IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

ROY BEATY, JR.	)	MONROE COUNTY
	)	03A01-9612-CV-00389
Plaintiff-Appellant	)	
	)	
	)	
v.	)	HON. EARLE MURPHY,
	)	JUDGE
	)	
SHERIFF R. H. JOHNSON, Individually and as Sheriff of Monroe County, and Monroe County	)	
	)	
	)	
	)	
	)	
Defendants-Appellees	)	VACATED AND REMANDED

JOHN W. CLEVELAND OF SWEETWATER FOR APPELLANT

ELIZABETH A. TOWNSEND and GERALD L. GULLEY, JR., OF KNOXVILLE FOR APPELLEES

OPINION

Goddard, P.J.

Roy Beaty, Jr., appeals dismissal by summary judgment of his suit seeking damages against R. H. Johnson, Sheriff of Monroe County, and Monroe County for personal injuries he received while incarcerated in the Monroe County Jail.

He insists that there are material issues of fact rendering summary judgment improper.

Mr. Beaty's complaint contains the following allegations relative to his injuries and, as pertinent to this appeal, relative to the Defendants' wrongdoing:

> 7. On or about December 17, 1993 at approximately 1930 hours, the Plaintiff, while a pre-sentence detainee at the Monroe County Jail, was returning to his bunk from using the bathroom and stepped on bare wires from an electrical extension cord.
>
> 8. The Plaintiff received a severe electrical shock when he stepped on the electrical cord. The shock caused the Plaintiff to be violently thrown about, resulting in serious head and back injuries.
>
> 9. Because of the electrical shock and resulting fall by the Plaintiff, he has received a massive disc herniation and nerve root encroachment. Plaintiff has been advised by medical doctors that he is in need of an anterior cervical diskectomy and fusion.
>
> 10. It was the duty of the Defendant R. H. Johnson, as Sheriff of the Monroe County Jail, to maintain and keep the jail in a safe condition.
>
> 11. It is also the duty of Monroe County to maintain a safe environment for the inmates and pre-sentence detainees of the Monroe County Jail.
>
> 12. The Defendant R. H. Johnson, as Sheriff of Monroe County Jail, breached his duty of care by failing to maintain the jail in a safe condition.
>
> 13. Monroe County breached their responsibility and duty of care by failing to maintain the Monroe County Jail in a safe condition.

The Trial Court's order of dismissal states the following:

> The suit is based upon the failure to make an inspection of the cell in which the Plaintiff was confined and the failure of the defendant to obtain medical treatment for plaintiff's injuries.
>
> Failure to make an inspection is excepted from the statute removing governmental immunity in accordance with T.C.A. 29-20-205. It also appears from the Plaintiff's deposition that he received medical treatment at Sweetwater Hospital.

As we understand Mr. Beaty's brief, he concedes that the Defendants are immune from any cause of action arising from the failure to inspect in accordance with the Code Section mentioned in the Trial Court's order above-quoted.

The complaint, as already noted, also sought damages because the Defendants failed to provide Mr. Beaty medical care after being injured. The proof, however, is undisputed that such was provided without cost to Mr. Beaty and no issue is made as to this point on appeal.

Mr. Beaty does, however, insist, under the provisions of T.C.A. 29-20-204(a)[1] that immunity of governmental entities has been removed "for any injury caused by the dangerous or defective condition of any public building," and that the failure to maintain the jail facilities in a safe condition is a separate claim from the one alleging failure to inspect.

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[1] **29-20-204. Removal of immunity for injury from dangerous structures--Exception--Notice required.**--(a) Immunity from suit of a governmental entity is removed for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement owned and controlled by such governmental entity.

The Defendants counter this argument by first insisting that there was no proof that they knew of the unsafe condition caused by the frayed electrical cord and that in discovery deposition Mr. Beaty testified his cause of action was predicated upon failure to inspect.

Before addressing our resolutions of the competing contentions, we observe that although the Defendants rely upon the discovery deposition of Mr. Beaty--and the record was supplemented to include his deposition--it was not made an exhibit to the Defendants' motion, the only material accompanying the motion being the Defendants' brief in support thereof.

Nevertheless, we are inclined, as did the parties, to treat the discovery deposition as a part of the motion, as well as the affidavit and other materials filed with Mr. Beaty's response.

Apropos of the first insistence, our case law requires either actual or constructive notice in premise liability actions predicated upon defective conditions. McCormick v. Waters, 594 S.W.2d 385 (Tenn. 1980); Benson v. H.G. Hill Stores, Inc., 699 S.W.2d 560 (Tenn. App. 1985). The complete answer to the Defendants' argument is that on motion for summary judgment it was not the duty of Mr. Beaty to show that the Defendants knew of the condition, but rather the duty of the Defendants to show that they did not.

The Defendants rely upon our unreported decision in the case of Rice v. Knoxville Utilities Board, C/A No. 03A01-9606-CV-00209, filed in Knoxville on December 23, 1996. They contend that Rice stands for the proposition that, in a premises liability case, a plaintiff faced with a motion for summary judgment predicated on a lack of notice has an affirmative duty to prove actual or constructive notice of the defect. The Defendant in the instant case has misconstrued our holding in that case. We held in Rice that a premises liability plaintiff, when faced with a properly supported motion on the issue of notice, had to bring forth facts to create a dispute on the issue of actual or constructive notice. In Rice, we sustained a grant of summary judgment to the defendants because their supporting material showed a lack of notice, both actual and constructive, and the injured plaintiff did not present any facts to bring into dispute the facts presented by the defendants. Rice is not contrary to our holding in this case.

Finally as to this point, the record discloses that pursuant to T.C.A. 41-4-140(a)(3),[2] an inspection of the jail was made on December 30, 1992, and a re-inspection on December 10,

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[2] **41-4-140. Standards prescribed by Tennessee corrections institute.**--(a) The Tennessee corrections institute has the power and its duty is to:

. . . .

(3) Inspect all local jails, lock-ups, workhouses and detention facilities at least once a year and publish the results of such inspections. Inspections shall be based on the established standards mentioned in subdivision (a)(1).

1993. The re-inspection resulted in a finding that "There are frayed extension cords and naked wires throughout the jail." It appears that this report was not transmitted to the County Executive and Sheriff until March 2, 1994, which, of course, was after the date of the accident. However that may be, it is clear that there is proof in the record that conditions existed at least one week prior to the accident. In our view this period of time was sufficient to satisfy the requirement of constructive notice when applying our standard of review for summary judgments.

As to the Defendants' other insistence, the proof shows that during the discovery deposition of Mr. Beaty, the following occurred:

> Now, . . . it's my understanding that you're claiming that the Sheriff and the County are liable for failing to make an inspection or making an inadequate or negligent inspection of that jail area: is that a correct statement of your claim?
>
> A Yeah.
>
> MR. LOMONACO: (Nods head affirmatively.)
>
> Q And your attorney is shaking his head. Just so I remember what happened here today, that that's the correct statement of your claim. And I take it that that negligence is just that if they had appropriately inspected it, they would have seen the cord and replaced it.
>
> A You would think so. I don't understand why they didn't get rid of it after I stepped on it.

While it is arguable from the foregoing that the only claim being made was for lack of inspection, Mr. Beaty did not testify--nor did his counsel agree--that lack of inspection was the only claim he was pressing. Moreover, we are loathed to confine a lay person to answers given to this type of questions when the complaint specifically alleges other claims. We are also disinclined to find trial counsel in nodding his head, as above shown, will be deemed to have waived one of the claims allowed.

For the foregoing reasons, the judgment of the Trial Court is vacated and the cause remanded for further proceedings not inconsistent with this opinion. Costs of appeal are adjudged against Sheriff Johnson and Monroe County.

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Houston M. Goddard, P.J.

CONCUR:

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Charles D. Susano, Jr., J.

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William H. Inman, Sr.J.