

[Cite as *Haddox v. Chillicothe Correctional Inst.*, 2008-Ohio-5729.]

# Court of Claims of Ohio

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TOMMIE E. HADDOX, JR.

Plaintiff

v.

CHILLICOTHE CORRECTIONAL  
INSTITUTION

Defendant

[Cite as *Haddox v. Chillicothe Correctional Inst.*, 2008-Ohio-5729.]

Case No. 2007-05661

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MAGISTRATE DECISION

Case No. 2007-05661

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

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging assault, denial of medical care, and negligent training and supervision. On December 10, 2007, the court dismissed plaintiff's medical and assault claims, leaving plaintiff's claim for negligent training and supervision for trial. 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 pursuant to R.C. 5120.16. Plaintiff alleges that on June 17, 2005, while incarcerated at the Chillicothe Correctional Institution (CCI), he sustained permanent and serious injuries as a result of an assault by CCI employee Gregory Nesser. Plaintiff asserts that defendant failed to properly train and supervise Nesser and that Nesser's subsequent assault upon him was a foreseeable result of such failure. Defendant argues that Nesser was given proper training and that it did not have any notice that Nesser would assault an inmate.

{¶ 3} In order for plaintiff to prevail on a claim for negligent hiring or retention, he must prove: 1) the existence of an employment relationship; 2) the employee's incompetence; 3) the employer's actual or constructive knowledge of such incompetence; 4) the employee's act or omission causing plaintiff's injuries and 5) the employer's negligence in hiring or retaining the employee as the proximate cause of plaintiff's injuries. *Evans v. Ohio State University* (1996), 112 Ohio App.3d. 724, 739.

{¶ 4} In support of his claim, plaintiff offered his own brief testimony and several documents that purport to show Nesser's penchant for harassing and assaulting inmates. First, plaintiff testified that Nesser was disciplined following a confrontation with an inmate that occurred on November 25, 1998. (Plaintiff's Exhibits 2-6.) According to the documents provided by plaintiff, Nesser's actions included "yelling and cussing at the inmate" and threatening to slap him. (Plaintiff's Exhibit 2.) As a result of the incident, Nesser received a written reprimand and attended anger management classes. (Plaintiff's Exhibits 5, 6.)

{¶ 5} The second incident plaintiff describes occurred on October 28, 2000, when an inmate who allegedly attempted to spit on Nesser was placed in handcuffs. Defendant's Use-of-Force Committee investigated the matter and determined that although the force used by Nesser to handcuff the inmate was "slight," it was

nonetheless “excessive” in that situation. (Plaintiff's Exhibit 16.) As a result of the incident, defendant fined Nesser an amount equal to one day of pay. (Plaintiff's Exhibit 17.)

{¶ 6} At the close of plaintiff's case, defendant moved the court for dismissal of plaintiff's claim pursuant to Civ.R. 41(B)(2), asserting that while plaintiff had arguably presented some evidence of dubious quality regarding some of the elements of his claim for negligent training and supervision, he had not proven all of the required elements. The court held the motion in abeyance and allowed defendant to proceed with its case. The court will now rule upon the motion.

{¶ 7} Civ.R. 41(B)(2) provides: “(2) Dismissal; non-jury action. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ. R. 52 if requested to do so by any party.”

{¶ 8} After considering plaintiff's testimony and the documents submitted as evidence, the court finds that plaintiff failed to meet his burden regarding the elements of his negligent training and supervision claim. Specifically, while defendant did not dispute the existence of an employment relationship with Nesser, and plaintiff presented some evidence indicating that Nesser had previously had confrontations with inmates, plaintiff did not present any evidence or testimony as to the remaining elements. Accordingly, it is recommended that defendant's motion to dismiss plaintiff's claim pursuant to Civ.R. 41(B)(2) be granted and that 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).*

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STEVEN A. LARSON  
Magistrate

Case No. 2007-05661

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MAGISTRATE DECISION

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Magistrate Steven A. Larson

MR/cmd  
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