



dormitory when another inmate informed him that "something was going on" near plaintiff's bunk bed.

{¶ 4} There was conflicting testimony at trial concerning the cause of the verbal confrontation. Plaintiff testified that he became upset because Thomas was holding a photograph album and standing on photos of plaintiff's father that had fallen onto the floor. According to plaintiff, Thomas kicked the photographs when plaintiff asked him not to "disrespect" them. Thomas testified that he did not recall either the photographs or plaintiff complaining about them. It is not disputed that plaintiff called Thomas a "fat bastard" and threatened to have him fired.

{¶ 5} It is also undisputed that when Jeffrey arrived he ordered plaintiff to step away from Thomas and plaintiff initially complied. However, plaintiff continued to yell and he again stepped toward Thomas. After Jeffrey repeated his order to step back "a couple of times," Jeffrey ordered plaintiff to "move to the wall" so that he could be restrained. Although plaintiff initially complied with the order, he pulled away as Thomas and Jeffrey attempted to place handcuffs on him. Jeffrey's hand was cut on a "tooth" of an open handcuff when plaintiff resisted. Plaintiff continued to struggle and curse after he was restrained and escorted to the "day room." Plaintiff remained in the day room until another CO arrived to escort him to the infirmary for evaluation before he was taken to segregation.

{¶ 6} Plaintiff testified that after he was restrained he was thrown to the floor, kicked by one of the COs, and "slammed" on a desk. Plaintiff also testified that he was not treated at the infirmary on the day of the incident, that a nurse gave him Tylenol and an analgesic balm the following day, and that he was not

examined by a doctor until approximately nine days after he was released from segregation. According to plaintiff, defendant's COs used excessive force both during and after their efforts to restrain him injuring his left shoulder and left clavicle.

{¶ 7} 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. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. 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.

{¶ 8} The Ohio Administrative Code sets forth the circumstances under which defendant's employees are authorized to use force against an inmate. Former Ohio Adm.Code 5120-9-01 provided:<sup>1</sup>

{¶ 9} "(A) As the legal custodians of a large number of inmates, some of whom are dangerous, prison officials and employees are confronted with situations in which it is necessary to use force to control inmates. This rule identifies the circumstances when force may be used lawfully.

{¶ 10} \*\*\*\*

{¶ 11} "(C) There are six general situations in which a staff member may legally use force against an inmate:

{¶ 12} \*\*\*\*

{¶ 13} "(1) Self-defense from an assault by an inmate;

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<sup>1</sup>Ohio Adm.Code 5120-9-01 was rescinded and re-enacted effective July 1, 2004.

{¶ 14} "(2) Defense of third persons, such as other employees, inmates, or visitors, from an assault by an inmate;

{¶ 15} "(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations;

{¶ 16} "\*\*\*

{¶ 17} "(E) The superintendent, administrator, or staff member of a correctional institution is authorized to use force, other than deadly force, when and to the extent he reasonably believes that such force is necessary to enforce the lawful rules and regulations of the institution and to control violent behavior."

{¶ 18} This court has previously noted that "corrections officers have a privilege to use force upon inmates under certain conditions. \*\*\* However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. \*\*\* Force may be used to control or subdue an inmate in order to enforce the institution's rules and regulations. \*\*\* Obviously, 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Citations omitted.)

{¶ 19} The testimony at trial established that Thomas performed an authorized search for contraband and that Jeffrey responded to the dormitory when he became aware of a disturbance. Plaintiff testified that he used derogatory language, threatened Thomas, and failed to comply with a direct order to "back up." Although plaintiff testified that other inmates observed the incident, he did not offer any testimony other than his own to show

that he was injured by defendant's employees. The court finds that the testimony of COs Thomas and Jeffrey that plaintiff had refused to cooperate during the shakedown was consistent and credible.

{¶ 20} Plaintiff's credibility regarding his version of the incident was undermined by the information contained in his medical records. Specifically, plaintiff's testimony that he was taken directly to the segregation unit and that he was not evaluated on the day of the incident was contradicted by a medical examination report that showed that he was examined by a nurse soon after the incident occurred. (Joint Exhibit A.) Furthermore, plaintiff's assertion that he was kicked and thrown to the floor was not consistent with notations in the examination report that plaintiff informed the examining nurse that he was not injured and that he exhibited "no visible signs of injury." Although plaintiff's medical records document treatment that he received in 2003 and 2004 for pain in his left shoulder, the court finds that plaintiff failed to establish that his shoulder injury occurred as a result of any negligence by defendant's employees.

{¶ 21} Based upon the totality of the evidence presented and assessing the credibility of the witnesses, the court is persuaded that plaintiff's conduct on June 11, 2003, required intervention by defendant's employees. The court is further persuaded that the COs did not violate the provisions of Ohio Adm.Code 5120-9-01 in their efforts to control plaintiff and that they used only the amount of force that was reasonably necessary to enforce the rules and regulations of the institution.

{¶ 22} For the foregoing reasons, the court concludes that plaintiff has failed to prove his negligence claim by a

preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 23} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

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STEVEN A. LARSON  
Magistrate

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