



but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*\* See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is alleged in the complaint that plaintiff was employed by defendants as a juvenile corrections officer (JCO) at the Indian River Juvenile Correctional Facility (IRJCF); that he was assaulted by an incarcerated youth; that IRJCF knew of the dangerous propensity of this particular youth offender; and that the youth had made recent threats of violence against plaintiff. Plaintiff also alleges that defendants' lack of concern for his well-being after the assault amounted to an intentional infliction of emotional distress. Finally, plaintiff alleges that IRJCF failed to maintain a safe workplace environment and failed to protect its employees from harm.<sup>1</sup>

{¶5} In support of his motion for summary judgment, plaintiff submitted numerous exhibits and depositions. Included in the exhibits is a statement prepared by plaintiff. This statement provides in relevant part:

{¶6} “\*\*\*\* I was involved in a code blue on E-unit which occurred in E-unit day room. At 1:37 p.m. Youth [XXX] assaulted this writer, and this situation should have never happened!! \*\*\* This youth has been in numerous codes that went from blue to green an staffs health/safety an well being were at risk. \*\*\* Mr. Pilgrim tried to get youth [XXX] to comply for about 2 minutes and youth [XXX] still continued to be disrespectful towards staff by cussing at us and disobeying direct orders. \*\*\* JCO's David McConnell and JCO Carmichael overheard youth [XXX] state out loud in front of OM's Ward Moore, an Mr. Gladstone Pilgrim while in dietary, that he was going to go back up to E-unit an start flipping furniture an assault staff. \*\*\* Youth [XXX] at this point turned away from Mr. Moore

an grabbed the right of my face an the left of my neck in a clawing manner. \*\*\* Youth [XXX] was swing[ing] and throwing punches at my mid-section. \*\*\*\*”

{¶7} The Supreme Court of Ohio has established the following three-part test to determine if an intentional tort occurred:

{¶8} “(1) knowledge by the employer of the existence of a dangerous process, procedure, instrumentality or condition within its business operation; (2) knowledge by the employer that if the employee is subjected by his employment to such dangerous process, procedure, instrumentality or condition, then harm to the employee will be a substantial certainty; and (3) that the employer, under such circumstances, and with such knowledge, did act to require the employee to continue to perform the dangerous task.” *Fyffe v. Jeno’s, Inc.* (1991), 59 Ohio St.3d 115.

{¶9} In *Ross v. Maumee City Schools, et al.* (1995), 103 Ohio App.3d 58, the Sixth District Court of Appeals stated: “\*\*\* we are of the opinion that an intentional tort claim can be raised, in certain and specific contexts, where a job is considered ‘inherently dangerous.’” *Id.* at 66. In *Ross* the court held that a school may be liable for an intentional tort where a teacher’s assistant continues to be assigned to control a violent, autistic child and the school knows of the violent acts and inappropriate placement. Additionally, in *Taylor v. Dept. of Rehab. and Corr.* (1994), 75 Ohio Misc.2d 60, this court held that a maximum security prison is an inherently dangerous workplace and the state may be liable for an intentional tort where prison staffing, policies, and layout make injury to a female staff member substantially certain to occur. *Id.*

{¶10} Here, plaintiff worked in a juvenile medium-maximum security prison where he had regular contact with violent juvenile offenders. Plaintiff testified in his deposition that just prior to the assault, his assailant was physically removed from plaintiff’s unit (E-unit) by other JCOs because he was exhibiting threatening behavior, and that his assailant subsequently told these JCOs that he was going to assault E-unit staff. Despite this threat, defendants’ staff returned the offender to E-unit, without restraints, where he proceeded to assault plaintiff. It is permissible to infer from this testimony that IRJCF knew or should have known that an assault upon plaintiff was certain or substantially certain to

occur. Thus, construing the facts in a light most favorable to plaintiff, the court finds that there is a genuine issue of material fact whether defendants committed an intentional tort against plaintiff.

{¶11} Plaintiff's complaint also alleges a claim for intentional infliction of emotional distress. Under Ohio law, a plaintiff claiming the tort of intentional infliction of emotional distress must show: "(1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff, (2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, (3) that the actor's actions were the proximate cause of the plaintiff's psychic injury, and (4) that the mental anguish suffered by the plaintiff is serious and of a nature that no reasonable man could be expected to endure it." *Burkes v. Stidham* (1995), 107 Ohio App.3d 363, 375. Additionally, a claim for intentional infliction of emotional distress may be brought in an employment setting. *Russ v. TRW* (1991), 59 Ohio St.3d 42.

{¶12} The Supreme Court of Ohio, in *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 374-375, described what constitutes extreme and outrageous conduct:

{¶13} "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. \*\*\* Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' \*\*\* The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities."

{¶14} Here, plaintiff alleges that defendants' lack of concern for his physical and emotional well-being after the assault caused him to suffer serious emotional distress. Specifically, plaintiff testified in his deposition that, immediately following the attack, defendants' nursing staff refused to treat his wounds and that he was required to transport

himself to the local hospital emergency room for treatment. Additionally, plaintiff testified that upon his return to work he learned that his assailant was not disciplined for attacking him. Plaintiff also testified that he was repeatedly exposed to further verbal abuse and harassment from this particular youth offender. Plaintiff also submitted a letter from his psychologist, Dr. Stephen Davis wherein Davis opines that plaintiff now suffers from post-traumatic stress disorder as a result of the attack and the subsequent conduct of his employer. Construing these facts in a light most favorable to plaintiff, the court finds that there is a genuine issue of material fact whether defendants intentionally inflicted emotional distress upon plaintiff.

**{¶15}** Plaintiff next alleges that defendants violated Ohio's workplace safety statutes by not restricting the youth's movement within IRJCF and by not having a policy in place to protect its employees from being attacked by juvenile inmates.

**{¶16}** If an employee were to prove that a violation of the workplace safety statutes occurred, the employee is barred from recovery if he/she received workers' compensation benefits for injuries that allegedly resulted from the violation of these statutes. *Fyffe*, supra; R.C. 4123.74.

**{¶17}** R.C. 4123.74 states:

**{¶18}** "Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval the employer is a self-insuring employer, whether or not such injury, occupational disease, bodily condition, or death is compensable under this chapter."

**{¶19}** Plaintiff has acknowledged receipt of workers' compensation benefits for the injuries he sustained from the attack. Therefore, defendants cannot be held liable to plaintiff for a violation of the workplace safety statutes as a matter of law.

{¶20} Upon review, defendants' motion for summary judgment shall be GRANTED, in part, pertaining to plaintiff's claim for a violation of the workplace safety statutes but DENIED as it pertains to plaintiff's claims for intentional tort and intentional infliction of emotional distress. Additionally, given the existence of the disputed factual issues mentioned above, plaintiff's motion for summary judgment shall be DENIED.

IN THE COURT OF CLAIMS OF OHIO

MICHAEL T. NICHOLS	:	
Plaintiff	:	CASE NO. 2004-06852
		Judge J. Craig Wright
:		
		<u>JUDGMENT ENTRY</u>
INDIAN RIVER JUVENILE	:	
CORRECTIONAL FACILITY, et al.	:	
Defendants	:	
	:	
:	:	
:	:	
:	:	
:	:	
:	:	
:	:	
:	:	
:	:	
:	:	

{¶21} A non-oral hearing was conducted in this case upon both defendants' motion for summary judgment and plaintiff's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, plaintiff's motion is DENIED and defendants' motion is GRANTED in part.

\_\_\_\_\_  
 J. CRAIG WRIGHT  
 Judge

Entry cc:

Lorrie E. Fuchs  
 P.O. Box 35787  
 Canton, Ohio 44735-5787

Attorney for Plaintiff

Eric A. Walker

Attorney for Defendants

Assistant Attorney General  
150 East Gay Street, 23rd Floor  
Columbus, Ohio 43215-3130

LP/AS/cmd

Filed April 21, 2005

To S.C. reporter May 3, 2005