting the shower which caused him to fall backward, hit his back on the stoop of the shower and injure his ankle. Plaintiff claims that his fall was caused by the unsafe condition of the shower. Specifically, plaintiff alleges that the shower was not kept free of dirt and soap buildup and that the floor of the shower room was extremely wet and slippery. Plaintiff argues that the filthy and slippery condition of the shower, in combination with the lack of any safety devices such as floor mats and hand rails, created a foreseeable and unreasonable risk of harm and that defendant was negligent in allowing such a condition to exist on the premises.

{¶7} The elements of a negligence claim are: 1) the existence of a duty; 2) breach of that duty by defendant; 3) proximate cause between the breach and some damage to the plaintiff; and 4) damage to plaintiff. *Whiting v. Ohio Dept. of Mental Health* (2001), 141 Ohio App.3d 198. As a general rule, prison officials owe inmates the duty of reasonable care and protection from harm. *Woods v. Ohio Dept. of Rehab. & Corr.*, 01AP-669, 2002-Ohio-204. Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would exercise under similar circumstances. *Id.* However, these officials are not insurers of inmate safety. *Woods, supra.*

{¶8} There is great divergence in the testimony as to the condition of the shower on the day that plaintiff fell. The inmates who testified on behalf of plaintiff stated that the showers were never properly cleaned, that there were always half-used bars of soap and other filth on the floor and that water and soap scum leaked onto the cement floor outside the stall. Conversely, the corrections officers who testified on behalf of defendant

maintained that the showers were cleaned on a regular basis by inmate porters and that it was defendant's practice to have the shower cleaned if inmates complained.

{¶9} Plaintiff acknowledged that a porter had cleaned the shower before plaintiff entered. However, the weight of the testimony convinces the court that there probably were discarded bars of soap and soap scum along the corners of the showers, that the shower floor was somewhat slippery and that the cement floor outside the shower was wet. Nevertheless, in light of the demanding security measures needed for high-security inmates, such as plaintiff, the preponderance of the evidence does not establish that the shower was unreasonably dangerous under the circumstances. See *Williams v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 699, 704.

{¶10} Plaintiff next argues that due to defendant's prior notice or knowledge of at least one other incident where an inmate fell in the shower, defendant was required to take some additional precautions. However, as stated above, concern for security limits any measures that defendant can reasonably employ in order to minimize accidents to inmates while they are showering.

{¶11} Lieutenant Williams testified that he was the supervisor for C-block on the day of plaintiff's fall. According to Williams, he was called to the scene after plaintiff fell, where he found plaintiff lying on the cement floor with his legs and feet in the shower. Although Williams could not recall the condition of the shower, he stated that the cement floor was not slippery and that plaintiff was not wearing shower shoes. It is a matter of common knowledge that shower stalls and floors can become slippery. *Williams, supra.*

{¶12} Lieutenant Williams' testimony was both credible and persuasive and based upon his testimony, the court finds that plaintiff was not wearing any shower shoes while showering. Consequently, even if the court were to find that the condition of the shower was unreasonably dangerous, plaintiff's failure to exercise reasonable care for his own safety outweighs any negligence on the part of defendant thereby barring plaintiff's claim. See R.C. 2315.19. Accordingly, judgment is recommended in favor of defendant.

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LEWIS F. PETTIGREW  
Magistrate

Entry cc:

Richard F. Swope  
6504 East Main Street  
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

Patrick J. Piccininni  
65 East State St., 16th Fl.  
Columbus, Ohio 43215

Assistant Attorney General

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