

[Cite as *Rose v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-2442.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

STACY ROSE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

[Cite as *Rose v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-2442.]

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Case No. 2002-06201

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} This case was initially tried to the court on the issue of liability. The court subsequently issued a decision in favor of plaintiff and determined that plaintiff's recovery should be reduced by 30 percent to account for plaintiff's own negligence. The case proceeded to trial on the issue of damages.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Chillicothe Correctional Institution (CCI) pursuant to R.C. 5120.16. In support of his claim for damages, plaintiff presented his own testimony, the testimony of his current girlfriend, and his medical records.

{¶3} Plaintiff suffered injuries to his lower back, left ankle, and right shoulder when he slipped and fell while attempting to alight from his upper bunk. Plaintiff claims that he still experiences pain from his injuries. Plaintiff testified that during the fall his ankle twisted, his shoulder struck the lower bunk, he twisted his back, and he bumped his head. Plaintiff further testified that he had previously suffered injuries to his lower back and shoulder as a result of an automobile accident that occurred while he was being transported between prisons. According to plaintiff, the injuries from the accident were minimal but the fall exacerbated those injuries.

{¶4} Plaintiff testified that after the fall he visited the CCI infirmary where he was given ibuprofen and that he visited the infirmary "three or four times a month" for several months seeking further treatment and pain medication. On cross-examination, plaintiff admitted that, after the fall, he continued to play basketball in the prison basketball league and that he may have been the league's leading scorer.

{¶5} Plaintiff testified that prior to being incarcerated, he worked jobs that required physical strength, including construction work. According to plaintiff, after his release from defendant's custody, he gained similar employment but eventually had to quit because such work caused him too much pain. Plaintiff testified that he is currently employed as a waiter which requires him to work on his feet and carry trays, but that he does feel more pain after he works.

{¶6} Tapeka Turner, plaintiff's girlfriend, testified that plaintiff worked construction prior to his incarceration, and that he is not as strong as he used to be. She testified that plaintiff complains often about his pain and that he is unable to push

her in her wheelchair due to the pain in his shoulder. According to Turner, plaintiff has visited the emergency room several times because of his pain.

{¶7} Based upon the totality of the testimony and evidence, the court finds that plaintiff suffers some pain on a daily basis as a result of the incident. The court further finds that plaintiff's pain is neither debilitating nor severe, as evidenced by his current employment. The court concludes that plaintiff's total damages in this case amount to \$10,000, with a 30 percent reduction for plaintiff's own negligence. Accordingly, judgment is recommended in favor of plaintiff in the amount of \$7,025 which includes the \$25 filing fee.

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

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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).

STEVEN A. LARSON
Magistrate

cc:

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Magistrate Steven A. Larson

MR/cmd
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To S.C. reporter May 21, 2008