

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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JAMES E. SHORTER

Plaintiff

v.

Case No. 2003-11810

Judge J. Craig Wright

Magistrate Steven A. Larson

MAGISTRATE DECISION

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

{¶1} On August 2, 2004, defendant filed an admission of liability. On November 30, 2004, and January 27, 2005, the case came on for trial on the issue of damages.

{¶2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Madison Correctional Institution (MaCI) pursuant to R.C. 5120.16. According to plaintiff, this cause of action arose as a result of an ongoing conflict that he had with Sergeant Terry Campbell. Plaintiff maintains that Sergeant Campbell resented him because he assisted inmates in filing grievances against MaCI staff and in helping them initiate court proceedings. Additionally, on July 31, 2002, plaintiff was in the law library when he was approached by Institutional Inspector Virginia Workman who asked him to step outside for a private conversation. According to plaintiff, Inspector Workman asked him to prepare an affidavit for an ongoing use-of-force investigation involving Corrections Officer (CO) Sickles, which he did as requested after being told by Inspector Workman to keep both their conversation and the existence of the affidavit confidential.

{¶3} Plaintiff related that some time later he was summoned to Sergeant Campbell's office. Four inmates, including inmate Petry, were in Sergeant Campbell's office when plaintiff entered the room and the door was closed behind him. According to plaintiff, Sergeant Campbell demanded that plaintiff tell him what he had discussed with Inspector Workman. Plaintiff told Sergeant Campbell that he was not at liberty to divulge

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the nature of the conversation with Inspector Workman, and that if Campbell wanted to know the subject of the conversation he could ask Workman himself. Plaintiff claims that, at that point, Sergeant Campbell struck a file cabinet with a chain and angrily demanded to know “what the *** she said!”

{¶4} Plaintiff testified that he ran out of the office and reported Sergeant Campbell’s threatening behavior to CO Bailey. Plaintiff testified that when he and CO Bailey went back to Sergeant Campbell’s office to explain to him that plaintiff was fearful, Sergeant Campbell became angrier. According to plaintiff, Sergeant Collins entered the office and told CO Bailey to leave and told Sergeant Campbell to calm down. Finally, plaintiff stated that Sergeant Collins told him to go back to his “cube.”

{¶5} As plaintiff lay on his bunk, his cell mate mentioned that plaintiff’s eyes were red. Plaintiff testified that it felt like there was a 400-pound weight on his chest. Plaintiff explained that the next thing he remembered was waking up in the infirmary. By that time, the nurse had called for an ambulance to transport plaintiff to the emergency room at the Madison County Hospital.

{¶6} The medical records from MaCI note that plaintiff reported experiencing chest pains at 11:45 a.m. The records further indicate that plaintiff’s EKG was abnormal. Based upon those indicators, the doctor at MaCI ordered that plaintiff be taken to the emergency room at Madison County Hospital for more comprehensive tests and observation. (Joint Exhibit A.)

{¶7} The medical records further show that when plaintiff was informed that an emergency squad had been summoned to transport him to the hospital, he resisted, claiming that his chest pains were “nothing” and protesting, “I am not going on a round trip to CMC. I’m not going.” (Joint Exhibit A.) Despite plaintiff’s reluctance to be transported to the hospital, the emergency squad left the institution with plaintiff at 11:55 a.m. en route to Madison County Hospital.

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{¶8} Plaintiff admitted that he did not want to leave the institution to go to the hospital but eventually relented due to the nurse’s insistence. Plaintiff testified that on the way to the hospital, he was told by medics that he was having an asthma attack triggered by anxiety. In the emergency room he was given oxygen, an EKG, and was allowed to rest. He explained that he was kept at the hospital until his asthma and blood pressure were under control. He was returned to the institution’s infirmary at approximately 6:00 p.m. that same day.

{¶9} Plaintiff testified that he was told to rest and to stay away from Sergeant Campbell. However, plaintiff claimed that while the nurse was walking him back to his cube for the night, Sergeant Campbell approached him and said in a taunting manner, “You didn’t die; you didn’t die?” Plaintiff further testified that Sergeant Campbell came to his cube, but was stopped by a staff member who said, “Leave him alone, Terry [Sergeant Campbell].”

{¶10} Plaintiff testified that he saw Sergeant Campbell on only one other occasion. However, he was of the opinion that because of the incident with Sergeant Campbell everyone at MaCI labeled him a troublemaker. Plaintiff claims that because of the incident with Sergeant Campbell, he did not want to be around people anymore and that he had gained 60 pounds because he discontinued working out with weights. Plaintiff testified that the harassment by Sergeant Campbell affected his psychological outlook and general well-being. Plaintiff complained that he has experienced more frequent and severe asthma attacks subsequent to his interactions with Sergeant Campbell.

{¶11} However, plaintiff admitted that he had been a chronic asthmatic and historically used an inhaler. He also had a history of high blood pressure. Plaintiff testified that he is assigned to the mental health unit at the institution and that he sees a psychologist on a monthly basis. He conceded that other factors besides Sergeant Campbell’s actions have caused him stress in the past two years such as his mother’s

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illness, disciplinary hearings, segregations, personal health problems, and the stress of preparing for court proceedings.

{¶12} According to plaintiff's psychiatric records, he first entered the correctional system in 1986. In May 1986, plaintiff received a psychiatric examination after complaining of difficulty sleeping. The doctor determined that plaintiff's symptoms did not warrant medication, but plaintiff did begin counseling with Psychological Services at Lebanon Correctional Institution. He was transferred to the Chillicothe Correctional Institution (CCI) on May 5, 1993. His intake screening report at CCI noted "some" stress and a diagnostic impression of "mild adjustment disorder." Based upon that evaluation, plaintiff was not referred for psychiatric treatment. (Joint Exhibit B.)

{¶13} Plaintiff was transferred to MaCI on November 17, 1995. His intake screening report at MaCI noted that he had no significant clinical features. Plaintiff was classified as a minimum security risk and was not assigned to any therapeutic programs. (Joint Exhibit B.)

{¶14} Edward Okel, Ph.D., a licensed clinical psychologist who began working at MaCI in August 2002, testified that plaintiff began receiving psychological treatment at MaCI in January 2003. Dr. Okel began treating plaintiff on July 17, 2003, and met with plaintiff as his treating therapist on 18 occasions. Dr. Okel explained that prior to his personal involvement, plaintiff's interdisciplinary progress notes documented that on December 26, 2002, plaintiff complained to nurse Brock of "stress secondary to harassment from staff." (Joint Exhibit B.) Dr. Okel testified that plaintiff suffered from a panic disorder that was in partial remission and that plaintiff's condition was monitored through regular contact with the mental health liaison.

{¶15} On January 31, 2003, plaintiff was prescribed the drug Wellbutrin by Dr. Yackman. However, plaintiff voluntarily discontinued taking the medication on March 3, 2003, because he felt that he was "back in the groove" and had begun walking and working out.

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{¶16} Dr. Okel explained that later in 2003, additional stressors including his mother's illness and a denial of parole made plaintiff's efforts to control his anxiety and panic disorder more difficult. Dr. Okel testified that on February 25, 2004, he was still counseling plaintiff for anxiety and stress disorder, and that plaintiff was making good progress. He stated that he last counseled plaintiff on November 18, 2004, and noted that plaintiff would have panic anxiety disorder with mild to minimum symptoms until plaintiff was released from prison. (Joint Exhibit B.)

{¶17} Michelle Bailey, a CO at MaCI for 11 years, testified that she was at her desk on July 31, 2002, at 7:30 a.m., when Sergeant Campbell came into the unit and entered his office. She said that three or four inmates were in Sergeant Campbell's office when he asked her, "Did Ms. Workman come in here?" CO Bailey said she responded by telling Sergeant Campbell, "Yes, she is with Shorter [plaintiff]." With that response, CO Bailey said Sergeant Campbell angrily replied that, "She is starting to piss me off; she and Shorter, I'm sick of them."

{¶18} CO Bailey testified that plaintiff was summoned to Sergeant Campbell's office at 10:55 a.m. CO Bailey explained that shortly thereafter, plaintiff exited Sergeant Campbell's office and requested that she call Inspector Workman on his behalf. She testified that she asked plaintiff why he needed Inspector Workman and plaintiff said that Sergeant Campbell was questioning him regarding the conversation that he had earlier with Inspector Workman. CO Bailey tried to contact Inspector Workman but was unable to do so.

{¶19} CO Bailey further explained that she went into Sergeant Campbell's office with plaintiff because plaintiff said he was frightened of Sergeant Campbell. CO Bailey said she opened Sergeant Campbell's door and told plaintiff to enter ahead of her. She testified that Sergeant Campbell was standing in his office screaming and using profanity which was directed at plaintiff. Sergeant Campbell told plaintiff, "You don't need Bailey,"

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so she left. CO Bailey testified that, shortly thereafter, she told Sergeant Campbell that it was count time and that he should send plaintiff back to his cube.

{¶20} CO Bailey said that plaintiff went back to his cube, but that she observed him sitting against a chair with his right hand on his chest. Plaintiff stated: “My chest, I can’t hardly [sic] breathe.” CO Bailey reported plaintiff’s complaint to the infirmary and a wheelchair was sent to transport him there. CO Bailey described plaintiff as sweating, with watery eyes. She explained, “He did not look like himself.”

{¶21} Additionally, CO Bailey corroborated plaintiff’s assertions that Sergeant Campbell had harassed him. On one occasion, CO Bailey saw Sergeant Campbell go into plaintiff’s cube and, upon exiting, he directed her to write plaintiff a ticket for a rule violation. When she personally investigated the allegation, she concluded that no violation had occurred and refused to follow Sergeant Campbell’s order. According to CO Bailey, there were many instances when Sergeant Campbell would falsely accuse plaintiff of rule violations. She testified that Sergeant Campbell’s mistreatment of plaintiff continued for one to two years. She said that on one occasion Sergeant Campbell admitted to her, “I don’t like that damn Shorter.”

{¶22} CO Bailey further testified that after the incident with Sergeant Campbell, she noticed that plaintiff stayed in his cube and slept more frequently, whereas his usual routine was to go to the library and use his typewriter.

{¶23} Although defendant admitted liability, no specific legal basis for liability was cited. Based on the evidence adduced at trial, the court concludes that defendant violated its duty under Ohio Adm.Code Ann. 5120-9-04 to properly supervise plaintiff.

{¶24} The court finds that defendant permitted Sergeant Campbell to engage in inappropriate supervision by repeatedly annoying and needlessly harassing plaintiff over a period of from one to two years. The court finds CO Bailey to be a credible witness. It was CO Bailey who alerted her superiors of Sergeant Campbell’s erratic behavior and his

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homicidal threats towards Inspector Workman. (Plaintiff's Exhibit 1.) CO Bailey testified about specific instances when Sergeant Campbell attempted to have plaintiff cited for rule infractions which were either petty or fictitious. Additionally, CO Bailey witnessed Sergeant Campbell yelling profanities at plaintiff during the July 31, 2002, incident.

{¶25} The court finds that Sergeant Campbell's actions were the proximate cause of plaintiff's anxiety, asthma attack, and hospitalization on July 31, 2002. However, after that incident, plaintiff ceased having contact with Sergeant Campbell. A review of plaintiff's interdisciplinary progress notes reveals that plaintiff's complaints of ongoing stress arise from prosecuting his lawsuit against defendant, his parole hearing, and his day-to-day life in prison, not his prior relationship with Sergeant Campbell. Plaintiff's counseling records are devoid of any complaints regarding Sergeant Campbell after their contact ceased. (Joint Exhibit B.)

{¶26} Based upon the testimony and evidence, the court finds that plaintiff has suffered from a mild anxiety disorder from the time of his initial incarceration; that Sergeant Campbell violated Ohio Adm.Code 5120-9-04 by harassing plaintiff while he was an inmate at MaCI; that Sergeant Campbell inappropriately confronted plaintiff on July 31, 2002, regarding plaintiff's conversation with another staff member; that as a result of his confrontation with Sergeant Campbell, plaintiff suffered an asthma attack triggered by anxiety, all of which necessitated plaintiff's being transported to a local hospital for tests and observation. However, the court further finds that after the July 31, 2002, incident, any further anxiety suffered by plaintiff was caused by stressors unrelated to any action on the part of Sergeant Campbell or any other staff members.

{¶27} Therefore, judgment is recommended for plaintiff in the amount of \$4,525, which includes the \$25 filing fee paid by plaintiff.

{¶28} *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*

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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 as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

[Cite as *Shorter v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-6470.]

cc:

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