

[Cite as *Landers v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-3380.]

CHARLES A. LANDERS, JR

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2020-00718JD

Judge Patrick E. Sheeran
Magistrate Gary Peterson

JUDGMENT ENTRY

{¶1} On June 16, 2022, Defendant filed an objection to the magistrate’s May 4, 2022 decision and recommendation regarding the civil immunity of Defendant’s former corrections officers. On July 28, 2022, Plaintiff filed a response to Defendant’s objection in which he requests that the Court overrule Defendant’s objection and adopt the magistrate’s decision.¹ For the reasons stated below, the Court SUSTAINS Defendant’s objection, in part, and OVERRULES its objection, in part.

Standard of Review

{¶2} Civ.R. 53(D)(4)(b) provides that, “[w]hether or not objections are timely filed, a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification.” However, when a party files objections to a magistrate’s decision, the court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues, and appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and conclusions in the magistrate’s decision.” *Ramsey v. Ramsey*, 10th Dist. Franklin No. 13AP-840, 2014-Ohio-1921, ¶ 17 (internal citations omitted).

¹ Plaintiff filed a motion for leave requesting the Court allow him to file his untimely response to Defendant’s objection. Upon review, the Court GRANTS Plaintiff’s motion for leave to file his response.

Background

{¶3} Plaintiff, a former inmate in Defendant's custody and control at Franklin Medical Center (FMC), filed this case after he was injured during a use of force incident on December 29, 2018 that involved FMC's former corrections officers Korday R. Allison, Paris C. Love, and Jovan Cason. Following an evidentiary hearing, the magistrate found that, pursuant to 9.86 and 2743.02(F), Allison acted manifestly outside the scope of his employment and was not entitled to civil immunity, but Love and Cason acted within the scope of their employment and were entitled to civil immunity. Defendant argues that the magistrate erred when he found that Cason and Love were entitled to civil immunity. Specifically, Defendant argues that the magistrate erred by (1) finding that Cason and Love were coming to the aid of Allison and, therefore, justified in the use of force, (2) failing to apply the correct evidentiary burden in order to establish that Cason and Love were acting outside the scope of their employment, and (3) not giving more weight to the fact that Cason and Love pleaded guilty to criminal dereliction of duty.

Discussion

{¶4} Initially, the Court notes that Defendant made no objections to the magistrate's recitation of the evidence or to his recommendation that the Court issue a determination that Korday R. Allison is not entitled to civil immunity. Upon review, the Court finds no error with the magistrate's findings of fact. Additionally, the Court agrees with and finds no basis to modify the magistrate's determination that Allison acted manifestly outside the scope of his employment during the December 29, 2018 use of force incident involving Plaintiff. Therefore, the Court adopts the magistrate's findings of fact and his decision regarding Allison as its own.

{¶5} Upon review, the Court finds no basis to modify the magistrate's decision on the basis that he did not give more weight to Cason's and Love's guilty pleas. Furthermore, Defendant's argument that the magistrate failed to apply the correct burden

of proof is not well taken. Consequently, the second and third parts of Defendant's objection are OVERRULED.

{¶6} Conversely, Defendant's argument that Cason and Love were not justified in their use of force warrants further consideration. Specifically, Defendant argues that the magistrate erred when he concluded that Cason and Love were acting within the scope of their employment because they were coming to Allison's aid pursuant to Ohio Adm.Code 5120-9-01(C)(2)(c). With regard to Love's actions, the Court agrees.

{¶7} While the Court agrees with the magistrate that corrections officers act within the scope of their employment when they come to the aid of another officer in accordance with Ohio Adm.Code 5120-9-01(C)(2)(c), the Court finds that the evidence demonstrates Love acted in a wanton or reckless manner when doing so. Although the Court recognizes a corrections officer may have conflicting duties between facilitating inmate safety and protecting himself and his fellow officers, Love knew or should have known that, under the circumstances, deescalating the situation would protect himself, his fellow officers, and Plaintiff. Instead, Love joined the excessive and unreasonable attack on Plaintiff. Indeed, Love knew or should have known that furthering such an attack would create an unnecessary risk of physical harm. The Court finds that such action constitutes a failure to exercise care toward the duties owed to Plaintiff and his fellow corrections officers. Accordingly, the Court SUSTAINS, in part, Defendant's objection and declines to adopt the magistrate's decision as to Love.

{¶8} However, the Court OVERRULES Defendant's objection as to Cason. While the Court recognizes that Cason too joined in the attack on Plaintiff, he was a probationary employee being trained by Love. Simply put, his actions cannot be viewed in the same light as Love. When following the lead of a training officer, Cason's judgment is going to be shaped by that officer's actions. The Court can neither say that Cason prioritizing the duty owed to his fellow officers over the duty he owed to Plaintiff was a failure to exercise any care nor that he knew or should have known doing so would create an unnecessary

risk of harm. Moreover, as the magistrate correctly determined, there is no evidence that Cason's actions were motivated by malice or bad faith. Therefore, the Court adopts the magistrate's decision as to Cason as its own with modification to reflect the additional analysis stated herein.

Conclusion

{¶9} Based on the reasons discussed above, Defendant's objection is SUSTAINED, in part, and OVERRULED, in part. The Court finds that Korday R. Allison and Paris C. Love are not entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and the courts of common pleas have jurisdiction over any civil actions that may be filed against them based upon the allegations of this case. The Court further finds that Jovan Cason is entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and the Court of Claims has jurisdiction over any civil actions that may be filed against him based upon the allegations of this case.

PATRICK E. SHEERAN
Judge