Farlough v. Huskic et al Doc. 20

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF KENTUCKY**
**AT LOUISVILLE**
**CIVIL ACTION NO. 3:14-CV-P721-DJH**

**CHARLES PHILLIP DOZIER** **PLAINTIFF**

**v.**

**MARION COUNTY, KENTUCKY et al.** **DEFENDANTS**

## MEMORANDUM OPINION

Plaintiff, Charles Phillip Dozier, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983. This matter is before the Court for screening pursuant to 28 U.S.C. § 1915A and *McGore v. Wrigglesworth*, 114 F.3d 601 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007). For the reasons set forth below, the action will be dismissed.

## I. SUMMARY OF CLAIMS

Plaintiff, who was incarcerated at the Marion County Detention Center (MCDC) at the relevant time, sues Marion County, Kentucky, and, in their individual and official capacities, MCDC Jailer Barry Brady and Lt. Guard Robert Martell. Plaintiff alleges that he was sexually assaulted on November 16, 2013. Plaintiff states that on that date he was working as a trustee, cleaning up the captain's office. He states that he was bending over, on his hands and knees, cleaning under a desk with the top of his buttocks exposed over the top of his pants when Defendant Martell "grabbed a broom handle and poked Dozier in his buttocks." Plaintiff states that he turned around and said, "'You know that is sexual assault.'" According to Plaintiff, an investigation by other staff members began the next day which resulted in Defendant Brady terminating Defendant Martell's employment.

Plaintiff alleges that Defendant Brady acted as an official of the County when he established and implemented security procedures for the jail and for supervising trustees working

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at the jail. Plaintiff further alleges that Defendant Brady had a duty to protect Plaintiff from sexual assault by his staff, "had a sufficiently culpable state of mind[,] and was deliberately indifferent to Dozier's health and safety in violation of the Eighth Amendment."

Plaintiff alleges that Marion County is liable under § 1983 because its failure to properly train jail guards and staff "amounts to deliberate indifference to rights of Dozier . . . whom the guards held in detention and supervised as a trustee, and where specific deficiency in training is moving force behind the constitutional injury which created conditions posing substantial risk to Dozier's health and safety," thereby violating the Eighth Amendment. As relief, Plaintiff requests monetary and punitive damages.

Plaintiff attaches to his complaint a statement dated the day after the incident. That statement details, in pertinent part:

> I had the broom stick off of the broom to hand sweep under a desk and Lt. Martell poked me on the top of my butt crack which was exposed from my shirt and pants from me being on my hands and knees cleaning. When Lt. Robert Martell poked me, I made a statement and after I was poked I turned and said, you know that is sexual assault.

## II. <u>ANALYSIS</u>

When a prisoner initiates a civil action seeking redress from a governmental entity, officer, or employee, the trial court must review the complaint and dismiss the action, if the Court determines that it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1) and (2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The Court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. When determining whether a

plaintiff has stated a claim upon which relief can be granted, the Court must construe the complaint in a light most favorable to Plaintiff and accept all of the factual allegations as true. *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 424 (6th Cir. 2002). While a reviewing court must liberally construe *pro se* pleadings, *Boag v. MacDougall,* 454 U.S. 364, 365 (1982) (per curiam), to avoid dismissal, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

***Eighth Amendment claim relating to alleged sexual assault***

Plaintiff alleges that Defendant Martell violated his Eighth Amendment rights when he sexually assaulted him with a broom handle. In the attachment to the complaint, Plaintiff states that he was "poked" on the top of his "butt crack which was exposed from my shirt and pants from me being on my hands and knees cleaning."

Not "every malevolent touch by a prison guard gives rise to a[n Eighth Amendment] cause of action." *See Hudson v. McMillian*, 503 U.S. 1, 9 (1992). "[B]ecause the sexual harassment or abuse of an inmate by a corrections officer can never serve a legitimate penological purpose and may well result in severe physical and psychological harm, such abuse can, in certain circumstances, constitute the 'unnecessary and wanton infliction of pain' forbidden by the Eighth Amendment." *Freitas v. Ault*, 109 F.3d 1335, 1338 (8th Cir. 1997) (internal citations omitted). "To prevail on a constitutional claim of sexual harassment, an inmate must therefore prove, as an objective matter, that the alleged abuse or harassment caused 'pain' and, as a subjective matter, that the officer in question acted with a sufficiently culpable state of mind." *Id.* (citing *Hudson*, 503 U.S. at 8).

Minor, isolated incidents of sexual touching do not rise to the level of an Eighth Amendment violation. *See, e.g.*, *Jackson v. Madery*, 158 F. App'x 656, 661-62 (6th Cir. 2005)

(per curiam) (correction officer's conduct in allegedly rubbing and grabbing prisoner's buttocks in degrading manner was "isolated, brief, and not severe" and so failed to meet Eighth Amendment standards); *Johnson v. Ward*, No. 99-1596, 2000 WL 659354, at *1 (6th Cir. May 11, 2000) (male prisoner's claim that a male officer placed his hand on the prisoner's buttock in a sexual manner and made an offensive sexual remark did not meet the objective component of the Eighth Amendment); *Berryhill v. Schriro*, 137 F.3d 1073, 1076 (8th Cir. 1998) (where inmate failed to assert that he feared sexual abuse, two brief touches to his buttocks could not be construed as sexual assault); *Boddie v. Schneider*, 105 F.3d 857, 859-61 (2d Cir. 1997) (court dismissed as inadequate prisoner's claim that female corrections officer made a pass at him, squeezed his hand, touched his penis, called him a "sexy black devil," pressed her breasts against his chest, and pressed against his private parts); *Reynolds v. Warzak*, No. 2:09-cv-144, 2011 WL 4005477, at *7-8 (W.D. Mich. Sept. 8, 2011) (finding that an officer grabbing "Plaintiff's butt cheeks with both hands and spread[ing] them apart," while asking "'[h]ow's that feel you little bitch?'" did not state an Eighth Amendment claim even when the plaintiff stated that the officer rubbed his chest, legs, and inner and outer thighs in a sexual manner during a pat down search on a later date). Here, Plaintiff does not allege that Defendant Martell coupled his questionable touching with any offensive sexual remarks. Moreover, Plaintiff does not suggest that he experienced any physical or emotional injury as a result of the touching. Therefore, there was no constitutional injury, and Plaintiff fails to state an Eighth Amendment claim related to the incident.

***Failure-to-protect claim***

Prison officials may be held liable under the Eighth Amendment for failing to ensure an inmate's safety only if it is shown that (1) the inmate "was incarcerated under conditions posing

a substantial risk of serious harm"; and (2) the prison officials acted with deliberate indifference to the inmate's safety or, in other words, knew the inmate "face[d] a substantial risk of serious harm and disregard[ed] that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 834, 847 (1994). A prison official may be found to be deliberately indifferent to inmate safety if he is aware that a prisoner is vulnerable to sexual assault and fails to protect him. *Bishop v. Hackel*, 636 F.3d 757, 767 (6th Cir. 2011). Moreover, the Eighth Amendment extends to provide protection even in cases where injury has not yet occurred. *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993) (*citing with approval Ramos v. Lamm*, 639 F.2d 559, 572 (10th Cir. 1980), which stated that "a prisoner need not wait until he is actually assaulted before obtaining relief").

First, as already discussed, what Plaintiff describes as a "sexual assault" -- one occasion of being poked with a broom on the buttocks -- does not rise to the level of a constitutional violation. Further, although Plaintiff conclusorily states in his complaint that Defendant Brady "had a sufficiently culpable state of mind," he does not allege that Defendant Brady knew that Defendant Martell posed a risk. Additionally, there is no possibility of future injury from Defendant Martell because it is clear from Plaintiff's complaint that an investigation into the incident began the next day resulting in Defendant Brady firing Defendant Martell, and, in any event, Plaintiff is no longer housed at the Marion County Detention Center. Therefore, Plaintiff fails to state a claim based on failure to protect.

***Failure-to-train claim***

Because there was no constitutional injury, Plaintiff cannot maintain a claim for municipal liability based on a failure to train. The elements of municipal liability for failure to train require that: (1) the training program is inadequate to the tasks that the municipal actor

must perform; (2) the inadequacy is the result of the municipality's deliberate indifference; and (3) the inadequacy *caused the plaintiff's constitutional injury*. *Berry v. City of Detroit*, 25 F.3d 1342, 1346 (6th Cir. 1994). Thus, without a constitutional injury, there is no claim for failure to train. *See Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 122 (1992) (emphasizing "separate character of the inquiry into the question of municipal responsibility and the question whether a constitutional violation occurred").

## III. CONCLUSION

For the foregoing reasons, the Court will by separate Order dismiss Plaintiff's claims.

Date: January 20, 2015

**David J. Hale, Judge**
**United States District Court**

cc: Plaintiff, *pro se*
Defendants
Marion County Attorney
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