

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

BILLY VAUGHN

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2006-01106

Judge J. Craig Wright
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On October 18, 2006, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. On November 13, 2006, plaintiff filed a motion for summary judgment pursuant to Civ.R. 56(A). On November 21, 2006, defendant filed a response. On November 30, 2006, an oral hearing was conducted by a magistrate of the court on both motions.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to 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, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

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{¶4} At all times relevant to this action plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF). On December 2, 2004, plaintiff was involved in a physical altercation with inmate Charles Taylor while in the Residential Treatment Unit (RTU) at SOCF. According to plaintiff, he was classified as a “4A” inmate, while Taylor was classified as a “4B” inmate. Plaintiff contends that defendant violated SOCF policy by allowing them to be housed together in the RTU and that defendant should have anticipated that an altercation would occur.

{¶5} Ohio law imposes upon the state a duty of reasonable care and protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235. In cases of inmate assault, a negligence action arises only when the institution has adequate notice of an impending assault. *Id.* The legal concept of notice is of two distinguishable types: actual and constructive. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. When the trier of fact finds from competent evidence that information was personally communicated to or received by the party the notice is actual. Constructive notice is that 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.

{¶6} Plaintiff did not submit any evidence either in opposition to defendant’s motion for summary judgment or in support of his cross-motion for summary judgment.

{¶7} In support of its motion for summary judgment, defendant submitted the affidavit of Bertha Goodman, a registered nurse in the RTU at SOCF. Goodman stated, in part, that:

{¶8} “****

{¶9} “4. The Residential Treatment Unit is a special housing unit where inmates are housed for mental health treatment;

{¶10} “****

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{¶11} “8. Although I did not observe the actual fight, I observed both Inmate Vaughn and Inmate Taylor just before the fight occurred;

{¶12} “9. I did not observe any conduct at any time between Inmate Vaughn and Inmate Taylor that would indicate a fight between the two inmates was likely to occur in the near future. To the best of my knowledge, no Department of Rehabilitation and Correction employee observed any such conduct or had any reason to believe there was a problem between these two inmates;

{¶13} “10. Inmate Vaughn never told me that he was in danger or that he was afraid of Inmate Taylor, and I am not aware of him making such statements to any other Department of Rehabilitation and Correction employees;

{¶14} “11. I do not know of any threats made by Inmate Taylor against Inmate Vaughn;

{¶15} ***.”

{¶16} Based upon Goodman’s undisputed affidavit testimony, the court finds that defendant did not have actual notice of an imminent altercation between plaintiff and Taylor.

{¶17} Defendant also submitted the affidavit of Corrections Officer (CO) George Radabaugh. In addition to stating that he had never observed conduct between plaintiff and Taylor that would indicate a future altercation, Radabaugh stated that his review of inmate complaint records at SOCF, revealed “*** no related complaints, requests for protective custody, notices, or other communications relative to this occurrence from anyone prior to the incident; ***.” Based upon this undisputed testimony, the court finds that there is no factual basis to support a finding that defendant had constructive notice of the altercation.

{¶18} In the alternative, plaintiff argues that constructive notice may be inferred from defendant’s own policy that prohibits inmates with “4A” and “4B” classifications from

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being housed together. In response to this argument, defendant submitted the affidavit of William D. Prise, the mental health administrator at SOCF, who stated that:

{¶19} “***

{¶20} “4. Under normal circumstances, level 4A and 4B inmates are not housed in the same block. However, for treatment purposes, they can be housed together in the mental health treatment unit;

{¶21} “5. The Residential Treatment Unit (RTU) is a special housing unit where inmates are housed for mental health treatment, the RTU operates on a privilege level system (levels 1-4; level one being the most restrictive and level four being the least restrictive). This system permits 4A & 4B inmates to intermingle when it is consistent with their level of functioning from a mental health standpoint. Accordingly, DRC’s decision to house Inmate Taylor in the RTU for mental health treatment was reasonable;

{¶22} ***.”

{¶23} Based upon Prise’s affidavit, the court finds that defendant did not violate SOCF policy in housing plaintiff and Taylor together in the RTU. Accordingly, plaintiff’s argument in the alternative is not well-taken.

{¶24} As stated above, plaintiff did not attach any affidavit or other evidence to support his arguments and allegations.

{¶25} Civ.R. 56(E) states, in part, as follows:

{¶26} “*** When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.”

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{¶27} Upon consideration of the arguments presented by the parties and the evidence provided by defendant, the court finds that no genuine issues of material fact exist and that defendant is entitled to judgment as a matter of law. Accordingly, it is recommended that plaintiff's motion for summary judgment be denied, that defendant's motion for summary judgment be granted, and that judgment be rendered in favor of defendant.

{¶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 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).

MATTHEW C. RAMBO
Magistrate

cc:

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Lucasville, Ohio 45699-0001
MR/cmd

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