[Cite as *Turner v. Pickaway Corr. Inst.*, 2002-Ohio-4132.]

IN THE COURT OF CLAIMS OF OHIO

MARK TURNER	:	
Plaintiff	:	CASE NO. 2000-11509
v.	:	DECISION
PICKAWAY CORRECTIONAL INSTITUTION	:	Judge J. Warren Bettis
Defendant	:	

: : : : : : : : : : : : : : : : :

{¶1} Plaintiff brings this action against defendant, Pickaway Correctional Institution (PCI), alleging negligence. The case was tried to the court on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. On November 5, 1996, plaintiff entered the PCI dining hall for dinner. When plaintiff attempted to sit down, the chair bent backwards and plaintiff abruptly fell to the floor, breaking his right wrist in the process. The chair, like all of the other chairs located in the dining hall, was welded to a steel beam that connected the chair to the table. Located underneath the seat of each chair were two steel plates; one plate was attached directly to the seat and the other was attached to the beam.

{¶3} 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 it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Although the state is not an insurer of inmate safety, in the

context of the custodial relationship between the state and its inmates, the state has a duty to exercise reasonable care to prevent prisoners in its custody from being injured by dangerous conditions of which it knows or should know. *Moore v. Ohio Dept. of Rehab. and Corr.* (1993), 89 Ohio App.3d 107, 112; *McCoy v. Engle* (1987), 42 Ohio App.3d 204. 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. and Corr*., Franklin App. No. 01AP-688, 2001-Ohio-3945. Plaintiff bears the burden of demonstrating that defendant was on notice or aware of any dangerous conditions. The legal concept of notice is of two distinguishable types: actual or constructive. The court in *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197; explained the difference between the two types of notice.

{¶4} "The distinction between actual and constructive notice has long been recognized. The distinction is in the manner in which notice is obtained or assumed to have been obtained rather than in the amount of information obtained. Wherever, from competent evidence, either direct or circumstantial, the trier of the facts is entitled to hold as a conclusion of fact and not as a presumption of law that the information was personally communicated to or received by the party, the notice is actual. On the other hand, constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice or knowledge." See, also, *Imburgia v. Ohio Dept. of Trans*. (1999), 114 Ohio Misc.2d 38, 41-42.

{¶5} If a plaintiff is unable to show that defendant had actual knowledge of a pre-existing hazard, evidence of the length of time the hazard had existed is necessary to

support an inference that defendant had constructive notice. Id. at 42. In order to support such an inference, plaintiff must present evidence demonstrating that the condition existed for a sufficient time to justify the inference that the failure to warn against it or remove it was a breach of ordinary care. Id.

{¶6} Plaintiff contends that defendant had actual notice of the defective nature of the chair because he observed defective chairs being removed from the dining hall prior to November 5. Plaintiff also relies on testimony of defendant's staff, Dennis Pemberthy and Everett Sheets, who testified that the welds on the chairs occasionally broke and, when a weakness was discovered, the chairs were ripped from their moorings and carried to a safe place (referred to as the "cage"). Assuming that the testimony presented at trial evidences a pattern of defective chairs being removed from the dining hall, the court finds that such a pattern does not equate to actual notice under the circumstances.

{¶7} However, a pattern of removing defective chairs does permit the inference of constructive notice. It is apparent from the testimony presented at trial that defendant had constructive notice of the defective condition of the chair. Dennis Pemberthy, employed by defendant as a corrections sergeant at the time of the incident, testified that the dining hall contained 120 to 150 tables, and there were four chairs attached to each table. During the course of his five-year tenure working intermittently in the dining hall, Mr. Pemberthy stated that he could recall seeing only a dozen or so broken chairs. Yet, Mr. Pemberthy testified that at the time of the incident there were at least twelve to twenty broken chairs being stored in the "cage" for repair or disposal. This evidence indicates that there was a pattern of defective chairs.

{¶8} Additionally, Everett Sheets, employed by defendant as a food service manager, testified that the chairs located in the dining hall were eventually removed and replaced with benches; that the dining hall area containing the chair on which plaintiff was injured was the first area to be replaced entirely by benches. Although Mr. Sheets testified that the benches made it easier for the inmates to get to and away from the table, he acknowledged that it was very hard for a large person to fit in the chairs because of the back rest. Based on the fact that the dining hall contained a number of broken chairs waiting for repair or disposal, defendant's knowledge that the chairs bent easily under an inmate's weight and the subsequent replacement of the chairs with benches, the court finds that defendant had constructive notice of the defective chair. Thus, defendant breached the duty owed to plaintiff by not timely replacing the chairs. For these reasons, plaintiff has proven his claim by a preponderance of the evidence. Therefore, judgment is rendered in favor of plaintiff.

_____

J. WARREN BETTIS
Judge

Entry cc:

Susan M. Daniels — Attorneys for Plaintiff
Conrad A. Curren
330 Jefferson Street
P.O. Box 149
Greenfield, Ohio 45123

Lisa M. Eschbacher — Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

AG/cmd

Filed 7-1-2002/Jr. Vol. 710, Pg. 96/To S.C. reporter 8-12-2002