

[Cite as *Cook v. Dept. of Rehab. & Corr.*, 2018-Ohio-3889.]

DENNIS COOK

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00579JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff was at all times relevant an inmate in the custody and control of defendant, the Ohio Department of Rehabilitation and Correction (ODRC). Plaintiff brings this action claiming that defendant was negligent in failing to prevent an attack upon him by another inmate. The case proceeded to trial on the issues of liability and damages.

{¶2} At trial, plaintiff testified that ODRC identified him as a member of the sovereign citizen gang. Plaintiff disputes that he is a member of a gang; however, he acknowledged that he identifies as a sovereign citizen. Plaintiff further acknowledged that ODRC identifies sovereign citizens as a security threat group, which is not necessarily a gang. Nevertheless, plaintiff maintained that ODRC must have revealed this identification to the general inmate population, although he could not identify who had revealed this information. Plaintiff asserted that a gang in prison became aware of the identification and that such an identification was the cause of the attack upon his person.

{¶3} Plaintiff testified that on February 24, 2017, he was involved in a verbal altercation with other inmates regarding his identity as a sovereign citizen. Plaintiff provided that the altercation occurred near an officer's station; however, the corrections officer, whom he was unable to identify, did not intervene in the altercation despite plaintiff's characterization of the altercation as quarrelsome. Plaintiff testified that

ODRC must have been aware of the threat he faced because the situation was not settled, even though the verbal altercation terminated. Plaintiff recalled discussing the situation with another inmate who encouraged him to go to the cell of the other inmate involved in the altercation and discuss the situation with him before it deteriorated even further. Plaintiff acknowledged that he was not forced to enter the cell and that there was no ongoing verbal altercation when he entered the cell. Plaintiff testified that after he entered the cell of the other inmate, he was promptly attacked; the attack occurred out of view of any corrections officer.

{¶4} Plaintiff stated that he returned to his cell to check on his injuries, but another inmate later encouraged him to seek medical intervention. According to plaintiff, he contacted a corrections officer and informed him that he fell out of his bed. Plaintiff reported that he was evaluated in the medical infirmary where it became apparent that his injuries were the result of a physical attack and that he was subsequently transported to a local hospital for additional treatment. Plaintiff testified that during the transport he informed corrections officer Beal and corrections officer Lewis about the designation as a sovereign citizen being the cause of the attack. Plaintiff stated that after arriving at the hospital, he was diagnosed with a broken rib and a lacerated spleen.

{¶5} Corrections officer Lynn Lewis testified that he was called to transport plaintiff to the hospital but was not able to recall any conversation with plaintiff. Lewis stated that he was only involved in the transport to the hospital. Corrections officer Dean Beal testified that he too was involved in the transport to the hospital and that he does recall plaintiff stating that the attack resulted from his affiliation with the sovereign citizen movement. Beal was unable to comment on plaintiff's physical condition during the transport.

{¶6} "To establish negligence, a plaintiff must show the existence of a duty, a breach of that duty, and injury resulting proximately therefrom." *Taylor v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15. "In the

context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks.” *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. “The state, however, is not an insurer of inmate safety and owes the duty of ordinary care only to inmates who are foreseeably at risk.” *Franks v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-442, 2013-Ohio-1519, ¶ 17. “Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know.” *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16.

{¶7} “The law is well-settled in Ohio that ODRC is not liable for the intentional attack of one inmate by another, unless ODRC has adequate notice of an impending assault.” *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606, 2012-Ohio-1017, ¶ 9, citing *Mitchell v. Ohio Dept. of Rehab. & Corr.*, 107 Ohio App.3d 231, 235 (10th Dist.1995), citing *Baker v. State, Dept. of Rehab. & Corr.*, 28 Ohio App.3d 99 (10th Dist.1986); *Literal v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-242, 2016-Ohio-8536, ¶ 16; see also *Frash v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-932, 2016-Ohio-3134, ¶ 11, (regarding an inmate-on-inmate attack, “[t]he law is that in order to be liable, ODRC must have had notice, actual or constructive, of an impending attack.”).

{¶8} “Notice may be actual or constructive, the distinction being the manner in which the notice is obtained rather than the amount of information obtained.” *Lucero v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-288, 2011-Ohio-6388, ¶ 18. “Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and

is regarded as a substitute for actual notice.” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14.

{¶9} Upon review of the evidence presented at trial, the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate further finds that on February 24, 2017, plaintiff was involved in a verbal altercation with another inmate regarding his affiliation with the sovereign citizen movement. While plaintiff testified that the altercation occurred near an officer’s desk, there is no credible evidence that a corrections officer, or any other employee of ODRC, ever heard the altercation. Nevertheless, the verbal altercation ceased at that time, and after plaintiff consulted another inmate, he proceeded to the cell of the other inmate who was involved in the altercation. Plaintiff acknowledged that he was not forced into the cell and that there was no ongoing verbal altercation when he entered the cell. After entering the cell, plaintiff was attacked and sustained injuries that required medical intervention. The attack occurred out of view of any employee of ODRC.

{¶10} Plaintiff did not present the court with evidence that defendant had notice of an impending attack. Indeed, as noted above, there is no credible evidence that a corrections officer, or any other ODRC employee, overheard the verbal altercation that preceded the physical attack. Nevertheless, even if a corrections officer did hear the verbal altercation, plaintiff acknowledged that the verbal altercation ceased prior to the physical attack. After the verbal altercation ceased, plaintiff voluntarily entered the cell of the other inmate where he was subsequently attacked. Plaintiff acknowledged that he did not inform any ODRC employee that he feared for his physical safety. There is no evidence that the other inmate threatened plaintiff, much less that any other person told prison staff that plaintiff was in danger.

{¶11} Regarding plaintiff’s classification as a member of a security threat group, while plaintiff maintained that defendant’s staff must have been the source of that information being disseminated to the general inmate population, plaintiff presented no evidence that anyone employed by ODRC identified plaintiff as a sovereign citizen to

the inmate population. Indeed, plaintiff acknowledged that he did not have evidence as to how his identification as a sovereign citizen became known or who disclosed such information. Finally, even if such an identification did occur, there is no evidence that such an identification put defendant on notice of an impending attack on plaintiff as a result of such information.

{¶12} 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 defendant.

{¶13} *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).*

GARY PETERSON
Magistrate