



{¶3} Plaintiff testified that he is paralyzed on the right side of his body due to spinal meningitis, a disease that he contracted during childhood; that he cannot raise his right arm over his head; that his right leg is deformed; and, that he has seizures. At trial, the court observed that both plaintiff's right arm and right leg appeared small and deformed. Plaintiff's medical records from various correctional institutions including CCI reflect a history of epilepsy and seizures, and confirm that the right side of his body is deformed. Plaintiff's medical records also reflect that he regularly refused medical treatment for his seizures.

{¶4} On December 30, 1999, plaintiff and a number of other inmates were temporarily moved from "A-Dorm" to "F-Dorm" so that construction work could be performed in A-Dorm. Plaintiff was assigned to an upper bunk in F-Dorm. Upon arrival to F-Dorm, plaintiff asked to be moved into a lower bunk but was told that one was not available.

{¶5} On January 3, 2000, plaintiff reported to CCI medical services requesting a lower bunk due to his seizures. At that time, he refused anticonvulsant medications and was advised that he would be evaluated for a restriction if and when he had another seizure. He was scheduled for a medical evaluation on January 14, 2000. Plaintiff alleged that on January 9, 2000, at approximately 11:15 a.m., he had a seizure while sitting in his top bunk waiting for count time and that he fell, striking both the lower bunk and his locker. Inmate Michael Penn testified that he witnessed plaintiff's seizure and fall. A nurse was called and plaintiff was taken to the infirmary. Plaintiff returned to the infirmary at 8:14 p.m. again that same day complaining of seizures. Accordingly, on January 10, 2000, plaintiff was issued a restriction.

{¶6} Plaintiff alleges that a permanent restriction was issued to him upon admission to CCI because of his well-documented history of right-sided paralysis and epilepsy resulting in a seizure disorder. Plaintiff alleges that defendant ignored his permanent restriction and his physical handicap and placed him in an upper bunk. Plaintiff further alleges that he should not have been assigned to an upper bunk even if he did not have a permanent or renewed restriction, given his documented history of seizures and his physical handicap.

{¶7} Defendant contends that CCI does not issue permanent restrictions; that plaintiff failed to renew his restriction; and that plaintiff refused to take medication for his seizures. Defendant further contends that since plaintiff did not comply with the renewal process, he was not entitled to a lower bunk.

{¶8} Plaintiff's last restriction was dated December 23, 1997, and was valid for six months. On January 3, 2000, plaintiff went to the infirmary and requested a restriction; however, it was denied. Thus, plaintiff did not have a valid restriction at the time of his fall on January 9, 2000. However, the issue for the court to decide is whether defendant was negligent in placing plaintiff in an upper bunk given his documented medical history and in denying his request for a lower bunk restriction.

{¶9} In order to prevail upon his claim of negligence, plaintiff 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 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.

{¶10} Plaintiff's medical file, which dates back to 1990, documents a history of epilepsy, seizures, and right-sided paralysis. His records also reflect that he had been issued numerous lower bunk restrictions based upon his seizure disorder and deformity of his right leg. His physical appearance demonstrates that he has a right-sided deformity/paralysis. Plaintiff testified that he remained in a lower bunk until December 1999, without having obtained a valid lower bunk restriction, even though his last order had expired in June 1998. These facts, taken together, persuade the court that defendant was on notice of plaintiff's medical need for a lower bunk. Thus, the court finds that defendant knew or should have known of the danger to plaintiff when he was issued an upper bunk.

{¶11} Plaintiff's medical record shows that he consistently refused medical treatment for his seizures in 1997 and 1999. Defendant argues that it is not responsible for any potential danger resulting from seizures because plaintiff refused treatment for the disorder. However, the court finds that plaintiff's refusal to accept medical treatment for the seizures does not obviate defendant's duty of reasonable care. Based upon the evidence presented at trial, the court finds that defendant breached its duty of reasonable care to plaintiff when it assigned him to an upper bunk despite notice of his well-documented history of seizures and right-sided deformity/paralysis. Accordingly, judgment is recommended in favor of plaintiff.

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STEVEN A. LARSON  
Magistrate

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