

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 E. BOLING

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2005-09901

Judge Joseph T. Clark
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. Plaintiff began a consensual sexual relationship with inmate William Weatherspoon while they were housed at Orient Correctional Institution. According to plaintiff, Weatherspoon failed to inform him that he was HIV positive; nevertheless, plaintiff continued to engage in a consensual sexual behavior with Weatherspoon. Plaintiff now claims that he was infected with HIV by Weatherspoon.

{¶3} When plaintiff and Weatherspoon were transferred to Madison Correctional Institution (MaCI), they enrolled in a sexual offender treatment program known as the Monticello program. In his complaint, plaintiff alleges that after he was transferred to MaCI, his relationship with Weatherspoon was strictly platonic. Plaintiff further alleges that defendant's mental health professionals, Jean Wardell and James DeFeo, falsely reported both to defendant's staff and to the parole board that plaintiff was still engaged in sexual conduct at MaCI. Finally, plaintiff claims that Wardell and DeFeo broke their promise of

¹By entry dated November 22, 2005, this case was combined for trial with Case No. 2005-04781.

Case No. 2005-09901	- 2 -	MAGISTRATE DECISION
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confidentiality and disclosed embarrassing facts about the relationship to members of defendant's staff, other inmates, and the parole authority. Plaintiff alleges that the disclosure of this information has damaged his reputation; that he has been subjected to hatred, ridicule, and threats of violence; and that defendant is liable in actions in negligence, defamation, and invasion of privacy.

{¶14} Notwithstanding plaintiff's claims, the evidence presented at trial is insufficient to support recovery under any legal theory.

{¶15} 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.

{¶16} At the time of trial, Weatherspoon had been released on parole and he did not testify. The facts relevant to plaintiff's claims are as follows.

{¶17} Wardell first met plaintiff when she was working at Orient Correctional Institution. She 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 that meeting, plaintiff acknowledged that he had been in a sexual relationship with Weatherspoon and that Weatherspoon had infected him with HIV.

{¶18} DeFeo held the position of psychologist supervisor in defendant's Monticello program. He 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 their behavior. DeFeo also acknowledged that at some point after plaintiff joined the program, he learned of plaintiff's claim that Weatherspoon had infected

Case No. 2005-09901	- 3 -	MAGISTRATE DECISION
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him with HIV. DeFeo testified that he did not report plaintiff's claim to other prison officials because the sexual contact had allegedly occurred more than two years prior to that time and at a different institution.

{¶9} Corrections Officer (CO) Wendell Sowards worked in the dorm where plaintiff resided at MaCl. According to Sowards, Wardell told him that plaintiff had admitted his sexual relationship with Weatherspoon but that, 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, he told the two men to stop their association. Sowards did not level charges against either inmate at that time because he did not have sufficient evidence of any rule violation.

{¶10} 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.

{¶11} In December 2004, plaintiff sent a letter to the Ohio State Highway Patrol complaining about both defendant's decision to suspend him and Weatherspoon from the Monticello program and defendant's ongoing efforts to keep him and Weatherspoon separated. Although plaintiff mentioned in this letter that he and Weatherspoon were HIV positive, he did not request that charges be brought against Weatherspoon. Plaintiff also admitted on cross-examination that he never told the Patrol that Weatherspoon had infected him with HIV on the two prior occasions during which he had spoken to them while at MaCl.

{¶12} With respect to plaintiff's defamation claims, plaintiff admitted that he continued his involvement in a sexual relationship with Weatherspoon after he had been transferred to MaCl. Plaintiff also admitted that he told inmates outside of the Monticello program about his sexual relationship with Weatherspoon and the fact that Weatherspoon

Case No. 2005-09901	- 4 -	MAGISTRATE DECISION
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had infected him with HIV. Consequently, plaintiff's claim of defamation is completely negated by his own testimony. Similarly, with respect to plaintiff's claims based upon publication of private facts, 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 those 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.

{¶13} Plaintiff's final claim is that defendant should be liable to him for failing to report Weatherspoon's criminal activity to the appropriate legal authorities. Plaintiff's theory is that his continued sexual contact with Weatherspoon and the HIV virus which he carried worsened his own condition and that defendant had a duty to protect him from Weatherspoon by pursuing criminal charges against him.

{¶14} It is true that Ohio law imposes upon the state a duty of reasonable care and protection of its inmates. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235. This duty however, does not make defendant the insurer of inmate safety. *Id.*

{¶15} The court finds that plaintiff's own conduct in consenting to his continued sexual behavior with Weatherspoon, in denying such behavior when confronted by defendant's staff, in concealing evidence of such conduct from defendant's staff, and in failing to report that conduct to the appropriate legal authority when he had an opportunity to do so, relieves defendant of any duty it may otherwise have owed to plaintiff with respect to inmate Weatherspoon.

{¶16} For the foregoing reasons, the court finds that plaintiff failed to prove any of the claims alleged in his complaints 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

Case No. 2005-09901	- 5 -	MAGISTRATE DECISION
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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 that might be taken against them based upon the allegations of plaintiff's complaints.

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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Case No. 2005-09901	- 6 -	MAGISTRATE DECISION
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