

Court of Claims of Ohio

The Ohio Judicial Center
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GRADY JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, et al.

Defendants

Case No. 2006-02323

Judge Joseph T. Clark
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant Department of Rehabilitation and Correction at the Oakwood Correctional Facility (OCF), pursuant to R.C. 5120.16. It is undisputed that on January 17, 2004, plaintiff was attacked by fellow inmate Daniel Wright as he watched television in the OCF “day room.” Plaintiff lost his right eye as a result of the attack. Plaintiff alleges that defendants knew or should have known that Wright was a dangerous individual prone to violence and failed to prevent the assault.

{¶ 3} Plaintiff testified that prior to the assault, he had never had a problem with or spoken to Wright even though they lived in the same housing unit. According to plaintiff, early on the day of the incident, he was in the OCF gym walking laps and Wright kept stepping in front of him and getting in his way. Plaintiff testified that he politely asked Wright to stop but that he persisted. Plaintiff stated that he “might” have

informed one of the three or four psychiatric attendants on duty in the gym at that time, but that even if he did not, they should have been able to observe his interaction with Wright. However, plaintiff could not recall the name of any OCF staff member who was present in the gym at the time. Plaintiff testified that approximately a half an hour after the incident in the gym he went to the day room and sat down to watch television, and that shortly thereafter Wright attacked him. According to plaintiff, he did not see Wright approach and he had no warning that Wright was going to attack him.

{¶ 4} In order for plaintiff to prevail upon his claims of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that defendants' acts or omissions resulted in a breach of that duty, and that the breach proximately caused his 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.

{¶ 5} Ohio law generally imposes upon the state a duty of reasonable care and protection of its prisoners. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. However, it is well-settled that the state is not liable for the intentional attack on one inmate by another unless there is actual or constructive notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. Southern Ohio Corr. Facility* (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. & Corr.* (1991), 61 Ohio Misc.2d 696. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice 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} Christopher Yanai was the warden of OCF at the time that plaintiff was assaulted. Yanai testified that OCF houses inmates who need special psychiatric treatment. Yanai stated that he is sometimes made aware of the violent tendencies of

particular inmates but that the OCF “treatment team” determines whether to make him aware of such cases. Yanai further stated that he was not familiar with Wright’s particular course of treatment and was not notified that he had a potential for violence. However, Yanai did identify a document dated December 22, 2003, pertaining to Wright’s treatment plan at OCF that stated that Wright had a “history of explosive episodes and exhibits a current potential for violence,” but that “[t]here continues to be no evidence of any violent behavior. He is cooperative.” (Plaintiff’s Exhibit 1D.) The report further states that Wright is “instigating conflicts,” “intimidating other [inmates],” “accepting no responsibility for his actions,” “challenging staff and unit rules,” and “struggles with low tolerance and managing his anger.” (Plaintiff’s Exhibit 1E.) Regardless, Yanai stated that this was not a “red flag” inasmuch as most of the inmates at OCF have some history of and potential for violence. Yanai testified that Wright did not “stick out” in his mind because prior to the assault on plaintiff, Wright had not had any incident with plaintiff or any violent episode at OCF, although he may have had problems at other institutions. Finally, Yanai testified that following the assault he and other OCF staff members reviewed plaintiff’s and Wright’s records and found no indicators that Wright would become violent and assault plaintiff.

{¶ 7} Psychiatric Attendant (PA) Travis Harter was in the day room when plaintiff was assaulted. Harter testified that plaintiff was sitting watching television and that he observed Wright leave the room to go to his cell, but that he returned and assaulted plaintiff “out of nowhere.” Harter and another PA then restrained Wright. Harter testified that he had been around plaintiff and Wright “five days a week” prior to the assault and that he never witnessed the two inmates have a disagreement or even talk to each other. Regarding the alleged incident in the gym, Harter testified that plaintiff did not inform him of a disagreement with Wright and that he did not witness any argument between plaintiff and Wright.

{¶ 8} Based upon the foregoing, the court finds that defendants did not have any actual or constructive notice of an impending assault on plaintiff by Wright. With

regard to actual notice, the court finds that Wright's attack on plaintiff was random and that no information was communicated to OCF staff that would lead them to believe that an attack on plaintiff would occur. With regard to constructive notice, the court finds that, despite some evidence of violent behavior by Wright at other correctional institutions, the lack of prior disagreements or any meaningful interaction between plaintiff and Wright shows that there was not a sufficient basis to constitute notice of an impending assault. Accordingly, judgment is recommended in favor of defendants.

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

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MAGISTRATE DECISION

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Magistrate Steven A. Larson

MR/cmd
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