[Cite as *Manigault v. Dept. of Rehab. & Corr.*, 2017-Ohio-9146.]

KHRISTAN MANIGAULT Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2014-00962 Judge Patrick M. McGrath Magistrate Robert Van Schoyck DECISION

{¶1} Before the court are (1) written objections filed on September 28, 2017 by plaintiff Khristan Manigault to Magistrate Robert Van Schoyck's decision of September 20, 2017, and (2) a motion by Manigault included in the written objections that asks the court "for an order to set aside the Magistrate's Decision or grant other relief that may be deemed appropriate by the Court."

{¶2} For reasons set forth below, the court determines that Manigault's objections should be overruled, that Manigault's motion to set aside should be denied, and that the magistrate's decision, including the findings of fact and conclusions of law contained in it, should be adopted.

I. Background

{¶3} The court, through Magistrate Robert Van Schoyck, held a bench trial concerning Manigault's claims of invasion of privacy and assault against the Ohio Department of Rehabilitation and Correction (ODRC). Manigault's claims stem from a strip search of Manigault on August 11, 2013 at Trumbull Correctional Institution (TCI) by ODRC's agents—Corrections Officer Natalie Bryant, Corrections Officer Cheri Raber, and then-Investigator Sharon Chilson. (At the time of trial, Chilson had accepted another position at TCI.)

{¶4} Before Bryant, Raber, and Chilson performed the strip search, Chilson conducted an investigation. Based on this investigation, Chilson suspected that Manigault might attempt to convey contraband, i.e., a drug of abuse, to her boyfriend, inmate Ryan Morris, during a scheduled visit on August 11, 2013. Chilson arranged to have Manigault strip searched on August 11, 2013 before Manigault was permitted to visit Morris. During the strip search Chilson gave instructions to Manigault and she observed Manigault. During the course of the strip search Manigault disrobed and she provided her clothing to Bryant and Raber, who then searched Manigault's clothing. Bryant, Raber, and Chilson did not find any contraband on Manigault's person or clothing as a result of the strip search.

{¶5} On September 20, 2017, the magistrate issued a 36-page decision. The magistrate found that Manigault "failed to prove her claims by a preponderance of the evidence" and he found that "at all times pertinent, Natalie Bryant, Sharon Chilson, and Cheri Raber acted within the scope of their state employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner." (Magistrate's Decision, at 35.) The magistrate "recommended that the court issue a determination that Bryant, Chilson, and Raber are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in the case." (Magistrate Decision, at 35.)

{¶6} Eight days after the magistrate issued his decision—on September 28, 2017—Manigault filed written objections, asserting:

A. The Magistrate erred when he found that "plaintiff failed to prove her claims by a preponderance of the evidence." (Decision, p. 35); and

B. The Magistrate erred when he found that Natalie Bryant, Sharon Chilson, and Cheri Raber are entitled to civil immunity. (Decision, p. 35).

The same day that Manigault filed her objections, Manigault filed a transcript of the trial proceedings before the magistrate. ODRC later moved to strike Manigault's objections; the court denied ODRC's motion to strike.

II. Law and Analysis

{¶7} Civ.R. 53(D)(3)(b) pertains to objections to a magistrate's decision. Pursuant to Civ.R. 53(D)(3)(b)(i), a party "may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed." Civ.R. 53(D)(3)(b)(ii) provides, "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." According to Civ.R. 53(D)(3)(b)(iii), "[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available."

{¶8} Civ.R. 53(D)(4) governs a court's action on objections to a magistrate's decision. Civ.R. 53(D)(4)(d) provides, "If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. * * *." A magistrate's decision "is not effective unless adopted by the court." Civ.R. 53(D)(4)(a).

{¶9} Here, Manigault filed her written objections within fourteen days of the filing of Magistrate Van Schoyck's decision in accordance with Civ.R. 53(D)(3)(b)(i). Additionally, Manigault has filed a transcript of the proceedings before Magistrate Van Schoyck in support of her objections.

1. First Objection – Whether the magistrate's finding that Manigault failed to prove her claims by a preponderance of the evidence is error.

{¶10} By her first objection, Manigault asserts: "The Trial evidence supports Manigault's assault and invasion of privacy claims because Defendant did not have credible evidence or reasonable suspicion to conduct the strip search pursuant to R.C. 5120.421." (Objections, 8.) Manigault also maintains that ODRC's agents did not comply with ODRC's policies during the strip search and that she failed to give informed consent to be strip searched. The court finds that Manigault's first objection is not persuasive.

{¶11} When this court independently reviews objections to a magistrate's decision, this court may give weight to a magistrate's assessment of witness credibility in view of a magistrate's firsthand exposure to the evidence. *See Siegel v. State*, 2015-Ohio-441, 28 N.E.3d 612, ¶ 12 (10th Dist.) ("'Although the trial court may appropriately give weight to the magistrate's assessment of witness credibility in view of the magistrate's firsthand exposure to the evidence, the trial court must still independently assess the evidence and reach its own conclusions.' *Sweeney v. Sweeney*, 10th Dist. No. 06AP-251, 2006-Ohio-6988, ¶ 15, citing *DeSantis v. Soller*, 70 Ohio App.3d 226, 233, 590 N.E.2d 886 (10th Dist.1990)"). Thus, in this instance, the court properly may give weight to Magistrate Van Schoyck's assessment of the credibility of the parties' witnesses.

{¶12} Based on the court's independent review, the court concludes that the evidence, when viewed together, establishes that ODRC, through Investigator Chilson, had a reasonable suspicion based on objective facts and reasonable inferences drawn from those facts in light of Chilson's experience that Manigault would attempt to convey drugs to Morris during a visit on August 11, 2013. Such objective facts and reasonable inferences include tips from prison staff reporting that at least one inmate identified Morris as prison drug dealer (i.e., "heroin man,") (Tr., 868-69; 873-74); a JPay message dated August 4, 2013 between inmate Morris and Manigault that Chilson construed as

Morris's berating of Manigault for not doing something that she was supposed to do (Tr., 876-879) (Defendant's Exhibit H); Chilson's review of certain telephone conversations (Tr., 879-80; 924-26); Chilson's review of certain JPay messages (Tr., 928-934); and Chilson's consideration of certain evidence and the significance attached to this certain evidence based on Chilson's experience. (Tr., 936-39.) And, because Investigator Chilson had a reasonable suspicion that Manigault might convey contraband to Morris during the visit on August 11, 2013, based on specific objective facts and reasonable inferences drawn from those facts in the light of her experience, Chilson had authority to conduct the strip search with assistance from other female corrections officers pursuant to R.C. 5120.421(D) (permitting a strip or body cavity search of visitors who are entering or have entered an institution under the control of ODRC).

{¶13} Manigault contends that ODRC's agents did not conduct the strip search in strict compliance with ODRC's rules or policies. In the court's view, this contention is irrelevant to whether Investigator Chilson had a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from the facts in light of her experience, that Manigault might convey contraband to Morris during a visit on August 11, 2013. Rather, this contention pertains to the execution of the strip search—it is thus relevant to Manigault's claims of invasion of privacy, assault, and her claim that civil immunity under R.C. 9.86 should not apply to Chilson, Raber, and Bryant.

{¶14} Besides contending that ODRC lacked a reasonable suspicion to conduct a strip search, Manigault contends that she did not give informed consent for the strip search. Such a contention is not well-taken. On cross-examination, Manigault testified that no one threatened her in any way on August 11, 2013. (Tr., 786.) And, Manigault conceded that the signature on a form labeled "Notification For Personal Search" "maybe" was hers. (Tr., 785.) According to the Notification For Personal Search, Manigault

> Agree[d] to submit to a search as noted by an officer or official of Ohio Department of Rehabilitation and Correction.
>
> I understand that this search is made to determine if I possess contraband or other illegal items on my person.
>
> *A Personal or Strip Search means an inspection of the genitalia, buttocks, breasts, or undergarments of a person that is preceded by the removal or rearrangement of some or all of the person's clothing and that is conducted visually. Such a search will be conducted by two employees of the same sex as the person being searched in a private area.*
>
> I also understand that I may refuse to be searched, in which case, I will not be permitted to visit and will be subject to a suspension of visiting privileges.

(Emphasis sic.) (Defendant's Exhibit M) (Tr., 785.) Manigault's claim of a lack of informed consent is not persuasive.

{¶15} In his decision, the magistrate noted that "[u]ndoubtedly, it was upsetting for plaintiff to be put through the strip search." (Magistrate's Decision, 32.) As a federal appellate court noted: "Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience." *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir.1982). Nonetheless, as discussed by the Tenth District Court of Appeals, the intrusion category of invasion of privacy "requires a finding of a 'wrongful intrusion into one's private activities in a manner that outrages or causes mental suffering, shame, or humiliation to a person of ordinary sensibilities.'" *Cotten v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-935, 2014-Ohio-2619, ¶ 14, quoting *Peitsmeyer v. Jackson Twp. Bd. of Trustees*, 10th Dist. No. 02AP-1174, 2003-Ohio-4302, ¶ 26. Here, as the magistrate properly noted: "The search substantially complied with R.C. 5120.421 and defendant's policies and procedures." (Magistrate's Decision, 31.) In the court's view, the strip search may have intruded into Manigault's

private activities and been a source of embarrassment; but, because Chilson had reasonable suspicion to conduct the strip search, based on specific objective facts gleaned from her investigation and reasonable inferences drawn from those facts in the light of her experience, the intrusion caused by the strip search was not wrongful. The magistrate's finding that Manigault did not prove her claim of invasion of privacy by a preponderance of the evidence is not error.

{¶16} Moreover, based on the court's independent review, the court concludes that the magistrate did not err by finding that Manigault did not prove by a preponderance of the evidence that ODRC's agents willfully threatened or attempted to harm or touch Manigault offensively in a manner that reasonably placed Manigault in fear of the contact. *See Ettayem v. Safaryan*, 10th Dist. Franklin No. 13AP-988, 2014-Ohio-4170, ¶ 40 ("In order to prevail on a claim for assault, a plaintiff must prove by a preponderance of the evidence that the defendant willfully threatened or attempted to harm or touch the plaintiff offensively in a manner that reasonably placed the plaintiff in fear of the contact"). Indeed, on cross-examination, Manigault herself testified that no one threatened her in any way on August 11, 2013. (Tr., 786.)

{¶17} In short, the court finds that Manigault's first objection is not well-taken. Manigault's first objection should be overruled.

2. Second Objection – Whether the magistrate's determination that Corrections Officer Natalie Bryant, Investigator Sharen Chilson, and Corrections Officer Cheri Raber are entitled to civil immunity constitutes error.

{¶18} In support of her second objection, Manigault asserts: "The evidence presented at trial unequivocally demonstrated that Natalie Bryant, Sharon Chilson, and Cheri Raber are not immune from liability." (Objections, at 20.) Manigault maintains that Bryant, Chilson, and Raber "acted with malicious purpose, in bad faith, and in a wanton or reckless manner" and that Chilson's actions "were outside the scope of her employment." (Objections, at 23.) Manigault's second objection is not persuasive.

R.C. 9.86 governs the civil immunity of state officers and employees. It provides:

> Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.
>
> This section does not eliminate, limit, or reduce any immunity from civil liability that is conferred upon an officer or employee by any other provision of the Revised Code or by case law. This section does not affect the liability of the state in an action filed against the state in the court of claims pursuant to Chapter 2743. of the Revised Code.

{¶19} Based on the court's review, Bryant, Chilson, and Raber acted in relationship with their assigned duties and their actions were not self-serving. Thus, their conduct was within the scope of their employment. *See Theobald v. Univ. of Cincinnati*, 111 Ohio St.3d 541, 2006-Ohio-6208, 857 N.E.2d 573, ¶ 28 ("if an employee's actions are self-serving or have no relationship to the employer's business, then the conduct is 'manifestly outside the scope of employment,' and R.C. 9.86 does not apply"). And, based on the court's independent review, the court concludes that Bryant, Chilson, and Raber did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. In *Caruso v. State*, 136 Ohio App.3d 616, 620-621, 737 N.E.2d 563 (10th Dist.2000), the Tenth District Court of Appeals instructed:

> In the context of immunity, an employee's wrongful act, even if it is unnecessary, unjustified, excessive or improper, does not automatically take such act manifestly outside the scope of employment. * * * It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment. * * * The act must be so divergent that it severs the employer-employee relationship. * * *.

> Malicious purpose encompasses exercising "malice," which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. * * *.
>
> Bad faith has been defined as the opposite of good faith, generally implying or involving actual or constructive fraud or a design to mislead or deceive another. *Lowry* [*v. Ohio State Highway Patrol*, 1997 Ohio App. LEXIS 679 (Feb. 27, 1997), Franklin App. No. 96API07-835, unreported], quoting Black's Law Dictionary (5 Ed.1979) 127. Bad faith is not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. *Id.*
>
> Finally, reckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent. * * * The term "reckless" is often used interchangeably with the word "wanton" and has also been held to be a perverse disregard of a known risk. * * *. As to all of the above terms, their definitions connote a mental state of greater culpability than simple carelessness or negligence. * * *.

{¶20} Here, based on the court's independent review, Chilson conducted an investigation, which was consistent with her job duties, that led her to reasonably suspect that Manigault may attempt to convey contraband to inmate Morris on August 11, 2013. Bryant and Raber were summoned to assist Chilson in a strip search of Manigault. And Bryant and Raber searched Manigault's clothing in a workmanlike manner.

The court concludes that Manigault's second objection is not well-taken. Manigault's second objection should be overruled.

III. Conclusion

{¶21} Accordingly, for reasons set forth above, the court determines that Manigault's objections to Magistrate Van Schoyck's decision of September 20, 2017

should be overruled and that Manigault's motion to set aside the magistrate's decision should be denied. The court also determines that Magistrate Van Schoyck properly applied the relevant law to the facts of this case. The court further determines that the magistrate's decision and recommendation should be adopted, including the findings of fact and conclusions of law contained in it, and that judgment should be rendered in favor of ODRC.

PATRICK M. MCGRATH
Judge

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KHRISTAN MANIGAULT Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2014-00962 Judge Patrick M. McGrath Magistrate Robert Van Schoyck JUDGMENT ENTRY

{¶22} For the reasons set forth in the decision filed concurrently herewith, and upon independent review, the court determines that Magistrate Van Schoyck applied the relevant law to the facts of this case in his decision of September 20, 2017. The court finds no error of law or other defect in the magistrate's decision. The court ADOPTS Magistrate Van Schoyck's decision and recommendations as its own, including the findings of fact and conclusions of law contained in it. In accordance with R.C. 2743.02(F), the court determines that Chilson, Bryant, and Raber are entitled to personal immunity under R.C. 9.86 and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based on allegations in this case. The court OVERRULES plaintiff Khristan Manigault's objections to the magistrate's decision, and DENIES Manigault's motion to set aside the magistrate's decision. Judgment is rendered in favor of defendant Ohio Department of Rehabilitation and Correction. Court costs are assessed against Manigault. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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