

[Cite as *Bell v. Ohio Dept. of Youth Servs.*, 2016-Ohio-983.]

RYAN BELL

Plaintiff

v.

OHIO DEPARTMENT OF YOUTH
SERVICES, et al.

Defendants

Case No. 2014-00556

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action for negligence alleging that on July 6, 2013, while in defendants' custody at the Scioto Juvenile Correctional Facility (SJCF), he sustained injuries as a result of an employee using excessive force upon him. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} At trial, plaintiff testified that on July 6, 2013, at about 8:30 p.m., he finished showering and walked back toward his room in the Jefferson Unit at SJCF. Plaintiff stated that in the common area of the unit, there was a staff area that included an elevated podium and a table in front of the podium, and surrounding the staff area was a line painted on the floor which youths were not allowed to cross. Plaintiff testified that when he walked past the staff area that evening, he looked on the table and saw a written report in which Youth Specialist Larry Rogers accused him of a rules infraction. According to plaintiff, the alleged infraction occurred earlier in the day when plaintiff had a disagreement with Rogers about plaintiff getting to his room in a timely fashion.

{¶3} Plaintiff stated that when he observed the report on the table, Rogers was at or around the podium and Youth Specialists by the names of Melcher and Miller were there as well. Plaintiff stated that another youth, T.W., was also in the common area of the unit at that time performing janitorial work. Plaintiff recounted that upon seeing the

report Rogers had prepared, he stopped walking to his room, stood near the podium, and verbalized his displeasure with Rogers. Plaintiff testified that Rogers ordered him to go to his room and threatened to write him up again if he did not do so. Plaintiff stated, however, that he instead went and picked up a mop stick (without a mop actually attached to it) that was sitting out for T.W. to use while he cleaned. Plaintiff stated that Rogers asked him if he really wanted to do this, as plaintiff then returned to the vicinity of the podium holding the mop stick with both hands as if it were a baseball bat, and told Rogers that he would hit him with the stick if Rogers called for assistance from other staff. According to plaintiff, he paced back and forth in the vicinity of the podium, about 15 feet from Rogers, while holding the mop stick in his hands and making hostile remarks toward Rogers and refusing to go to his room. Plaintiff acknowledged that he also stated aloud to another youth who lived in a nearby room that he was going to hit Rogers if Rogers called for backup.

{¶4} Plaintiff testified that after Rogers picked up the telephone at the podium and started to call for backup, he advanced directly toward Rogers. Plaintiff acknowledged that he was brandishing the mop stick like a baseball bat at that time, that Rogers walked away from him, and that he got as close as three or four feet from Rogers. Plaintiff initially testified that he did not enter the staff area and that he stayed to the side of the podium and never stepped on the raised platform behind the podium. When he was shown a video recording of the incident during cross-examination, however, plaintiff acknowledged that he not only crossed the line painted on the floor around the staff area, but he actually went behind the podium as well while pursuing Rogers, still holding the mop stick up in the air over his shoulder like a baseball bat. (Defendants' Exhibit G.)

{¶5} According to plaintiff, he had no intention of striking Rogers with the mop stick. Rather, it was plaintiff's testimony that he was merely bluffing when he threatened to strike Rogers and then subsequently pursued Rogers while brandishing the mop stick

like a baseball bat. In an interview with an investigator afterward, plaintiff stated that he “was just trying to scare him.” (Defendants’ Exhibit F.) Plaintiff, who testified that he had been at SJCF for about 18 months at that point, explained that based upon past experiences when he had been upset with staff, it was his understanding that Rogers was required to call for assistance under the circumstances, and he expected that a “cool CO” or other staff member would come to the scene and intervene, and he would then go to his room.

{¶6} Plaintiff stated, though, that Rogers suddenly turned around and rushed at him, and that Rogers wrapped his arms around him in a bear hug. At first, plaintiff testified that he offered no resistance and allowed Rogers to take him down, but he later acknowledged that he did resist being subdued by Rogers and that he tried to get loose. Plaintiff also acknowledged that during the interview with the investigator after the incident, he stated that he pulled away from Rogers and tried to get loose. (Defendants’ Exhibit F.) Plaintiff further admitted that he held onto the mop stick even as Rogers had a bear hug on him, and that the video recording of the incident appears to show the mop stick making contact with Rogers’ head at one point during the struggle, but he stated that he was only trying to get loose and that any contact between the mop stick and Rogers’ head was unintentional.

{¶7} Plaintiff testified that Rogers ultimately picked him up off his feet and then took him to the ground such that his head struck the ground with great force. Plaintiff stated that after losing consciousness momentarily, he was escorted away and was seen soon afterward by a nurse. Plaintiff testified that his jaw was broken on the right side, one of his teeth was dislodged, and he suffered persistent headaches as a result of the incident.

{¶8} Plaintiff testified that he was released from defendants’ custody on January 11, 2014. Plaintiff related that at the time of trial, he was 20 years old, 6’1” tall, and

weighed 200 pounds, but he stated that at the time of the incident he was about 5'9" tall. Plaintiff described Rogers as being about 5'11".

{¶9} Timothy L. Gillis, an investigator employed by defendants, testified that he investigated the incident, including reviewing video recordings of the incident and obtaining statements from plaintiff, Rogers, Melcher, and Miller. Gillis testified that the video recordings of the incident capture four frames per second, and he authenticated a set of still-frame photographs taken from the recordings. (Plaintiff's Exhibit 1.) Gillis also authenticated a copy of defendants' Use of Force Policy. (Plaintiff's Exhibit 2.)

{¶10} As previously stated, plaintiff brought this action asserting a claim of negligence. "To prevail in a negligence action, the plaintiff must show (1) the existence of a duty, (2) a breach of that duty, and (3) an injury proximately resulting from the breach." *Price v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-11, 2014-Ohio-3522, ¶ 9, quoting *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, ¶ 21. As this court has observed, defendants have a duty under R.C. 5139.01(A)(3) to "train, protect, and control" the youth in their custody. *Taylor v. Cuyahoga Hills Juvenile Corr. Facility*, Ct. of Cl. No. 2002-10283, 2004 Ohio Misc. LEXIS 379 (June 22, 2004); *Shover v. Ohio Dept. of Youth Servs.*, Ct. of Cl. No. 1993-04176 (Sept. 14, 1994); *Martin v. Dept. of Youth Servs.*, Ct. of Cl. No. 2006-07635-AD, 2007-Ohio-7094, ¶ 9.

{¶11} As to adult offenders in the custody of the state, Ohio law imposes a duty of reasonable care upon the state to provide for the offenders' health, care, and well-being. *Ensmann v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 06AP-592, 2006-Ohio-6788, ¶ 5, citing *Clemets v. Heston*, 20 Ohio App. 3d 132, 136 (6th Dist.1985). It has been held that this duty of reasonable care is analogous to the youth in the custody of defendants. *Barrett v. Ohio Dept. of Youth Servs.*, Ct. of Cl. No. 2006-Ohio-07643-AD, 2007-Ohio-7195, ¶ 14; *Shover v. Ohio Dept. of Youth Servs.*, Ct. of Cl. No. 1993-04176 (Sept. 14, 1994). "Reasonable care' is the degree of caution and foresight that an ordinary prudent person would employ in similar circumstances."

Taylor v. Ohio Dept. of Rehab. & Corr., 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15.

{¶12} Upon review of the evidence presented at trial, the magistrate finds the following. On July 6, 2013, at approximately 8:30 p.m., plaintiff returned from the showers to the Jefferson Unit at SJCF, which was his assigned housing unit. As plaintiff walked past a table in front of the staff podium in the common area of the unit, he saw paperwork in which Youth Specialist Rogers wrote him up for a rules infraction earlier in the day. Rogers was seated at the table, and Youth Specialists Melcher and Miller were nearby. Plaintiff tore the paperwork up, argued with Rogers and the other Youth Specialists for several minutes, refused to go to his room, and became increasingly agitated. Rogers eventually got up from his chair at the table and picked up a telephone from the podium to call for assistance.

{¶13} Plaintiff walked a short distance away and picked up a mop stick that had been resting against a wall while another youth cleaned the unit and plaintiff told Rogers that if he called for assistance, plaintiff would hit him with the mop stick. Plaintiff also stated aloud to another youth in a room nearby that he would hit Rogers. Plaintiff held the mop stick like a baseball bat and stood directly facing Rogers. Rogers placed or attempted to place the call for assistance, at which point plaintiff began approaching Rogers, holding the mop stick in a menacing fashion. The staff area around the podium and table where Rogers had been situated was marked off by a line painted on the floor, which youths were not allowed to cross. While plaintiff had substantially remained outside the line up to this point, when he started pursuing Rogers he walked directly over the line and indeed pursued Rogers behind the podium and stepped up onto the raised platform behind the podium. Rogers turned around at that time and wrapped his arms around plaintiff, and he attempted to get plaintiff off balance and take him to the ground. Plaintiff resisted and tried to get away, and he also held onto the mop stick, which struck Rogers in the back of the head. Having been unsuccessful in his initial

take-down maneuvers, Rogers proceeded to lift plaintiff off his feet and put him down onto his side or back. Once plaintiff was on the ground, no additional force was used, Melcher and Miller assisted in removing the mop stick and placing plaintiff in restraints, and plaintiff was escorted away.

{¶14} Regarding Rogers' decision to use physical force in the first place, under defendants' Use of Force Policy staff are permitted to exert a physical response when a youth is physically violent and poses an immediate danger toward others, only after attempting other non-physical alternatives. (Plaintiff's Exhibit 2.) In this case, when confronted with plaintiff's anger concerning the disciplinary write-up, Rogers and the other Youth Specialists initially used verbal strategies to manage the situation and persuade plaintiff to proceed to his room. They also employed time and distance techniques by allowing plaintiff to go on for several minutes expressing his displeasure, and they maintained some distance from plaintiff throughout. Staff presence was another strategy used as Rogers eventually stood up from the table and chair where he had been sitting, and Melcher and Miller also remained in the vicinity throughout and drew closer once plaintiff picked up the mop stick. Furthermore, after several minutes Rogers telephoned for assistance or at least attempted to do so, and Rogers also retreated initially when plaintiff came toward him with the mop stick.

{¶15} The situation escalated significantly once plaintiff picked up the mop stick, giving every indication that he intended to use it as a weapon. While plaintiff maintains that he was only bluffing and did not intend to harm Rogers, plaintiff uttered multiple verbal threats that he would hit Rogers with the stick if Rogers called for assistance, and once Rogers did so plaintiff indeed came toward Rogers while brandishing the stick like a baseball bat, plaintiff crossed the line on the floor which he had theretofore remained on the proper side of, plaintiff stepped up onto the raised platform behind the podium as Rogers retreated further, and plaintiff caused Rogers to be isolated on the other side of the podium from Melcher and Miller, thereby making Rogers more vulnerable to harm.

At this point, plaintiff had the potential to do great physical harm to Rogers, and, again, he had declared his intention to do so. Under the circumstances, it would not have reasonably appeared to Rogers that plaintiff was bluffing; to the contrary, it appeared that plaintiff was targeting Rogers to cause harm. Plaintiff's testimony that he was only bluffing is not persuasive, especially when considering that his testimony about the incident was inconsistent in important ways from what actually occurred as captured on camera, and he attempted overall to portray himself in a more favorable light than what the camera footage reveals.

{¶16} Plaintiff's words and actions gave the appearance that he posed an immediate threat of violence toward Rogers that could result in at least severe bodily injury, and a series of non-physical alternatives to using force had already been employed. Under the circumstances, Rogers was justified and privileged to use force. Indeed, under defendants' Use of Force Policy, IV(A)(3), the need for a physical response was plain in light of plaintiff's violent and dangerous behavior and the prior attempts by staff at non-physical alternatives.

{¶17} Regarding the degree of force used by Rogers, Rogers started by wrapping plaintiff up in a bear hug and trying to force him to the ground. Video of the incident appears to show that Rogers worked to maneuver plaintiff into a bent position and pull him downward in an effort to execute a takedown. It is equally apparent, both from the video and from plaintiff's own admissions, that plaintiff successfully resisted Rogers' efforts to control him and take him down, and that plaintiff continued trying to get loose. Moreover, plaintiff continued holding the mop stick with which he had threatened to hit Rogers and the video shows that the stick did hit the back of Rogers' head, and indeed it also appears that plaintiff kept the stick forced against Rogers' head or neck. (Defendants' Exhibit G, Camera 3.) Rogers, being unable to perform the intended takedown method and being locked in a dangerous struggle without any aid from Melcher or Miller, against an individual over whom he appears to have had no

significant size advantage, then progressed to a different tactic to get plaintiff on the ground, by lifting plaintiff off the ground and flipping his legs out from under him, then taking him to the ground on his back or his side. Once plaintiff was taken to the ground, control was established and no additional force was used, and Melcher and Miller assisted in securing plaintiff and escorting him away.

{¶18} Considering the totality of the circumstances existing at the time, the degree of force used by Rogers was not excessive and satisfied the duty of reasonable care. Rogers' response was measured and progressive, beginning when he initially tried a basic balance displacement takedown procedure to restrain plaintiff. When that strategy proved ineffective, Rogers faced considerable resistance from plaintiff, the weapon plaintiff threatened to use against him had struck the back of his head and remained forced against his neck or head, and no assistance was being offered by other staff. It was therefore reasonable for Rogers to use a greater degree of force to restrain plaintiff.

{¶19} Indeed, applying defendants' Use of Force Policy, the situation was one that could have resulted in severe bodily injury to Rogers and he was therefore acting in what is termed an "Emergency Response" situation, which permits the highest level of physical response by staff. The Use of Force Policy still places limits on the techniques or practices that may be used in an emergency response, and as plaintiff asserted in his closing argument one of the prohibitions is against the "intentional, knowing, or reckless" use of "any method that is capable of causing loss of consciousness * * *." However, while plaintiff testified that he briefly lost consciousness after he was taken to the ground, the video shows that Rogers attempted to put plaintiff on his back or his side. The video does not show that Rogers' actions were designed to intentionally or knowingly strike plaintiff's head against the ground, nor does the evidence support a finding of recklessness.

{¶20} In short, the evidence demonstrates that Rogers used force that was reasonable under the circumstances, to a degree no greater than that which was necessary, and his actions were at all times justified and privileged. Accordingly, it was not shown that defendants breached their duty of care. Moreover, even if it could be concluded that there were some negligence on the part of defendants, the magistrate finds that plaintiff was negligent in failing to exercise care for his own safety and that the degree of fault attributable to him would exceed any fault attributable to defendants.

{¶21} Based on the foregoing, the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendants.

{¶22} 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).

ROBERT VAN SCHOYCK
Magistrate

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