

[Cite as *Ford v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-1286.]

IN THE COURT OF CLAIMS OF OHIO

CARL FORD :
 :
 Plaintiff : CASE NO. 2003-01296
 : Judge Fred J. Shoemaker
 v. :
 : DECISION
 DEPARTMENT OF REHABILITATION :
 AND CORRECTION :
 :
 Defendant :

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{¶ 1} Plaintiff brought this action alleging negligence. The case was tried to the court on the issue of liability and the related issue whether Corrections Officers (CO) Hill and Massie are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86.

{¶ 2} At all times relevant to this action, plaintiff was an inmate at the Ross Correctional Institution (RCI) in the custody and control of defendant pursuant to R.C. 5120.16.

{¶ 3} On February 21, 1999, plaintiff was violently assaulted in his cell by Everett Griffith, another inmate, who was housed a few cells away from plaintiff in Unit 2A. In his complaint, plaintiff alleges that defendant's COs were negligent in failing to properly supervise inmates and in failing to follow proper security regulations. Defendant denies liability.

{¶ 4} It is uncontested that on the day of the assault, all inmates housed in 2A were locked in their individual cells at 11:00 a.m. in order to allow the COs to conduct a pre-chow count. The inmates remained locked in their cells until they were called out for lunch at precisely 11:48 a.m. At this time, they were released

for lunch and their cell doors were placed on "local mode," which means that cell doors were locked and, in order to open them from the outside, a CO needed to unlock them with a key; however, on local mode a cell door may be opened from the inside by an inmate by pressing a small button located within the cell.

{¶ 5} Plaintiff was incarcerated in RCI Building H, Unit 2A. The building is a two-story structure with units or "pods" located on upper and lower tiers. Each pod is shaped in the form of a right triangle and is attached to another mirror-image pod. Cells are located on each of the two legs of the triangle while the third side, or hypotenuse, contains multipurpose facilities through which passes an enclosed hallway, or sally port, which is used as a secured passageway for ingress to and egress from the pod. Each cell has a solid steel door with a glass panel measuring 5 inches wide by 24 inches high. The pods have a shared common area, or C-section, that contains a lobby, staff offices, staff restroom, and break room. On the date at issue, the common area also contained a desk which was located near the entrance to the sally port.

{¶ 6} Plaintiff testified that he was housed on the first floor of 2A, with Griffith occupying a cell nearby. Plaintiff chose not to go to chow. Before being attacked in his cell, he recalled telling either Sergeant "JJ," or CO Massey that he was fearful of Griffith. Plaintiff testified that Griffith had stolen his property and wanted to take his money, and that he did not see any COs or inmates in the vicinity when Griffith attacked him. While plaintiff could not remember whether the cell door was open or closed, he admitted that if the door had been open, he could have chosen to close it to prevent anyone from entering.¹

¹The court notes that plaintiff stated during his testimony that his memory

{¶ 7} John Randall Johnson, the unit sergeant of 2A and 2B, testified that he is known by the inmates as Sergeant JJ. Prior to Griffith's assault, Johnson occasionally spoke with plaintiff; however, at no time did plaintiff mention any problems that he might be having with Griffith or did he state that he was fearful of him.

{¶ 8} Johnson also testified about a CO's post orders, explaining that post orders are a description of a CO's daily duties. He stated that an officer's post would be responsible for 2A and C-section, and that a CO would enter 2B (mirror-image pod) only if an emergency arose; that COs conduct security checks on varying half-hour intervals; and that post orders do not require COs to be seated at the desk in 2A because the majority of their duties require them to move throughout the entire post.

{¶ 9} Christopher Hill, a CO for nine years, testified that he was working as a relief officer in 2A and that the daily duties of a CO are to make security rounds, lock/unlock doors, write passes, and answer phones. He also testified that his post in 2A included C-section and that the desk located in 2A by the sally port was an area available to do paperwork but that it was not used for observation and security of the cellblock.

{¶ 10} Hill began working in 2A at 6:55 a.m. and was on duty when inmates were released for chow. He explained that he allowed the inmates ten minutes to leave 2A and then locked the door leading out of the housing unit. He stated that after locking the door he conducted a security round that lasted approximately four minutes and that he entered C-section to use the restroom at 12:02

was impaired by the assault and that he had trouble recalling the events surrounding the attack.

p.m. He then started a pot of coffee and went to the lobby area to wait with Massie. At that point, an inmate entered C-section and asked if he could go to Inmate Health Services. Hill explained that another inmate also came into C-section and asked for a "key round," which requires a CO to walk around the housing unit and unlock cell doors for inmates. Massie left C-section to conduct the key round and within minutes Hill was informed by an inmate that Massie needed help. Hill immediately proceeded to Massie who was attending to plaintiff.

{¶ 11} Hill testified that at no time prior to the lunch period had plaintiff mentioned any threats by Griffith, and that if plaintiff had said as much, he would have been duty-bound to tell a supervisor, at which time plaintiff would have been taken to the captain's office to be placed in protective custody.

{¶ 12} Bradley Massie, a CO for 14 years, was the other officer working in 2A. Unlike Hill, Massie was a regular officer in 2A. His job duties for the day included conducting security rounds, checking for contraband, and maintaining logbooks. That morning, while escorting plaintiff to the supply closet, he noticed that plaintiff was subdued and asked if something was bothering him. Plaintiff stated that nothing was bothering him, but that he was just tired.

{¶ 13} After releasing the inmates for lunch, Massie explained that he went into C-section where he could observe the inmates walking across the yard to the dining hall. He then bought a drink from the vending machine and sat down in the lobby, where Hill joined him. Massie testified that they were in C-section together for no more than six or seven minutes when he began the key round.

{¶ 14} Approximately three minutes into the key round, Massie found plaintiff in his cell. Although a logbook entry states that plaintiff was found at 12:20 p.m., Massie testified that he came across plaintiff at 12:15 p.m. and that his incident report showed that he found plaintiff at 12:15 p.m. (Plaintiff's Exhibit 35.) Upon finding plaintiff, Massie initially believed that plaintiff had struck his head during a seizure.

{¶ 15} Massie testified that the entire time that he was in C-section, the doors were open so that he could hear any noises in the area and observe part of 2A; that at no time prior to February 21, 1999, did plaintiff inform him that he was having problems with or that he was frightened of Griffith; and that plaintiff never asked for protection.

{¶ 16} Inmate Troy Moss was housed in 2A at the time in question. Moss stated that prior to February 21, 1999, plaintiff and Griffith had an ongoing disagreement; however, Moss never reported the problem.

{¶ 17} 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. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. However, the state is not an insurer of inmate safety. See *Williams v. Ohio Department of Rehabilitation and Correction* (1991), 61 Ohio Misc.2d 699, at 702.

{¶ 18} The law is well-settled in Ohio that the state is not liable for the intentional attack on one inmate by another unless

there is adequate notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 696. The legal concept of notice comprises two distinguishable types, actual and constructive. See *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶ 19} The court's determination whether defendant had actual or constructive notice of the intentional attack on plaintiff turns on witness credibility. "In determining the issue of witness credibility, the court considers the appearance of each witness upon the stand; his manner of testifying; the reasonableness of the testimony; the opportunity he had to see, hear, and know the things about which he testified; his accuracy of memory; frankness or lack of it; intelligence, interest, and bias, if any; together with all facts and circumstances surrounding the testimony." *Adair v. Ohio Dept. of Rehab. & Corr.* (1998), 96 Ohio Misc.2d 8, 11; See 1 Ohio Jury Instructions (1994), Section 5.30.

{¶ 20} The testimony presented by plaintiff in this case was contradicted by a unit sergeant and two COs. Applying the criteria in *Adair*, supra, to the testimony presented herein, the court finds that Sergeant Johnson, CO Hill, and CO Massie were more credible witnesses than plaintiff. Moreover, the court notes that plaintiff acknowledged under oath that his memory had been impaired by the assault. Accordingly, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant had either actual or constructive notice of Griffith's intent to assault him.

{¶ 21} Plaintiff also alleges that defendant was negligent in failing to follow proper security regulations. Specifically,

plaintiff asserts that both Hill and Massie left their post when they were in C-section together and had they not remained in C-section at the same time, the assault could have been prevented.

{¶ 22} Johnson, Hill and Massie all testified that the post orders for 2A included C-section. Indeed, page 4 of the post orders states under the heading "Procedures" that: "Unit officers will makes checks on staff that work in C-section at least once every half hour." (Plaintiff's Exhibit 18.)

{¶ 23} Plaintiff presented the expert testimony of Roger Leist, Jr., a sergeant with the Lucas County Sheriff's Office who had worked as a CO in the Lucas County Jail for five and one-half years. Defendant's expert, James Ricketts, Ph.D., was a correctional consultant with experience in both medium and maximum-security facilities, as well as service as an auditor determining whether such facilities met accreditation standards.

{¶ 24} Sergeant Leist opined that the COs in 2A were not in their assigned areas at the time of the assault and had one or both of them been at their post, the assault would not have occurred. In his opinion, a CO should be in a position to observe every cell around the clock in a setting such as RCI.

{¶ 25} Despite Leist's opinions on these matters, he admitted on cross-examination that he was unfamiliar with the post orders for 2A in February 1999 and that he did not know whether RCI utilized direct or indirect security. Additionally, plaintiff's expert had never provided security in a state penitentiary and had not traveled to RCI to observe the scene of the assault.

{¶ 26} Dr. James Ricketts testified that a post is the area within a facility where a CO is assigned to maintain security, and that there are no industry standards for determining what areas are

encompassed in a post, since the post is based on the specific configuration of individual institutions. Ricketts traveled to RCI, viewed 2A and C-section, and determined that the post orders for 2A included C-section. He stated that RCI is a direct-supervision facility where COs have direct contact with the inmate population, and that the two senses used most often in correctional supervision are sight and hearing. Ricketts opined that there was adequate security provided in 2A and that industry standards were met since both COs were within sight or hearing of the inmate population during the time of the assault.

{¶ 27} Upon review of the testimony of these witnesses, and to the extent that such evidence was either relevant or probative under the facts of this case, the court finds not only that plaintiff's expert was not persuasive but also that defendant's expert was more credible.

{¶ 28} Based upon the evidence produced at trial, the court finds that COs Hill and Massie did not leave their post at any time on February 21, 1999. Accordingly, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant was negligent in failing to follow proper security regulations.

{¶ 29} For the foregoing reasons, the court finds that plaintiff has not proven any of his claims by a preponderance of the evidence. Accordingly, judgment shall be rendered in favor of defendant.

{¶ 30} In light of the above findings, the court concludes that COs Hill and Massie did not act manifestly outside the scope of their employment, with malicious purpose, in bad faith, or in a wanton or reckless manner. They are therefore entitled to civil

immunity pursuant to R.C. 9.86 and 2743.02(F) and the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

IN THE COURT OF CLAIMS OF OHIO

CARL FORD	:	
	:	
Plaintiff	:	CASE NO. 2003-01296
	:	Judge Fred J. Shoemaker
v.	:	
	:	<u>JUDGMENT ENTRY</u>
DEPARTMENT OF REHABILITATION	:	
AND CORRECTION	:	
	:	
Defendant	:	

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This case was tried to the court on the issue of liability and to determine civil immunity pursuant to R.C. 9.86 and 2743.02(F). Upon hearing all the evidence and for the reasons set forth in the decision filed concurrently herewith, the court finds that COs Hill and Massie are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

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