

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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JOHN ASH, JR.

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2003-03663

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the North Central Correctional Institution (NCCI), pursuant to R.C. 5120.16. The witnesses at trial described NCCI as a minimum to medium security, dormitory-style institution where inmates live in unenclosed cubicles. This case arises out of an incident that occurred on April 14, 2002, when plaintiff was assaulted by inmate Flint Bonney. Bonney did not testify at trial.

{¶3} Plaintiff testified that his status as an institution porter provided him access to the office of one of the sergeants. According to plaintiff, Bonney stated that several confiscated audio cassette tapes were being held in the sergeant's office. Bonney asked plaintiff to retrieve the tapes and return them to him. Plaintiff initially agreed, but later changed his mind. Plaintiff testified that on the morning of April 13, 2002, he had a brief argument with Bonney about the tapes but that the day passed without further incident.

{¶4} At approximately 4:20 a.m. on April 14, 2002, Bonney entered plaintiff's cubicle and used a metal tray obtained from an institution locker to attack plaintiff as he slept. After Bonney struck plaintiff several times, he scuffled with plaintiff's bunkmate, Alfredo Serrano, who then sought help from corrections officers (COs) who were on duty.

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{¶5} COs Timothy Miller and Oralia Jacobs were stationed at a desk nearby and, upon hearing the commotion, they responded in that direction where they observed Serrano approaching. Jacobs stopped to speak with Serrano. Miller pursued Bonney who, after following Serrano toward the COs' desk, had reversed course and was headed down an aisle toward plaintiff's cubicle. Miller instructed Jacobs to turn on the lights; however, because the light switch was some distance away, the aisle remained dark such that Miller did not detect the metal tray that Bonney was carrying. As Bonney reached plaintiff, he assaulted him once more with the tray. Miller pressed his "man-down" alarm to summon more officers and ordered Bonney to drop the tray. Bonney complied and was escorted from the scene.

{¶6} Plaintiff was transported to Marion General Hospital for treatment and then taken to The Ohio State University Medical Center for surgery. Plaintiff contends that defendant was negligent in that it did not provide reasonable security to ensure his safety. Plaintiff alleges that he suffered permanent injuries as a result of defendant's alleged negligence. Plaintiff also claims that after the incident, defendant was negligent in providing medical care, in assigning him an upper bunk, and in causing him to lose his position as an institution porter.

{¶7} In order for plaintiff to prevail upon his claims of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶8} Ohio law generally imposes upon the state a duty of reasonable care and protection of its prisoners. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. However, it is well-settled that the state is not liable for the intentional attack on one inmate by another unless there is actual or constructive notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. Southern Ohio Corr. Facility* (1990), 67 Ohio

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App.3d 517; *Belcher v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 696. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶9} Plaintiff testified that after the incident on April 13, 2002, he believed that the quarrel with Bonney had concluded. Moreover, plaintiff testified that he took no measures to notify defendant that an attack was likely. Both Miller and Jacobs testified that they were unaware of any disagreement between plaintiff and Bonney prior to the assault. Based upon this testimony, the court finds that defendant had neither actual nor constructive notice of an impending assault by another inmate on plaintiff.

{¶10} Additionally, plaintiff alleges that defendant was negligent in maintaining security at NCCI. Specifically, plaintiff claims that defendant did not have a sufficient number of COs on duty the day of the assault and that defendant was negligent in allowing inmates to possess lockers with removable trays. However, when dealing with a prison's day-to-day operation, the court should defer to the discretion of prison officials unless there is "substantial evidence" to show that the official acted in bad faith. *Procurier v. Martinez* (1974), 416 U.S. 396, 404-405. Prison officials must be given "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547, citing *Jones v. North Carolina Prisoners' Labor Union, Inc.* (1977), 433 U.S. 119, 128. In this case, there is no evidence suggesting that defendant acted in bad faith in maintaining security at NCCI at the time of plaintiff's injury.

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{¶11} Finally, plaintiff failed to adduce any evidence in support of his claims that defendant was negligent in providing medical care to him after the incident, in assigning him an upper bunk, or in causing him to lose his position as an institution porter.

{¶12} For the foregoing reasons, the court finds that plaintiff failed to prove his claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-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. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

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RCV/AMR/cmd	

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