

ORIGINAL

In the Supreme Court

Gerald Fields
Appellant

vs.

Ohio Department of
Rehabilitation and
Correction

14-1525
ON APPEAL FROM THE
MUSKINGUM COUNTY
COURT OF APPEALS
FIFTH DISTRICT

C.A. CASE No. 13AP-1079

Notice of Appeal of Appellant Gerald Fields

Gerald Fields (Propria Persona)
FRANKLIN MEDICAL CENTER
B-4 119-B
1300 HARMON AVE
Columbus, Ohio 43223

vs.

Amber Wooten Hertlein (0083858)
Court of Claims Defense
150 East Gay St, 18th Floor
Columbus, Ohio 43215

Counsel for Appellant,
Ohio Department of Rehabilitation
and Correction

FILED
SEP 03 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
AUG 22 2014
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
SEP 03 2014
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SUPREME COURT OF OHIO

NOTICE of Appeal of Appellant
GERALD FIELDS

Appellant, GERALD FIELDS, hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Muskingum County Court of Appeals, Fifth District Appellate Court, entered in Court of Appeals Case No. 13AP-1079 on the 22nd day of July, 2014.

This case raises a substantial constitutional question and is one of great general and public interest.

Respectfully Submitted
Gerald Fields
Appellant - Propria Persona

Certificate of Service

I hereby certify that a copy of this Notice of Appeal was sent by regular U.S. mail to counsel for Appellees Ramber Wooten Hettlein, Court of Claims at 150 East Gray St, 18th floor, Columbus, Ohio 43215; this 20th day of August, 2014.

Gerald Fields
Appellant - Propria Persona

In the Supreme Court

Gerald D. Fields
Appellant

v.

Ohio Department of
Rehabilitation and
Correction

ON Appeal from the
Franklin County Court
of Appeals Tenth
Appellate District

Court of Appeals

Case No. 13APT-12-1079

Memorandum in Support of Jurisdiction
of Appellant Gerald D. Fields

Gerald D. Fields # A617-709

Franklin Medical Center

Zone - B4 119-B

1800 Harmon Avenue

Columbus, Ohio 43223

Appellant - Pro Se

Amber Wootton Hertlein (0083858)

Assistant Attorney General

Court of Claims Defense

150 East Gay Street, 18th Floor

Columbus, Ohio, 43215

Counsel for Appellee

Ohio Department of Rehabilitation
and Correction

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SEP 03 2014

CLERK OF COURT
SUPREME COURT OF OHIO

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Memorandum in Support

Explanation of why this case is of great public interest or general interest and involves a substantial Constitutional Question

This case presents two critical issues for the future of countless other inmates who are subjected to a denial of an adequate remedy of law against the Department of Rehabilitation and Corrections.

This question addresses the Eighth Amendment's Cruel and unusual punishment. And also addresses to what extent the State is responsible for an accident initiated by State Employee's at Marion Correctional.

And also addresses the recuperation of monies that Appellant has had to spend during the course of this (4) four year litigation. The question of the payment of all litigation as a Pro Se Appellant and the damages incurred.

The Court of Appeals in its decision has already in a round about way sustained Appellant's assertions when it awarded the sum of \$2,500. For this case, Appellant's initial claim was \$250,000 for pain and suffering and to recoup some of the out of pocket. And what of Appellant's long range damage to his body and health.

Appellant already suffers from BRAIN damage

and deformities on his right side due to a disease known as Cerebral Palsy, which makes his bones brittle and unhealable as would be normal. Appellant has left a paper trail with the Prison's Kiting system and with Appeals to the Chief Medical Inspector's Office.

These injuries due to prison officials indifference to conditions of the prison grounds in the winter months. Appellant was told to use the uncleared portion of prison property. Simply because they did not want him going in front of the Captains Office.

This indifference to inmate's already damaged body due to disease he's fought since birth, was made worse by being made to try to walk in eight inches of snow and ice. If not the officials responsibilities whose is it. Appellant was doing as directed by prison officials, knowing the hazards. Especially to a man who already needs to use a cane. The order's to walk around on unplowed and unshoveled ground on snow and ice, fully falls on the shoulder's of the officials in charge, and that falls under Cruel and Unusual Punishment and the Eighth Amendment to the U.S. Constitution.

Statement of CASE and facts

In 2010 Appellant was forced to walk on the snow and ice at Marion Correctional Institution, which resulted in a slip & fall at said Institution causing damage to inmate left hip and arm.

Appellant sought medical attention and follow up which was slow in coming. Appellant Appealed to the Tenth Appellate District in case No. 13API-12-1079

Proposition of LAW No. 1

Did the state violate the Appellant's Eighth Amendment to CRUEL AND UNUSUAL punishment pursuant to the constitutional protection of the Constitution

The department of Rehabilitation and Corrections did in fact cause this accident, that the consequences may not be felt for years. IN this case the Corrections Officer's at MARION Correctional are at fault. The walkway was cleared and was passable, the Appellant was ordered to go the long way.

This course was uncleared of (8) Eight inches of snow and ice. Appellant is a man who already has a physical disadvantage. Appellant was at the age of six months diagnosed with disease called Cerebral Palsy.

Appellant is deformed in his right side and the muscles are weak. Appellant has Brain Damage and does not comprehend very well. Appellant was living on S.S.I as a civilian, and has been disabled for years.

By prison officials requiring Appellant to proceed to his destination through (8) Eight inches of snow and ice, and denying him the clear path the state violated Appellant's Constitutional

Rights pursuant to the 8th Amendment to the U.S. Constitution. It is CRUEL AND HIGHLY UNUSUAL PUNISHMENT when an inmate be RE-QUIRED TO TRAVEL ON A ROAD THAT NOT EVEN A C/O WOULD WALK ON. Asking Appellant to WALK ON, if C/O's WOULD WALK THESE ROADS WITH TWO GOOD LEGS. How CAN IT BE EXPECTED THAT THE Appellant DO THIS WITH ONE GOOD LEG AND A CANE.

This IS AN UNREASONABLE AND NEGLIGENT ORDER UNDER THE CIRCUMSTANCES. AND BLATANT DISREGARD FOR THE SAFETY OF THE Appellant. AND IS UNCONSCION-ABLE HOW THE PRISON C/O'S THOUGHT THIS COULD BE ACCOMPLISHED.

The Appellant followed the guidelines and kiting procedure to NO AVAIL. AND THE Appellate COURT IN FACT ABUSED ITS DISCRETION IN MAKING ITS OP-INION IN THIS CASE. THE JUDGMENT SHOULD BE RE-VERSED FOR FURTHER PROCEEDINGS. AND Appellant AWARDED MORE THAN \$2,500 DOLLARS.

Proposition of Law II

What is the prison's obligation to dependent
Inmate's with Health Issue's

The defendant - Appellant is in custody of the prison system and is responsible for every facet of the prisoner's life. Medical, vision, dental etc, but in this case the (ODRC) is in fact claiming they are not responsible. If in fact the (ODRC) isn't responsible who is because this question must be answered so the appropriate person or persons can be brought before the court.

The Ohio Department of Rehabilitation and Corrections owns the land the prison is built on, they are required to do the upkeep on the property, this includes the roads inside and outside of the institution. Here, the Appellant fell and hurt himself on state land. Because that grounds had not been cleaned off, Appellant slipped and fell on those grounds.

Therefore, the state is responsible because one, Appellant is a ward of the state, and two the negligence is squarely upon the prison's back to ensure the safety of their wards. Those wards being the inmates.

Therefore, the state is at fault in this case and should be made to pay for that negligence in protecting their wards safety. And Appellant - Defendant should be repayed all monies used in filing as pro se. That means attorney fees, coping expenses as well as postage.

In all criminal cases the state continuously talk about owning up to your mistakes or put another accepting responsibility for our actions, well now the state should be made to accept its responsibility in this matter.

Also Appellant pursuant to Civ. Rule of procedure 1343.03, appellant request that all monies spent in pro se, and compounded interest, expenditures for counsel be reimbursed.

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Gerald D. Fields, :
 :
 Plaintiff-Appellant, :
 :
 v. :
 :
 Ohio Department of Rehabilitation :
 and Correction, :
 :
 Defendant-Appellee. :

No. 13AP-1079
(Ct. of Cl. No. 2010-12281)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on July 22, 2014

Swope and Swope, and Richard F. Swope, for appellant.

Michael DeWine, Attorney General, and Amber Wootton Hertlein, for appellee.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Gerald D. Fields, appeals a judgment of the Court of Claims of Ohio. For the following reasons, we affirm.

{¶ 2} Fields is an inmate in the custody of defendant-appellee, the Ohio Department of Rehabilitation and Correction ("DRC"). Fields suffers from cerebral palsy, which has weakened the right side of his body and impairs his ability to walk. Fields is also a diabetic.

{¶ 3} On February 6, 2010, Fields left his dormitory at the Noble Correctional Institution to visit the infirmary. Fields needed to visit the infirmary to receive his morning insulin injection. Due to a recent snowfall, eight inches of snow covered the path

to the infirmary designated for prisoner use. Another walkway, however, was clear. Fields sought permission from two correctional officers to use the cleared walkway. Both officers denied Fields' request, even though Fields used a cane and explained his fear of falling. Having no choice, Fields attempted to traverse the snow-covered path, but he fell.

{¶ 4} According to Fields, he initially felt numb after the fall and then began experiencing persistent pain in his left hip and knee. Once back in his dormitory, Fields wrote a kite, a form of communication between prisoners and institutional staff, to the warden. In the kite, Fields explained the circumstances that precipitated his fall and stated that, "I hurt my back and my leg and knees." On February 9, 2010—three days after the fall—Fields submitted a health services request, wherein he represented that, "when I fell in snow[,] I hurt my back * * * and my arms and neck." Fields attended the February 11, 2010 nurse's sick call, but his medical records contain no details regarding the visit.

{¶ 5} On or about April 22, 2010, DRC transferred Fields to the Marion Correctional Institution ("Marion"). Fields saw a nurse at the Marion infirmary on April 26, 2010. That nurse documented that Fields complained of "hip and back pain[;] more in [his] r[ight] hip[;] upon standing[,] pain is in back and [in] r[ight] [lower] calf upon sitting."

{¶ 6} According to Fields' medical records, he first complained of pain in his left hip during a May 4, 2010 doctor's sick call. A physician assistant recorded in a progress note that Fields complained of a "fall in Feb. at Noble" and "since [the] fall, pain const[ant] [and] sharp" had been radiating down his left leg. Fields also complained of "intermittent [and] dull" pain in his left hip. The physician assistant ordered an x-ray of Fields' left hip, but the x-ray showed no abnormalities.

{¶ 7} The first complaint recorded of pain in the left knee appears in progress notes dated March 9, 2012. During a doctor visit on that date, Fields complained of "pain radiat[ing] from [his] left hip to knee." A physician examined Fields' knee and found it to be normal.

{¶ 8} Fields' medical records show that, after May 4, 2010, Fields complained periodically about pain in his left hip to Marion medical professionals. Fields complained

less often of pain in his left knee. Over the years, Fields received ibuprofen, acetaminophen, naproxen, and other medications to lessen the pain.

{¶ 9} At least two medical professionals assessed Fields as having arthritis in his left hip and/or knee. One physician, Dr. Piefer, recorded in a progress note dated November 14, 2012 that he felt that Fields' "r[ight-]sided problems ha[d] contributed to l[eft] knee and l[eft] hip symptoms." Fields had "r[ight-]sided problems" as a result of his cerebral palsy.

{¶ 10} On December 1, 2010, Fields filed a complaint against DRC alleging that DRC's negligence caused his fall. The trial court bifurcated the issues of liability and damages. After a trial on liability, a magistrate recommended judgment in Fields' favor. The trial court adopted the magistrate's decision and entered judgment for Fields.

{¶ 11} At a trial on damages, Fields testified regarding his fall and the subsequent pain he felt. Fields stated that he still experiences pain in his left hip and knee, although not at the level he felt immediately after the fall. Fields stands often because sitting causes his left hip and leg to feel numb. He sometimes has difficulty sleeping because he cannot get comfortable.

{¶ 12} Fields also introduced the testimony of Ralph Lyon, who serves as both the medical director and a staff physician at Marion. Dr. Lyon explicated Fields' medical records. During direct examination, Fields' attorney asked Dr. Lyon whether he had an opinion, based on a reasonable degree of medical certainty, as to whether Fields' chronic pain in his left hip and knee were proximately caused by the trauma he experienced when he fell. Dr. Lyon answered, "I don't have enough information to make that assumption. It's possible, but I can't say more than that." (Tr. 78-79.)

{¶ 13} On cross-examination, DRC's attorney asked Dr. Lyon if he agreed with the opinion Dr. Piefer expressed in a progress note that Fields' right-sided problems contributed to the left knee and hip pain. The following then occurred:

A: If I understand correctly, what he's thinking, it would be that - -

MR. SWOPE: I'm going to object, if he has to speculate - -

THE WITNESS: Yes, I have to speculate.

THE COURT: I will sustain that one.

BY MS. VOLP:

Q: Is it possible that Mr. Fields' right-sided limp due to his cerebral palsy has caused pain in his left hip?

A: It's possible.

MR. SWOPE: Object; move to strike. Everything is possible.

MS. VOLP: You had him testify to possibilities, as well.

THE COURT: I'll overrule. I mean, it is what it is. It's possible. I don't think that's calling for him to speculate.

(Tr. 100-01.)

{¶ 14} After Dr. Lyon concluded his testimony, Fields introduced the testimony of Troy Lumpkin, a fellow inmate of Fields when Fields was assigned to Noble. Lumpkin testified that Fields "really couldn't move" after his fall. (Tr. 8.) Lumpkin also stated that Fields complained that the fall caused pain along the whole right side of his body.

{¶ 15} On June 25, 2013, the magistrate issued a decision in which he recommended that the trial court award Fields \$2,500 for his pain and suffering. The magistrate concluded that, while Fields' fall on the snow-covered walkway "caused him to sustain some temporary pain or soreness throughout his body for several days," Fields failed to prove "a causal relationship between the fall and the persistent pain he complains of in his left hip and knee." (R. 111, at 5.) Thus, the amount of the award only compensated Fields for the transitory pain he experienced immediately after the fall, not the chronic pain in his left hip and knee.

{¶ 16} Fields objected to the magistrate's decision, but the trial court overruled the objections and adopted the decision. On December 4, 2013, the trial court issued a judgment rendering judgment for Fields in the amount of \$2,500.

{¶ 17} Fields now appeals the December 4, 2013 judgment, and he assigns the following errors:

ASSIGNMENT OF ERROR NO. 1.) THE TRIAL COURT AND MAGISTRATE ERRED WHEN THEY RULED PLAINTIFF-APPELLANT FAILED TO PROVE HIS PERSISTENT PAIN, SUFFERED SINCE THE FALL ON FEBRUARY 6, 2010, AT THE NOBLE

CORRECTIONAL INSTITUTION, WAS CAUSED BY THE FALL.

ASSIGNMENT OF ERROR NO. 2.) THE TRIAL COURT AND MAGISTRATE ERRED WHEN THEY RELIED ON A MEDICAL REQUEST FORM DATED FEBRUARY 6, 2010 AND A KITE TO THE WARDEN, WHEN THE REQUEST STATES HE FELL TWICE WHEN NO MEDICAL RECORD OR TESTIMONY DESCRIBES THE FALL, ITS NATURE OR FACTS RELATED TO THE FALL, AS WELL AS A DESCRIPTION OF INJURIES.

ASSIGNMENT OF ERROR NO. 3.) THE TRIAL COURT AND MAGISTRATE ERRED AND FAILED TO CONSIDER PLAINTIFF-APPELLANT'S PRIOR MEDICAL HISTORY OF LACK OF PAIN AND THE FACT THAT PLAINTIFF-APPELLANT WAS MORE SUSCEPTIBLE TO BACK, KNEE AND HIP PAIN BECAUSE OF HIS FRAGILE CONDITION CAUSED BY CEREBRAL PALSY.

ASSIGNMENT OF ERROR NO. 4.) THE TRIAL COURT AND MAGISTRATE ERRONOUSLY ALLOWED THE DEFENSE TO ELICIT AN OPINION ABOUT POSSIBILITIES AND TO RELY ON THE HEARSAY OPINION OF DR. PIEFER.

ASSIGNMENT OF ERROR NO. 5.) THE TRIAL COURT'S AND MAGISTRATE'[S] DECISIONS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, NOT SUPPORTED BY SUFFICIENT EVIDENCE AND [ARE] CONTRARY TO LAW.

{¶ 18} Because they are interrelated, we will address Fields' first, second, third, and fifth assignments of error together. Essentially, by these assignments of error, Fields argues that the trial court should have awarded him damages for the chronic pain in his left hip and knee. Fields contends that that the manifest weight of the evidence does not sustain the finding that the fall did not proximately cause his chronic pain. We disagree.

{¶ 19} Appellate courts will not reverse judgments supported by some competent, credible evidence as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 280 (1978). "Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one

side of the issue rather than the other. * * * Weight is not a question of mathematics, but depends on its effect in inducing belief." ' ' (Emphasis omitted.) *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *Black's Law Dictionary* 1594 (6th Ed.1990). Thus, in reviewing a judgment under the manifest-weight standard, a court of appeals weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way. *Eastley* at ¶ 20. In so applying the standard, the court of appeals "must always be mindful of the presumption in favor of the finder of fact." *Id.* at ¶ 21.

{¶ 20} Compensatory damages are intended to make the plaintiff whole for the wrong done to him or her by the defendant. *Fantozzi v. Sandusky Cement Prods. Co.*, 64 Ohio St.3d 601, 612 (1992). Compensatory damages in a personal injury case include compensation for direct pecuniary loss, such as medical expenses; loss of time or money from the injury; loss due to the permanency of the injuries; disabilities or disfigurement; and physical and mental pain and suffering. *Id.*; *Stephenson v. Upper Valley Family Care, Inc.*, 2d Dist. No. 07CA12, 2008-Ohio-2899, ¶ 79. Before a plaintiff can recover any such damage, he or she must prove that the act complained of was the direct and proximate cause of the injury for which the plaintiff seeks compensation. *Strother v. Hutchinson*, 67 Ohio St.2d 282, 286 (1981).

{¶ 21} Here, the trial court did not believe Fields' assertion that the fall directly and proximately caused the chronic pain in his left hip and knee. To support its finding, the trial court pointed out that the injuries Fields complained of immediately after the accident did not correspond with his later complaints. After the fall, Fields complained to Lumpkin about pain on his right—not left—side. When seeking medical attention for his injuries, Fields claimed that he had hurt his back, arm, and neck—not his hip or knee. Thereafter, during an April 26, 2010 nursing assessment, Fields stated that his pain was primarily in his right—not left—hip. The first documented complaint of left hip pain occurred approximately three months after the fall. Fields' medical records include no specific complaint of left knee pain until March 9, 2012—over two years after the fall.

{¶ 22} Second, the trial court found telling the absence of any expert testimony that the fall proximately caused Fields' chronic left hip and knee pain. The best Fields

could muster was Dr. Lyon's testimony that the fall possibly caused the pain. Dr. Lyon later identified a second possible cause; namely, that the pain could be due to overcompensation for the neuropathy on Fields' right side.¹

{¶ 23} On appeal, Fields attacks the trial court's finding of a lack of proximate cause by referring to evidence that, according to Fields, demonstrates that he did not have any left hip or knee pain until after the fall. Fields also points to his own testimony that the fall caused his left hip and knee pain. Ultimately, the trial court did not find Fields' evidence as persuasive as DRC's evidence. We concur with the trial court's assessment of the evidence.

{¶ 24} After reviewing the record, we conclude that competent, credible evidence supports the trial court's conclusion that Fields failed to show the fall proximately caused his chronic left hip and knee pain. The trial court, therefore, did not err in refusing to award him damages to compensate him for that pain. Accordingly, we overrule Fields' first, second, third, and fifth assignments of error.

{¶ 25} By Fields' fourth assignment of error, he argues that the trial court erred in allowing into evidence Dr. Piefer's progress note and Dr. Lyon's testimony that Fields' right-sided limp possibly caused the pain in his left hip. We disagree.

{¶ 26} The admission of evidence is within the discretion of the trial court. *Banford v. Aldrich Chem. Co.*, 126 Ohio St.3d 210, 2010-Ohio-2470, ¶ 38. Thus, a court of appeals will only reverse a decision admitting or excluding evidence upon a showing of an abuse of discretion. *Id.*; *Estate of Johnson v. Randall Smith, Inc.*, 135 Ohio St.3d 440, 2013-Ohio-1507, ¶ 22. A trial court abuses its discretion if its decision is unreasonable, arbitrary, or unconscionable. *Johnson* at ¶ 22; *Banford* at ¶ 38.

{¶ 27} To preserve error for appellate review, a party must make a timely objection to the admission of evidence and state the specific ground of the objection if not otherwise apparent from the context of the testimony. Evid.R. 103(A)(1); *Brooks-Lee v. Lee*, 10th Dist. No. 03AP-1149, 2005-Ohio-2288, ¶ 43. Failure to object waives any error, other than plain error, on appeal. *Id.* Here, Fields did not object to the admission of the progress note containing Dr. Piefer's opinion. Therefore, we review the admission only for plain error.

¹ As discussed below, we reject Fields' argument that the trial court erred in admitting this testimony.

{¶ 28} "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus. Applying this standard, we cannot conclude that the admission of Dr. Piefer's progress note rises to the level of plain error.

{¶ 29} Unlike Dr. Piefer's progress note, Dr. Lyon's testimony was the subject of an objection. Fields argues that the trial court abused its discretion in admitting Dr. Lyon's testimony because he stated that Fields' right-sided limp was a possible—not probable—cause of the pain in his left hip. We are not persuaded.

{¶ 30} When identifying a proximate cause of an injury, an expert witness, whether testifying for the plaintiff or defendant, must express his opinion in terms of probability. *Stinson v. England*, 69 Ohio St.3d 451 (1994), paragraph one of the syllabus. This rule, however, does not apply to the case at bar. Dr. Lyon expressly declined to offer any opinion regarding the proximate cause of Fields' chronic pain. In response to the questioning of Fields' attorney on direct examination, Dr. Lyon would only state that Fields' fall was a possible cause of his chronic pain. We conclude that DRC could counter this testimony by cross-examining Dr. Lyon about other possible causes.

{¶ 31} In sum, Fields has failed to demonstrate any reversible error in the challenged evidentiary rulings. Accordingly, we overrule Fields' fourth assignment of error.

{¶ 32} For the foregoing reasons, we overrule all of Fields' assignments of error, and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

CONNOR and LUPER SCHUSTER, JJ., concur.
