

[Cite as *Rowe v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-5728.]

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

LEWIS ROWE

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

[Cite as *Rowe v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-5728.]

Case No. 2007-08945

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ENTRY

Case No. 2007-08945

Judge J. Craig Wright
Magistrate Steven A. Larson

DECISION

{¶ 1} On July 29, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶ 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. 5120.16. Plaintiff alleges that on November 11, 2007, Corrections Officers (COs) Wesley Smith and “Lewis B.” and Corrections Lieutenant Workman assaulted him. Plaintiff further alleges that Lieutenant Workman failed to properly supervise COs Smith and “Lewis B.” Defendant argues that its employees used appropriate force in dealing with plaintiff.

{¶ 5} 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:

{¶ 6} “(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:

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

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

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

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

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

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

{¶ 13} 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.)

{¶ 14} In support of its motion, defendant submitted the affidavits of CO Wesley Smith, CO Benjamin Lewis, and Lieutenant Steven Workman. Defendant also submitted relevant incident and conduct reports.

{¶ 15} In his affidavit, CO Smith states, in part:

{¶ 16} “2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 17} “3. On November 11, 2007, I observed [plaintiff] steal three slices of bread. I gave [plaintiff] a direct order, saying, “Inmate Rowe, I am giving you a direct order to give me those three slices of bread you stole.” [Plaintiff] turned and made eye contact and then turned and walked away. I approached [plaintiff] and gave him another direct order to return the three slices of stolen bread. I then gave [plaintiff] a direct order to get on the wall, but he continued to ignore my commands and kept

walking. I took [plaintiff's] food tray in my hands and set it down on the table. [Plaintiff] yanked his arm away in an aggressive manner and turned to face me in an aggressive manner;

{¶ 18} “4. C.O. Lewis and myself assisted [plaintiff] to the floor and C.O. Lewis handcuffed [plaintiff].

{¶ 19} “5. I wrote a conduct report on [plaintiff] for violating the following inmate rules: #20 - physical resistance to a direct order; #18 - encouraging or creating a disturbance; and #48 - stealing.

{¶ 20} “6. During this incident, no prison staff assaulted [plaintiff];

{¶ 21} “7. During this incident, SOCF and [defendant's] policy was properly followed by the prison staff;

{¶ 22} “8. I was properly trained and supervised regarding giving orders to inmates, handling inmates who do not comply with direct orders, handcuffing inmates and escorting inmates.”

{¶ 23} CO Lewis' affidavit corroborates the facts as set out by CO Smith. Both CO Smith and Lewis authenticated copies of their incident reports.

{¶ 24} Lieutenant Workman states in his affidavit, in part:

{¶ 25} “2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 26} “3. On November 11, 2007, I responded to an incident involving [plaintiff]. When I arrived, C.O. Smith and C.O. Lewis were securing the inmate.

{¶ 27} “4. Once [plaintiff] had been handcuffed, I placed my right hand on [plaintiff's] left arm and escorted him out of the area. After another correctional officer advised me that [plaintiff] had thrown a punch at C.O. Smith, [plaintiff] began yelling and attempted to pull away from me. I placed the inmate in an escorting technique and continued to escort the inmate.

{¶ 28} “5. During this incident, no prison staff assaulted [plaintiff];

{¶ 29} “6. During this incident SOCF and [defendant’s] policy was properly followed by the prison staff;

{¶ 30} “7. I was properly trained and supervised regarding giving orders to inmates, handling inmates who do not comply with direct orders, handcuffing inmates and escorting inmates.”

{¶ 31} Lieutenant Workman also authenticated a copy of his incident report from the day in question.

{¶ 32} Based upon the undisputed affidavit testimony provided by defendant, the court finds no evidence to support plaintiff’s allegation that defendant’s employees used excessive force against him on November 11, 2007.

{¶ 33} To the extent that plaintiff asserts a claim of negligent supervision, the court notes that in order to prove such a claim, plaintiff has the burden to establish: 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 retaining the employee as the proximate cause of plaintiff’s injuries. *Evans v. Ohio State University* (1996), 112 Ohio App.3d 724, 739.

{¶ 34} Inasmuch as plaintiff has provided the court with no evidence to support his claims of excessive force, plaintiff’s claim for negligent supervision fails as a matter of law. Accordingly, defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

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A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

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MR/cmd
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