

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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www.cco.state.oh.us

NATHAN BOLING

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2005-04781

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶1} Plaintiff brought this action alleging numerous claims for relief. The issues of liability and damages were bifurcated and the case proceeded to trial on the issues of liability and civil immunity.¹

{¶2} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. In his complaint, plaintiff alleges that while he was housed at Orient Correctional Institution, defendant's mental health professionals, Jean Wardell and James DeFeo, encouraged plaintiff to continue a sexual relationship with inmate William Weatherspoon and then to report all sexual activity to them as part of a research project that Wardell was conducting for use in a book that she was authoring about homosexual behavior. According to the complaint, Wardell and DeFeo continued to encourage the relationship even after learning that Weatherspoon had contracted HIV and that he had infected plaintiff with the virus. Plaintiff alleges that in return for his promise to provide intimate details about his relationship with Weatherspoon, Wardell and DeFeo agreed to keep the relationship confidential and not report plaintiff's conduct to other staff.

¹Pursuant to entry filed in Case No. 2005-09901, the court directed that this matter be jointly tried with Case No. 2005-09901.

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{¶3} Plaintiff further alleges that when he and Weatherspoon were transferred to Madison Correctional Institution (MaCI), they enrolled in a sexual offender treatment program known as the Monticello program. Plaintiff claims that while attending this program he was sexually assaulted by inmate John White. Plaintiff further alleges that when he reported the assault to Corrections Officer (CO) Wendell Sowards, he was threatened by Sowards and told to keep quiet.

{¶4} Finally, plaintiff asserts that Wardell and DeFeo broke their promise of confidentiality and disclosed embarrassing facts about his relationship with Weatherspoon to members of defendant's staff, other inmates and the parole authority. Plaintiff alleges that disclosure of this information damaged his reputation and subjected him to hatred, ridicule, and threats of violence.

{¶5} Based upon these allegations, plaintiff's complaint states a claim against defendant for negligence, civil conspiracy, and invasion of privacy. The court however, finds that the evidence presented at trial was insufficient to impose liability upon defendant under any legal theory.

{¶6} In order for plaintiff to prevail upon his claim of negligence, plaintiff 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 plaintiff's 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.

{¶7} With regard to the alleged assault by inmate White, the evidence demonstrates that White was a former cell mate of plaintiff. White invoked his Fifth Amendment right against self-incrimination when questioned by plaintiff about the alleged assault and plaintiff provided the court with only sketchy details about the incident. According to Wardell, she first learned of the alleged assault from plaintiff in February 2004, whereupon she reported the information to DeFeo. When Defoe met with White, he

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denied assaulting plaintiff. DeFeo then reported his findings to the appropriate prison authorities, after which White was charged with a rules infraction; however, White was later cleared after a hearing. The incident was investigated by the Ohio State Highway Patrol but no criminal charges were filed. Plaintiff admitted on cross-examination that when he provided a statement to the Patrol, he informed the trooper that he did not want charges filed.

{¶8} Plaintiff neither alleged nor proved that the claimed assault should have been prevented by defendant or that defendant had actual or constructive notice of an impending assault by White. The evidence also fails to support plaintiff's contention that defendant's staff ignored his report of rape. In short, even if the court were to find that a sexual assault did occur, the evidence does not support a finding either that defendant was negligent in failing to prevent the assault or that defendant conspired to conceal evidence of the criminal activity.

{¶9} The remainder of plaintiff's claims turn on his consensual sexual relationship with Weatherspoon. At the time of trial, Weatherspoon had been released on parole and he did not testify.

{¶10} At the outset, the court finds no credible evidence to support plaintiff's contention that Wardell or DeFeo either encouraged plaintiff's sexual activity or that they elicited private and intimate details from plaintiff that were to be used as research material for a future publication. The court finds those allegations to be totally baseless.

{¶11} Wardell, defendant's psychological assistant, first met plaintiff when she was working at Orient Correctional Institution. Wardell testified that she was aware that plaintiff was involved in a sexual relationship with another inmate but she did not learn that it was inmate Weatherspoon until October 12, 2001, when she had a meeting with plaintiff, plaintiff's mother and plaintiff's stepfather. At this meeting, plaintiff acknowledged both his sexual relationship with Weatherspoon and his claim that Weatherspoon had infected him with HIV.

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{¶12} According to Sowards, Wardell told him that plaintiff had confessed a sexual relationship with Weatherspoon; however, when Sowards confronted the two inmates about their relationship, they denied the allegation. When Sowards received similar complaints about plaintiff and Weatherspoon in May 2004, Sowards told the two men to stop hanging around together. Sowards did not level charges against either inmate at that time because he did not have sufficient evidence of a rule violation.

{¶13} James DeFeo held the position of psychologist supervisor in defendant's Monticello program. DeFeo testified that he became aware of plaintiff's sexual relationship with Weatherspoon after the two had been admitted to the Monticello program. DeFeo allowed plaintiff and Weatherspoon to remain in the program with the understanding that they would discontinue that behavior. DeFeo also acknowledged that at some point in time after plaintiff joined the program he learned of plaintiff's claim that Weatherspoon had infected him with HIV. DeFeo testified that he did not report plaintiff's claim to other prison officials because the incident had allegedly occurred more than two years prior to that time and at a different institution.

{¶14} Sowards, DeFeo, and Wardell each testified that sexual activity is a violation of prison rules. In fact, plaintiff was suspended from the Monticello program when he admitted that his sexual relationship with Weatherspoon had not ended. Plaintiff's participation in the program was subsequently terminated at Wardell's request and with DeFeo's approval.

{¶15} Plaintiff's claim of invasion of privacy is based upon the alleged publication of private facts. However, both the terms of plaintiff's incarceration and the express terms of the Monticello agreement permit defendant's employees to disclose otherwise private facts regarding plaintiff's behavior to anyone with a legitimate need to know. Under the circumstances of this case, the disclosure of plaintiff's relationship with Weatherspoon to defendant's COs and to the parole authority was neither an actionable invasion of plaintiff's right to privacy nor a breach of patient confidentiality.

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{¶16} For the foregoing reasons, the court finds that plaintiff failed to prove any of the claims alleged in his complaint and judgment is recommended in favor of defendant.

{¶17} Additionally, to the extent that plaintiff seeks a determination as to the civil immunity of defendant's employees, the court finds that Jean Wardell, William DeFeo, and Wendell Sowards were, at all times relevant hereto, acting within the scope of their employment or official responsibilities with defendant, and that they did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Therefore, it is recommended that the court issue a determination that Jean Wardell, William DeFeo, and Wendell Sowards are entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction of any civil action against them based upon the allegations of plaintiff's complaint.

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:

Velda K. Hofacker Carr Assistant Attorney General
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