

[Cite as *Gill v. Mansfield Corr. Inst.*, 2001-Ohio-3958.]

IN THE COURT OF CLAIMS OF OHIO

ALI GILL :
Plaintiff : CASE NO. 2000-03131
v. : DECISION
MANSFIELD CORRECTIONAL : Judge Russell Leach
INSTITUTION :
Defendant :
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This matter was tried to the court on the issues of liability and civil immunity.

Plaintiff alleges that defendant is liable for injuries that he suffered as a result of an assault by another inmate. Plaintiff further alleges that defendant was negligent in not preventing the assault, and that defendant failed to administer adequate and timely follow-up medical care. Plaintiff also asserts that a number of defendant's employees acted outside the scope of their employment or in a wanton or reckless manner with regard to the assault.

At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Mansfield Correctional Institution (ManCI) pursuant to R.C. 5120.16. On May 16, 1999,¹ plaintiff was housed in cell block 4-A, cell

¹In plaintiff's complaint, he alleges that the assault took place on May 15, 1999. At trial, documents were produced that lead the court to conclude that the assault took place on May 16, 1999.

number 109. At approximately 9:38 a.m., plaintiff went to take a shower. Upon exiting his cell, he put his cell door on "soft lock," meaning that the door was closed but not locked. When plaintiff returned, he was attacked by inmate Timothy Sloan, who used a belt with a combination lock tied to it to beat plaintiff about the head and shoulders. Within seconds of the assault, Sgt. William Jansen, Corrections Officers (COs) Earcel Shears and B. Hicks ran to plaintiff's cell and subdued both Sloan and plaintiff. Plaintiff was transported to the institution's infirmary and was treated for his injuries.

Plaintiff alleges that inmate Sloan was intoxicated at the time of the assault, and that defendant was negligent in allowing inmate Sloan to possess illegal intoxicants and a dangerous weapon.

In order for plaintiff to prevail on 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. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. 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. However, the state is not an insurer of inmate safety. See *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, at 702.

The law is well-settled in Ohio that the state is not liable for the intentional attack on one inmate by another unless there is adequate notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. S. Ohio Correctional*

Facility (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 696. The legal concept of notice comprises two distinguishable types, actual and constructive. See *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

In the instant case, plaintiff has failed to prove by a preponderance of the evidence that defendant had either actual or constructive notice of inmate Sloan's intent to assault him. Plaintiff testified that on May 8, 1999, he and Sloan had argued in the yard, and that he told CO Shears about it the following day when he asked the CO to keep Sloan away from him. However, plaintiff admitted that he did not ask for protective custody. Plaintiff also stated that it was surprising to him that Sloan attacked him on May 16, 1999, because there had been no other problems with Sloan since the day of their argument.

The evidence shows that defendant did not have notice of inmate Sloan's intent to attack plaintiff. Defendant cannot be held liable for injuries when it does not know of or have reason to anticipate an unreasonable risk or injury. *Justice v. Rose* (1957), 102 Ohio App. 482. Further, the evidence shows that once the attack occurred, defendant's COs responded quickly to the situation. Therefore, plaintiff has failed to prove that defendant breached any duty of care owed to him. Additionally, plaintiff failed to prove that defendant had notice that inmate Sloan possessed illegal intoxicants or that he had made a weapon out of a belt and combination lock prior to the day of the assault.

Plaintiff also asserts that defendant failed to provide him with adequate and timely medical care. Plaintiff produced no expert testimony to substantiate this claim. Moreover, defendant administered timely medical care to plaintiff when he was transported to the infirmary after the assault. Thus, plaintiff has failed to prove by a preponderance of the evidence that defendant breached any duty with respect to plaintiff's medical treatment.

Lastly, plaintiff asserts that a number of defendant's employees should be held personally liable for their actions or inaction in this case. Based upon the evidence presented, the court finds that all of defendant's employees acted within the scope of their employment with defendant at all times relevant hereto. The court further finds that defendant's employees did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff. Consequently, the employees named in plaintiff's complaint are entitled to civil immunity pursuant to R.C. 9.86 and R.C. 2743.02(F); it therefore follows that the courts of common pleas do not have jurisdiction in this case.

The court concludes that plaintiff has failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is rendered for defendant.

RUSSELL LEACH
Judge

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ALI GILL :
 Plaintiff : CASE NO. 2000-03131
 v. : JUDGMENT ENTRY
 MANSFIELD CORRECTIONAL : Judge Russell Leach
 INSTITUTION :
 Defendant :
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This case was tried to the court on the issues of liability and civil immunity pursuant to R.C. 9.86 and 2743.02(F). The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. The court finds that the employees of defendant named in plaintiff’s complaint are entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over this matter. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

RUSSELL LEACH
 Judge

Entry cc:

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