

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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RAYSHAN WATLEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION,
et al.

Defendants

Case No. 2006-05926

Judge Clark B. Weaver Sr.
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶1} On May 24, 2007, plaintiff filed a motion for summary judgment. On June 8, 2007, defendant filed a cross-motion for summary judgment, and a memorandum contra plaintiff's motion for summary judgment. On July 13, 2007, an oral hearing was held on the motions. Plaintiff participated via telephone from the Ohio State Penitentiary.

{¶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.

{¶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) pursuant to R.C.

Case No. 2006-05926	- 2 -	MAGISTRATE DECISION
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5120.16. Plaintiff alleges that two interoffice memos prepared by defendant's employee, James Goodman, contained defamatory statements about him. Defendant argues that plaintiff cannot establish a prima facie case of defamation because the statements contained in the memos are true. Defendant further argues that even if plaintiff were able to establish a prima facie case, Goodman's statements are protected by qualified privilege.

{¶5} Plaintiff submitted his own affidavit in support of his motion wherein he restated several of the allegations contained in his complaint.

{¶6} In support of its motion for summary judgment, defendant submitted the affidavit of James Goodman, the institutional inspector at SOCF. Goodman described the events that prompted his preparation of the memos as follows:

{¶7} "3. On May 19, 2006, while working as the Institutional Inspector at SOCF and after receiving approval from the Chief Inspector, I wrote an inter-office communication to [plaintiff] informing him that he had been placed on a grievance restriction for 90 days for (a) abusing the grievance procedure, and (b) for fraudulently submitting numerous Informal Complaint Resolutions and kites in the names of other inmates;

{¶8} "4. On August 20, 2006, while working as the Institutional Inspector at SOCF and after receiving approval from the Chief Inspector, I wrote an inter-office communication to [plaintiff] informing him that his grievance restriction had been extended for another 90 days, because [plaintiff] had not complied with the May 19, 2006 grievance restriction;

{¶9} ***

{¶10} "6. These inter-office communications were written as part of my duty, on behalf of [defendant], to maintain the safety and security of SOCF;

{¶11} "7. I believe the content of both the inter-office communications was truthful."

{¶12} Plaintiff asserts that Goodman's statement that he "fraudulently submitted" complaints on behalf of other inmates is false.

Case No. 2006-05926	- 3 -	MAGISTRATE DECISION
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{¶13} “Defamation is defined as ‘the unprivileged publication of a false and defamatory matter about another * * * which tends to cause injury to a person’s reputation or expose him to public hatred, contempt, ridicule, shame or disgrace * * *.’ *McCartney v. Oblates of St. Francis deSales* (1992), 80 Ohio App.3d 345, 353. As suggested by the definition, a publication of statements, even where they may be false and defamatory, does not rise to the level of actionable defamation unless the publication is also unprivileged. Thus, the threshold issue in such cases is whether the statements at issue were privileged or unprivileged publications.” *Sullivan v. Ohio Dept. of Rehab.& Corr.*, Ct. of Cl. No. 2003-02161, 2005-Ohio-2122, ¶8.

{¶14} Privileged statements are those that are “made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right or interest. The essential elements thereof are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, publication in a proper manner and to proper parties only.” *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244.

{¶15} Furthermore, a qualified privilege can be defeated only by clear and convincing evidence of actual malice. *Bartlett v. Daniel Drake Mem. Hosp.* (1991), 75 Ohio App.3d 334, 340. “Actual malice” is “acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity.” *Jacobs v. Frank* (1991), 60 Ohio St.3d. 111, 116.

{¶16} Based upon the un rebutted affidavit testimony of James Goodman, the only reasonable conclusion to draw is that the statements contained in the interoffice memos prepared by Goodman were not made with “actual malice” and are protected by a qualified privilege. Accordingly, it is recommended that plaintiff’s motion for summary

Case No. 2006-05926	- 4 -	MAGISTRATE DECISION
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judgment be denied and that defendant's motion for summary judgment be granted and judgment be rendered in favor of defendant.

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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MR/cmd
Filed September 14, 2007
To S.C. reporter September 28, 2007