

[Cite as *Hendrickson v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-7121.]

JAMES HENDRICKSON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2015-00339

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, formerly an inmate in the custody and control of defendant, brought this action for negligence arising from an accident in which he suffered a steam burn in the course of his work assignment in the kitchen of the Marion Correctional Camp at the Marion Correctional Institution (MCI) on February 3, 2015. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff testified that at the time of the accident, he had been at MCI for about four years. Plaintiff stated that after holding a work assignment for some time in the kitchen of the main compound, he eventually moved out to the Marion Correctional Camp, which is a facility for lower security inmates situated apart from the main MCI compound, and he was given a work assignment as a cook in the camp kitchen. According to plaintiff, the kitchens at both the camp and the main compound had steam kettles which inmate workers would use to cook food, and he used them extensively during his time in both kitchens.

{¶3} Plaintiff testified that there were two steam kettles in the camp kitchen, and he authenticated photographs of both the kettles and the kitchen as a whole. (Defendant's Exhibits A, B.) As plaintiff described, when the kettles were in use steam would build up inside them, and when the pressure reached a certain point, the kettles automatically released excess steam from a release valve. In the case of the particular

kettle at issue in this case, plaintiff explained that, to a person standing in front of the kettle, the release valve extended down toward the floor from what would be the left side of the kettle. Plaintiff testified that the steam made a hissing noise when released, but there was no advance warning when a release would occur, and he stated that he had been told when he started working with the kettles in the main compound to stay away from the release valve. Plaintiff testified that, as far as he could tell, the release of steam from the valves was part of the normal operation of the kettles and did not result from any mechanical defect. Plaintiff stated that any maintenance of the kitchen equipment was performed by defendant's maintenance staff and by inmate workers, even after all food service operations were contracted out to Aramark in 2013.

{¶4} Plaintiff stated that the accident occurred near the end of his shift in the kitchen on the morning of February 3, 2015. According to plaintiff, the kettles had been in use until about 10:30 a.m. to prepare food for lunch, and subsequently he started cleaning up around the kitchen. Plaintiff explained that in the past there had usually been a porter who would come in and clean after the cooks were done, but recently the cooks had been asked to do more of the cleaning themselves. Plaintiff stated that he had consequently started a few days earlier to wipe down the walls at the end of his shifts. According to plaintiff, he had been doing that task for about 15 minutes on this particular day when he got to the point where he was wiping the wall near the kettles. While doing so, plaintiff stated, there was an emission of steam from the release valve described earlier and the steam burned the top of his right foot, which was underneath the valve. Plaintiff, who explained that he did not have full sensation in that foot due to preexisting nerve damage, stated that he had been unaware his foot was in that spot, and he could not say whether he had bumped into the valve.

{¶5} Plaintiff testified initially that he did not know the kettle was in use at that time. Plaintiff acknowledged, however, that he sensed heat emanating from the kettle and ultimately he was able to remember that the other cook with whom he worked that

morning told him before he started cleaning that cooks from the second shift had come in early and were using the kettles to prepare food for dinner. As plaintiff described, the second shift cooks would do this occasionally and ask him or another cook to keep an eye on the food while they went back to their housing units for an 11:00 a.m. institutional count.

{¶6} George Rayford testified by way of deposition.¹ (Plaintiff's Exhibit 1.) Rayford testified that he is an inmate at MCI and that he generally worked the first shift with plaintiff in the camp kitchen, but he believes that he had the day off when the accident occurred. Rayford recounted that he primarily worked as a baker, but he also did some cooking occasionally. According to Rayford there had been various mechanical problems with the kettles before the accident, including leaks, loose pipes and valves, and a poor seal on the drain at the front of the kettles. Rayford stated that he complained about some of the problems to two Aramark employees named Atkins and Russell, and also to an employee of defendant named Bill. From Rayford's recollection, work orders were submitted as a result of inmate complaints at one time or another to have maintenance performed on the kettles, and he observed inmates working on the kettles at some point under the supervision of defendant's maintenance staff.

{¶7} Rayford testified that the kettles automatically released steam at times in order to relieve the pressure inside, and he stated that he inadvertently sustained a burn on his own foot one time when steam was released. When asked to mark on a photograph of the kettle the location of what he understood to be the release valves, as well as the location of the problematic areas that had been the subject of inmate complaints, Rayford did so, but it is noted that the areas identified by Rayford do not

¹The objections raised in the deposition transcript at page 7/line 24 (moot); page 8/lines 7, 9, & 13; page 9/lines 5 & 12; page 10/line 4; and, page 10/line 14 (moot) are OVERRULED.

correspond to the location where plaintiff testified that he was injured. (Rayford Deposition, Exhibit A.)

{¶8} Thomas Steward testified by way of deposition.² (Plaintiff's Exhibit 2.) Steward testified that he is an inmate at MCI and that he worked the second shift in the camp kitchen in February 2015. As Steward described, he usually arrived for work between 11:30 a.m. and noon, but sometimes he would go in early to get a head start on cooking meat for dinner, so long as it would not interfere with the first-shift workers preparing lunch. Steward stated that he was not in the kitchen when the accident occurred and he could not remember whether he had gone to the kitchen earlier that morning. According to Steward, on the days that he went in early, he would notify an Aramark supervisor and they would open the meat locker for him, and he stated that whether or not he told the inmates working the first shift that he was going to start dinner, it would have been hard for them to not see what he was doing. Steward also testified that when the kettles are in operation, it is possible to hear noise from the rattling of the steam jacket, depending on the pressure, and heat may be felt radiating from the kettle.

{¶9} Inmates in the kitchen had two ongoing problems with the kettles, Steward stated, one being that steam would spontaneously release from valves when the pressure got to a certain level in the kettles. When presented with photographs and asked to identify where this occurred, Steward circled a different area than the area where plaintiff testified that he was injured. (Steward Deposition, Exhibits 7, 8.) The other problem, according to Steward, involved faulty seals on the drain plugs at the front of the kettles, and Steward testified that he was injured in a separate accident by water escaping out of one of the drain plugs. Steward stated that, in addition to several other complaints about conditions in the kitchen, he thinks he complained about the "pressure

²The objections raised in the deposition transcript at page 8/line 22; page 9/line 8; and, page 26/line 13 (moot) are OVERRULED.

release valves constantly just going off” and about drain plugs both to his Aramark supervisor, a Miss Spitzer, and to two employees of defendant, a “Miss Shaw the Unit Manager” and a person with the last name Miracle, whom he believed to be a maintenance worker.

{¶10} Corrections Officer Kenneth Rollins testified that he works as a relief officer at various posts at MCI, where he has been employed with defendant since 2000. Rollins related that up until 2013 he worked as a member of the food service staff, first in the camp, and then starting in 2010 in the main compound, but in 2013 all food service operations were privatized and taken over by Aramark, and he was eventually able to transition into his current role. Rollins explained that as a relief officer, one of the posts where he often worked around the time of this accident was at the camp.

{¶11} According to Rollins, when working in the camp he was required to make rounds through the kitchen and other areas every 30 minutes, and because Aramark ran the kitchen there were usually no employees of defendant in the vicinity other than himself when he would pass through. Rollins testified, though, that his responsibility at the camp was security, not inspecting the equipment in the kitchen, and he stated that no inmate or Aramark employee ever notified him of any concerns about malfunctioning equipment there.

{¶12} Rollins testified that he was familiar with the kettles from his prior experience as a food service worker and that the kettles in the camp kitchen are similar to the kettles in the kitchen of the main compound. When shown the photograph attached to inmate Rayford’s deposition as Exhibit A, Rollins stated that what is circled is not a steam release valve for a kettle, and Rollins identified in the photograph where the release valve is actually located. Rollins stated that when the kettles are in operation, they generate a lot of noise, including hissing sounds and a clattering sound, depending on the level of pressure inside. With regard to the maintenance of equipment in the camp kitchen, Rollins stated that from time to time inmate workers

under the supervision of the MCI maintenance department would come in and attend to the equipment.

{¶13} Rollins stated that he learned about the accident when plaintiff approached him after it occurred. Rollins related that he had plaintiff sit down in a chair and wait for medical personnel to arrive, and he prepared an Incident Report based upon what plaintiff described to him at that time. (Plaintiff's Exhibit 5.)

{¶14} "In a claim predicated on negligence, plaintiff bears the burden of proving by a preponderance of the evidence that defendant breached a duty owed to him and that this breach proximately caused the injury." *Woods v. Ohio Dept. of Rehab. & Corr.*, 130 Ohio App.3d 742, 744 (10th Dist.1998).

{¶15} "In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks." *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. "The state's duty of reasonable care does not render it an insurer of inmate safety." *Allen v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-619, 2015-Ohio-383, ¶ 17. "Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know." *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16. "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." *Barnett v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1186, 2010-Ohio-4737, ¶ 18. "The inmate also bears a responsibility 'to use reasonable care to ensure his own safety.'" *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-941, 2011-Ohio-3314, ¶ 20, quoting *Macklin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-293, 2002-Ohio-5069, ¶ 21.

{¶16} Upon considering the evidence presented at trial, the magistrate makes the following findings. On the morning of February 3, 2015, plaintiff was on duty at his work assignment as a cook in the kitchen of the Marion Correctional Camp. Plaintiff was familiar the operation of the two steam kettles in the kitchen, including the fact that each kettle automatically released steam from a release valve when the pressure inside the kettle reached a certain point. Although the kettles were turned off after food for lunch had finished cooking that morning, an inmate who worked the next shift subsequently came in and turned on at least one of the kettles to prepare food for dinner. Toward the end of his shift, plaintiff performed clean-up duties around the kitchen, including wiping down the wall near the kettles, a task that he only started performing a few days earlier. Plaintiff was not experienced at cleaning the walls, and as he came near the left kettle, which was in use at that time to prepare food for dinner, his attention was focused on the wall and he inadvertently placed his right foot under the release valve of the kettle. Due to the build-up of pressure inside the kettle, the kettle automatically released steam from the release valve. The steam contacted plaintiff's foot and burned him.

{¶17} While the magistrate is not without sympathy for the harm that plaintiff suffered in this accident, the evidence demonstrates that by placing his foot underneath the release valve, plaintiff failed to exercise appropriate care for his own safety, and this was the proximate cause of the injury. Plaintiff was familiar with the operation of the kettles, including the release valve, and knew the danger in placing his foot underneath the release valve. There was only a small space between the release valve and the floor which plaintiff needed to avoid, and it was not necessary for him to have his foot there in order to clean the wall. Plaintiff also had notice that the kettle was operating. Another inmate told plaintiff that a second-shift worker had come in and started cooking dinner, but plaintiff forgot. The evidence also established that the kettle generated heat and sound that enabled one to know the kettle was in operation.

{¶18} Although plaintiff argued that the kettles were old and defective, the age of the kettles was not credibly established and it appears that the release of steam which injured plaintiff resulted from the normal operation of the kettle rather than any malfunction. Rayford and Steward's descriptions of problems with the kettles were somewhat vague, and the particular parts of the kettles they identified from photographs as not working properly were different than the part at issue in this case. It was argued that there must have been a defect if steam was released by plaintiff bumping into the valve, but plaintiff himself testified that he was not sure whether he bumped into the valve or not. While plaintiff pointed to several work orders that are attached as exhibits to Steward's deposition in an effort to show that the kettle was defective, even if the documents are authentic they largely pertain to issues with other equipment, such as the steam line that keeps the food warm when it is being served in the cafeteria, or issues in the kitchen of the main compound rather than the camp kitchen.

{¶19} Finally, even if the evidence had shown that the release of steam which injured plaintiff resulted from an equipment malfunction, the kitchen was operated by Aramark at that time. While defendant's maintenance employees apparently worked on the kitchen equipment when notified of a problem by Aramark employees, there is no credible evidence that an Aramark employee reported any problem with this particular release valve prior to the accident or that defendant otherwise knew or should have known of any such problem.

{¶20} Based on the foregoing, the magistrate finds that plaintiff failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶21} *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 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).

ROBERT VAN SCHOYCK
Magistrate

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