

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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ELVERT S. BRISCOE, JR.,

Plaintiff,

v.

GARY MOHR, et al.,

Defendants.

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CASE NO. 1:18-cv-02417

OPINION & ORDER  
[Resolving Docs. [39](#); [43](#); [57](#)  
[58](#); [65](#)]

JAMES S. GWIN, UNITED STATES DISTRICT COURT JUDGE:

Plaintiff Elvert S. Briscoe, Jr., an Ohio prisoner proceeding *pro se*, has filed this civil rights action under 42 U.S.C. § 1983 against multiple Ohio Department of Rehabilitation and Correction (“ODRC”) officials and Mark Hurayt, a fellow inmate.<sup>1</sup>

In March 2019 this Court dismissed Plaintiff’s complaint pursuant to 28 U.S.C. § 1915(e)(2)(B).<sup>2</sup> This Court also dismissed Briscoe’s claims against Hurayt, although with little discussion regarding the claim.

Plaintiff appealed.<sup>3</sup> The United States Court of Appeals for the Sixth Circuit affirmed this Court’s dismissal of Plaintiff Briscoe’s equal protection and excessive force claims and vacated this Court’s dismissal of Plaintiff Briscoe’s procedural due process and retaliation claims.<sup>4</sup> Plaintiff Briscoe did not argue to the Sixth Circuit that this Court erred in dismissing Briscoe’s state law claim against Defendant Hurayt.<sup>5</sup>

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<sup>1</sup> Doc. [1](#).

<sup>2</sup> Doc. [5](#).

<sup>3</sup> Doc. [7](#).

<sup>4</sup> *Briscoe v. Mohr*, No. 19-3306, 2020 WL 1813660, at \*4 (6th Cir. Mar. 16, 2020), cert. denied sub nom. *Briscoe v. Chambers-Smith*, 141 S. Ct. 911 (2020).

<sup>5</sup> *Id.* at \*1.

After an October 2021 jury trial, a verdict was returned for Plaintiff Briscoe against Defendant Steve Weishar.<sup>6</sup> The jury awarded Plaintiff Briscoe \$1,000 in damages and an additional \$2,000 in punitive damages.

This Court ruled on motions during pretrial hearings and during trial. Those rulings are summarized below.

Plaintiff Briscoe moved for leave to depose Defendant Hurayt.<sup>7</sup> The ODRC Defendants opposed.<sup>8</sup> This Court **DENIED** this motion.<sup>9</sup>

Plaintiff Briscoe moved for default judgment against Defendant Hurayt.<sup>10</sup> Plaintiff Briscoe brought a claim for intentional infliction of emotional distress under Ohio State law against Defendant Hurayt.<sup>11</sup> Because Plaintiff Briscoe did not argue this claim on appeal to the Sixth Circuit, he abandoned it.<sup>12</sup> Therefore, this Court **DENIED** this motion.

ODRC Defendants moved in limine to exclude the proffer of evidence and arguments that Plaintiff Briscoe suffered collateral injuries because his security classification increased after his Rules Infraction Board hearing conviction.<sup>13</sup> This Court **GRANTED** in part and **DENIED** in part this motion.<sup>14</sup> Plaintiff was allowed to proffer evidence that the Rules Infraction Board hearing conviction elevated his security classification from Level 1 to Level 4. Plaintiff was not allowed to proffer evidence regarding any subsequent emotional difficulties he suffered or any potential impact on parole.

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<sup>6</sup> Doc. 70.

<sup>7</sup> Doc. 39.

<sup>8</sup> Doc. 45.

<sup>9</sup> Transcript of Trial (Unofficial) at 14–15, Briscoe v. Mohr, et al., No. 1:18-cv-02417 (N.D. Ohio, Oct. 12, 2021).

<sup>10</sup> Doc. 43. *See also* Doc. 37.

<sup>11</sup> Doc. 1 at 39.

<sup>12</sup> *Briscoe*, 2020 WL 1813660 at \*1 (citing *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 311 (6th Cir. 2005)).

<sup>13</sup> Doc. 57.

<sup>14</sup> Transcript of Trial (Unofficial) at 10–11, Briscoe v. Mohr, et al., No. 1:18-cv-02417 (N.D. Ohio, Oct. 12, 2021).

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ODRC Defendants moved in limine to exclude the proffer of evidence and witnesses at trial relating to Plaintiff Briscoe's claimed mental health and emotional injuries.<sup>15</sup> This Court **GRANTED** this motion.<sup>16</sup>

Plaintiff moved for a continuance to allow counsel to appear, to seek newly discovered evidence, to receive discovery, and to file a class action related to his procedural due process claim.<sup>17</sup> This Court **DENIED** this motion.<sup>18</sup>

IT IS SO ORDERED.

Dated: November 1, 2021

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>15</sup> Doc. 58.

<sup>16</sup> Transcript of Trial (Unofficial) at 9-10, Briscoe v. Mohr, et al., No. 1:18-cv-02417 (N.D. Ohio, Oct. 12, 2021).

<sup>17</sup> Docs. 65; 65-1.

<sup>18</sup> Transcript of Trial (Unofficial) at 2, Briscoe v. Mohr, et al., No. 1:18-cv-02417 (N.D. Ohio, Oct. 12, 2021).