

[Cite as *Norris v. Richland Correctional Inst.*, 2005-Ohio-5596.]

IN THE COURT OF CLAIMS OF OHIO
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ROBERT LEE NORRIS :
Plaintiff : CASE NO. 2004-07107
v. : Judge J. Craig Wright
Magistrate Steven A. Larson
RICHLAND CORRECTIONAL : MAGISTRATE DECISION
INSTITUTION :
Defendant :
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{¶ 1} Plaintiff brought this action against defendant alleging "battery and negligence." The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability and whether Corrections Officer (CO) Danielle Moore is entitled to civil immunity. The case was tried before a magistrate of this court on May 26, 2005, at the Richland Correctional Institution.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that defendant's employee, CO Moore, committed battery and was negligent when she ordered him to stand outside on a winter day while waiting for medication for a respiratory infection.

{¶ 3} Plaintiff testified that on the evening of February 8, 2004, he walked to the medical services building to receive his medication during "pill-call." Due to a commotion among other inmates, Moore ordered everyone to leave the building, allowing only five inmates at a time to come back inside for their medication. Plaintiff alleges that Moore knew that the outside

temperature was 19 degrees and that it was her intent to harm inmates by sending them out into the cold air. According to plaintiff, Moore acted in this manner because she believed inmates had been laughing at her.

{¶ 4} The testimony at trial revealed that Moore did not use physical force or otherwise touch plaintiff and that plaintiff followed her orders. Additionally, Moore testified that she was unaware of the temperature at the time of the incident and that she was equally unaware of plaintiff's medical condition. According to Moore, the inmates were sent outside because they failed to follow repeated commands to quiet down and that any continued disturbance would be disruptive to other inmates convalescing in the infirmary located next to the medical building.

{¶ 5} "Battery is the unlawful touching of the person of another or the striking, beating, or wounding of another by the aggressor with the intent of inflicting injury upon the person assaulted *** such intent need not, however, be an expressed intent but may be inferred from the nature of the defendant's act or conduct, nor is it necessary that the defendant act in anger or with malice toward the person when the battery was directed." 6 Ohio Jurisprudence 3d (1978), 103 Assault, Civil Aspects, Section 4. Based upon the evidence presented, the court finds that plaintiff failed to prove his claim of battery.

{¶ 6} In regard to plaintiff's claim of negligence, he bears the burden of proving by a preponderance of the evidence that defendant breached a duty owed to him and that this breach proximately caused his injury. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Defendant owed to plaintiff the common law duty of reasonable care. *Justice v. Rose* (1975), 102 Ohio App. 482, 485. Reasonable

care is that which would be utilized by an ordinarily prudent person under similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310, 313.

{¶ 7} According to plaintiff, he re-entered the building twice to request a reprieve from the cold and both times Moore ordered him back outside. Plaintiff stated that he returned to his housing unit and that a third-shift escort officer later accompanied him to the medical building to obtain his medication. Plaintiff did not present any other witness testimony to support his claim.

{¶ 8} Moore testified that she ordered the inmates to quiet down numerous times, but that they refused to comply. She admitted that plaintiff was not part of the commotion and that her objective was to ensure that everyone remained orderly so that infirmary inmates would not be disturbed.

{¶ 9} Kelly Rose, defendant's institutional inspector, testified that when Moore directed inmates to leave the area, she was following "post orders" that the medical area must be maintained in a quiet and orderly manner because of proximity to the infirmary. Rose also explained that plaintiff was "out of place" when he twice returned after being ordered out of the area and that he could have been disciplined for disobeying a direct order. Additionally, Rose confirmed that plaintiff would not have been considered out of place if he had returned to his housing area and waited there.

{¶ 10} The court's determination whether defendant breached a duty of care owed to plaintiff ultimately 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. In considering the conflicting testimony of the witnesses and applying the above criteria, the court finds the testimony of Moore and Rose to be the more credible.

{¶ 11} Based upon the totality of the evidence presented and the credibility of the witnesses, the court finds that Moore was following her post orders when she instructed the inmates to leave the pill-call area. Specifically, the court finds that Moore acted properly when faced with a situation that threatened the safety of other inmates and that could have quickly escalated into a security threat. Moreover, the court is persuaded that Moore did not order plaintiff to wait only outside in the cold; he could have waited inside his housing unit.

{¶ 12} For the foregoing reasons, the court concludes that plaintiff has not proven any of his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 13} In light of the above findings, the court also concludes that Moore did not act manifestly outside the scope of her employment, with malicious purpose, in bad faith, or in a wanton or reckless manner. Thus, it is recommended that the court issue a determination that CO Moore is 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 her based upon the allegations in this case.

{¶ 14} *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).*

STEVEN A. LARSON
Magistrate

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LM/cmd
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