

[Cite as *Wilkins v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-1141.]

KENNETH R. WILKINS

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2019-01193JD

Judge Patrick E. Sheeran  
Magistrate Scott Sheets

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

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{¶1} Before the court is defendant's November 16, 2020 motion for summary judgment. Plaintiff filed an untimely response on January 25, 2021 which the court nonetheless considered in the interest of justice. Therefore, the court DENIES defendant's February 4, 2021 motion to strike plaintiff's response. Plaintiff seeks recovery based on the use of force by one or more corrections officers at North Central Correctional Complex (NCCC). Defendant seeks summary judgment on the basis that NCCC is a privately run prison and that its employees are independent contractors and not agents of defendant. For the following reasons, the court GRANTS defendant's motion for summary judgment.

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part:

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 summary 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.

To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which states, in part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

## **Facts**

{¶4} The material facts are limited and are established by the affidavit of Stuart Hudson, who is defendant's Assistant Director. Pursuant to a contract with defendant, NCCC is independently operated, maintained, staffed and controlled by the Management and Training Corporation (MTC). It procures all necessary supplies and equipment. The corrections officers and medical staff at NCCC are employees of MTC, who dictates both their hours and rate of pay. Defendant plays no role in their hiring, training, or supervision. Defendant is not involved in MTC's decision-making, does not control the details of MTC's work at NCCC and is not involved in NCCC's daily operation.

## **Law and Analysis**

{¶5} As noted, defendant seeks summary judgment on the basis that MTC's employees are independent contractors. Pursuant to the doctrine of *respondeat superior*, vicarious liability is imposed on employers for the tortious acts of employees or agents but not for the tortious acts of independent contractors. The primary factor used to determine whether one is an employee or an independent contractor is control. As stated in *Wright v. Ohio Dept. of Rehab and Correc.*, 10th Dist. No. 14AP-153, 2014-Ohio-4359, ¶ 9 “[i]f an employer retains control or the right to control the mode and manner of doing the work contracted for, then the relationship is one of principal and agent \* \* \* if the employer merely dictates the ultimate result to be accomplished, then the relationship is one of employer and independent contractor.”

{¶6} As also stated in *Wright*, courts look at various factors when determining whether an employer has the requisite “degree of control \* \* \* to establish agency.” These factors include:

whether the employer or individual controls the details of the work; whether the individual is performing in the course of the employer's business rather than in an ancillary capacity; whether the individual receives compensation from the employer, and the method of that compensation; whether the employer or individual controls the hours worked; whether the employer or individual supplies the tools and place of work; whether the individual offers his services to the public at large or to one employer at a time; the length of employment; whether the employer has the right to terminate the individual at will; and whether the employer and individual believe that they have created an employment relationship.

*Id.* at ¶ 10.

As with any factual issue on summary judgment, “[i]f the opposing parties present evidence on both sides of the issue, then summary judgment is inappropriate, and a finder of fact must decide the issue. *Id.* at ¶ 11.

{¶7} Here, the court finds that defendant met its initial burden on summary judgment and established that there is no genuine issue of material fact regarding its lack of control over MTC employees and its lack of control over the operation of NCCC. Mr. Hudson's affidavit addresses most of the factors set forth in *Wright*. It establishes that defendant does not control the details of MTC's employees' work and does not compensate, train, supervise, or hire MTC's employees. Defendant is not involved in NCCC's daily operation. Instead, MTC operates NCCC independently and procures all supplies and equipment necessary to operate it. Defendant has established that MTC's employees are independent contractors. Of note, the court reached the same conclusion in rendering judgment for defendant in *Dent v. Dept. of Rehab. and Correc.*, Ct. of Cl. No. 2014-00562 (July 5, 2016).

{¶8} Defendant's satisfaction of its initial burden imposed a reciprocal burden on plaintiff to demonstrate a genuine issue of material fact exists. To do so, plaintiff needed to point to admissible evidence. Plaintiff's response does not provide or point to any evidence in support of his claims. This failure alone means plaintiff has not met his burden. Moreover, the unsupported assertions in plaintiff's response do not address the factors set forth in *Wright* or otherwise create an issue of material fact regarding defendant's lack of control over MTC and its employees. Plaintiff's response does not address these facts at all. It simply asserts that he is in defendant's custody and, therefore, that defendant is liable.

{¶9} The court finds plaintiff's response does not demonstrate the existence of a genuine issue of material fact regarding defendant's lack of control. Moreover, as *respondeat superior* does not apply under these circumstances, the court finds defendant cannot be vicariously liable for the actions of MTC employees. Thus, the court finds defendant is entitled to judgment as a matter of law. *See, Wright and Dent, supra.*

{¶10} For the foregoing reasons, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. The court GRANTS defendant's motion for summary judgment and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. 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.

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PATRICK E. SHEERAN  
Judge

Filed February 10, 2021  
Sent to S.C. Reporter 4/5/21