

# Court of Claims of Ohio

The Ohio Judicial Center  
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PAUL CLAREN

Plaintiff

v.

GRAFTON CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-05482

Judge J. Craig Wright  
Magistrate Matthew C. Rambo

## MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging claims of assault, defamation, retaliation, and violations of institutional rules. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At the outset of the proceedings, and after hearing argument from the parties, the court granted defendant's May 22, 2008 motion to quash the subpoenas issued to Gary Burt, Terry Collins, and William Eleby.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of the Department of Rehabilitation and Correction at the Grafton Correctional Institution (GCI) pursuant to R.C. 5120.16. Plaintiff alleges that a corrections officer (CO) assaulted him, that COs defamed him in two conduct reports, that defendant violated various institutional rules, and that defendant retaliated against him in determining his security level and placement.

{¶ 4} In support of his defamation claims, plaintiff testified that on October 8, 2006, CO Dent prepared a conduct report in which he charged plaintiff with spitting out

medication that Dent found on the ground near plaintiff. (Plaintiff's Exhibit 5.) According to plaintiff, the medication was not his and he did not spit it out. The Rules Infraction Board (RIB) found plaintiff not guilty of the charge.

{¶ 5} Plaintiff's second defamation claim arises from an October 11, 2006 consultation between plaintiff and GCI Psychologist Dr. Chee. Plaintiff testified that when Dr. Chee informed him that he would not be released from a segregation unit at that time, he became upset and experienced a "flashback" memory of his military service in Vietnam, causing him to hyperventilate and make anti-Asian remarks. Corrections Lieutenant Everly witnessed that episode and prepared a conduct report as a result, wherein he charged plaintiff with making "several direct threats to beat and kill Dr. Chee." (Defendant's Exhibit A.) Plaintiff testified that he was incoherent at the time of the incident, but that his statements only pertained to persons of Asian ancestry in general and were not specific to Dr. Chee. Nonetheless, plaintiff acknowledged that his testimony before the RIB regarding this incident included such statements as "I started to have flashbacks from Vietnam and Dr. Chee being oriental, I don't care much for orientals, I was just cussing up the orientals in general about how they should have been nuked and all," and "it got blurry and I don't know what happened." (Defendant's Exhibit A.) The RIB found plaintiff guilty of the charge.

{¶ 6} "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 exposes him to public hatred, contempt, ridicule, shame or disgrace or affects him adversely in his trade or business.' *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.” (Citation omitted.) *Sullivan v. Ohio Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2003-02161, 2005-Ohio-2122, ¶8.

{¶ 7} 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.

{¶ 8} A qualified privilege can be defeated only by clear and convincing evidence of actual malice. *Jacobs v. Frank* (1991), 60 Ohio St.3d 111, 116. “[A]ctual malice’ is defined as acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity.” *Id.*

{¶ 9} Upon review, the court finds that the statements contained in the conduct reports authored by CO Dent and Lieutenant Everly were protected by a qualified privilege and that they were not made with actual malice. Therefore, plaintiff failed to prove his claims of defamation.

{¶ 10} Plaintiff’s assault claim arises from an October 9, 2006 incident in which COs intervened during a suicide attempt by plaintiff. While patrolling plaintiff’s cell block that day, CO Kelly Rice looked through the window of plaintiff’s cell and saw plaintiff hanging on a noose fashioned out of bed sheets tied to a ceiling vent. Rice radioed for assistance and CO David Coe responded. Coe and Rice then opened plaintiff’s cell door, removed him from the noose, placed him on the floor, and handcuffed him. Medical personnel arrived shortly thereafter and plaintiff was transported to Elyria Memorial Hospital.

{¶ 11} Plaintiff alleges that while he was on the ground in handcuffs, Coe kicked and punched him. Defendant denies these allegations and asserts that Coe used only such force as was necessary in responding to the situation.

{¶ 12} The Ohio Administrative Code sets forth the circumstances under which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) provides, in relevant part:

{¶ 13} “(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate or third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

{¶ 14} “(a) Self-defense from physical attack or threat of physical harm;

{¶ 15} “(b) Defense of another from physical attack or threat of physical attack;

{¶ 16} “(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders;

{¶ 17} “(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;

{¶ 18} “(e) Prevention of an escape or apprehension of an escapee, or;

{¶ 19} “(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.”

{¶ 20} The court has recognized that “corrections officers have a privilege to use force upon inmates under certain conditions. \* \* \* However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. \* \* \* Obviously ‘the use of force is a reality of prison life’ and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Internal citations omitted.)

{¶ 21} Defendant introduced a video recording of the incident that was taken from a camera mounted outside plaintiff's cell. (Defendant's Exhibit M.) The recording shows that plaintiff attempted to struggle with COs Coe and Rice, but that they were able to subdue and handcuff him using minimal force. Once plaintiff was cuffed, he and the COs calmly awaited the arrival of medical personnel.

{¶ 22} The court finds that Coe's actions complied with Ohio Adm.Code 5120-9-01(C)(2)(f) inasmuch as he subdued plaintiff in order to prevent him from harming himself. Accordingly, plaintiff failed to prove his claim for assault.

{¶ 23} Next, plaintiff alleges that defendant violated institutional rules and retaliated against him. Plaintiff testified that defendant failed to perform required investigations of several matters, including the above-described incidents of October 9 and 11, 2006. Plaintiff also stated that defendant has not performed timely reviews of his security level and placement and that defendant has categorized him at too high of a security level. According to plaintiff, defendant has denied him a lower security level and has transferred him to several institutions in retaliation for his filing a federal lawsuit against defendant.

{¶ 24} The Supreme Court of Ohio has held that "[p]rison regulations \* \* \* are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 1997-Ohio-139. "A breach of [defendant's] internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. & Corr.* (1993), 67 Ohio Misc.2d 1, 3. See also *Horton v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 05AP-198, 2005-Ohio-4785, ¶29. Therefore, to the extent plaintiff alleges that defendant failed to comply with internal policies, he fails to state a claim upon which relief may be granted.

{¶ 25} To the extent plaintiff alleges that defendant's decisions regarding his security level and placement were retaliatory in nature, inmate claims of retaliation are to be treated as constitutional claims under 42 U.S.C. 1983. *Deavors v. Ohio Dept. of*

*Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105. Such claims may not be brought against the state in the Court of Claims because the state is not a “person” within the meaning of Section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App.3d 170; *White v. Chillicothe Correctional Inst.* (Dec. 29, 1992), Franklin App. No. 92AP-1230. Thus, this court lacks jurisdiction to hear plaintiff’s claims insofar as they are predicated upon retaliation.

{¶ 26} Moreover, the Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined \* \* \* in accordance with the same rules of law applicable to suits between private parties \* \* \*’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶ 27} Based upon the foregoing, the court finds that defendant’s decisions pertaining to plaintiff’s security level and placement are characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising therefrom.

{¶ 28} For the foregoing reasons, the court finds that plaintiff failed to prove any of the claims alleged in his complaint and judgment is therefore recommended 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).*

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MATTHEW C. RAMBO  
Magistrate

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