

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

RAYSHAN WATLEY

Case No. 2006-06680

Plaintiff

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

v.

MAGISTRATE DECISION

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} On May 22, 2007, plaintiff filed a motion for summary judgment. On June 4, 2007, defendant filed a cross-motion for summary judgment. On June 29, 2007, an oral hearing was held on the motions. Plaintiff participated via telephone from the Ohio State Penitentiary (OSP).

{¶2} Civ.R. 56(C) provides, 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. 5120.16. Plaintiff alleges that defendant’s employee, Corrections Officer (CO) Brian Felts,

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defamed him by authoring a false conduct report accusing him of “head-butting” another inmate. Plaintiff alleges that after a hearing before the Rules Infraction Board (RIB) at SOCF, he was found not guilty of the alleged assault. Defendant argues that although plaintiff was found not guilty, he has failed to establish a prima facie case of defamation. Defendant further argues that the statements made by Felts are protected by a qualified privilege. The court notes that plaintiff did not submit any evidence either in support of his motion for summary judgment or in opposition to defendant’s cross-motion for summary judgment.

{¶5} In support of its motion for summary judgment, defendant submitted the affidavit of CO Felts. Felts described the events in question as follows:

{¶6} “3. On December 13, 2005, while working as a correctional officer at SOCF, I observed a fight break out among inmates on a recreation chain, and I helped to break up the fight;

{¶7} “4. Based on my senses, knowledge, and experience as a correctional officer, I wrote a conduct report on [plaintiff] for, among other violations, threatening bodily harm to another and for fighting;

{¶8} “5. This conduct report was written as part of my duty, on behalf of DRC, to maintain the safety and security of SOCF;

{¶9} “6. When I wrote the conduct report, it was my belief that [plaintiff] had violated the rules listed in the conduct report;”

{¶10} “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

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or unprivileged publications.” *Sullivan v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2003-02161, 2005-Ohio-2122, ¶8.

{¶11} 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, and publication in a proper manner and to proper parties only.” *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244.

{¶12} 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.

{¶13} Based upon the uncontested affidavit testimony of Felts, the only reasonable conclusion to draw is that defendant is protected by qualified privilege for the statements contained in the conduct report authored by Felts. Plaintiff presented no evidence to support the conclusion that the statements were made by Felts with actual malice. Therefore, defendant is entitled to judgment as a matter of law. Accordingly, it is recommended that plaintiff’s motion for summary 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

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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:

Daniel R. Forsythe Assistant Attorney General 150 East Gay Street, 23rd Floor Columbus, Ohio 43215-3130	Rayshan Watley, #347-921 878 Coitsville-Hubbard Road Youngstown, Ohio 44501
MR/cmd	

Filed August 28, 2007
To S.C. reporter September 28, 2007