IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Timothy R. Johnson,	:	
Appellant	:	
	:	
v.	:	No. 467 C.D. 2008
	:	Submitted: June 13, 2008
James Lightcap; Chris Putnam;	:	
Captain Davenport; Officers	:	
Guzman & Corbett; C/O Flick;	:	
Lieutenant Cywinski Austin and	:	
McCoy	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE DAN PELLEGRINI, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI FILED: July 11, 2008

Timothy R. Johnson (Johnson) appeals an order of the Court of Common Pleas of Luzerne County (trial court) granting the motion for summary judgment filed by James Lightcap, Chris Putnam, Captain Davenport, Officers Guzman and Corbett, C/O Flick and Lieutenants Cywinski, Austin and McCoy (collectively "Prison Officials"). For the following reasons, we affirm the order of the trial court.

Johnson is an inmate who was formerly incarcerated at the State Correctional Institution at Dallas, Pennsylvania (SCI-Dallas). Prison Officials are

employees of the Pennsylvania Department of Corrections (DOC) at that institution. In 2003, Johnson filed a complaint naming only Officer Lyons and Captain Davenport as defendants, but in July 2004, he amended his complaint adding the remaining Prison Officials as defendants. In his amended complaint, Johnson alleged that his rights were violated when, among other things, he: (1) was assigned a top bunk for three days when he was under a medical order restricting the same; (2) suffered retaliation at the hands of a non-defendant corrections officer for making various complaints; and (3) was exposed to Environmental Tobacco Smoke (ETS).

Prison Officials filed an answer and new matter and asserted that the misconducts issued to Johnson were warranted, that he had been treated professionally, and that he did not have bottom bunk clearance at the time of his transfer to the cell on J-block. Extensive discovery was conducted, and Johnson was deposed. Prison Officials filed two motions for summary judgment in February 2006 and January 2007, but both were denied as premature. The third motion was supported with excerpts from Johnson's deposition transcript and relevant court filings from his dismissed federal case. Johnson filed his own motion for summary judgment. The trial court granted Prison Officials' motion for summary judgment, dismissing his claims with prejudice, and Johnson appealed to this Court contending that summary judgment should not have been granted for a number of reasons.[1]

[1] Our scope of review from an order denying or granting summary judgment is plenary. *PECO Energy Company v. Township of Upper Dublin*, 922 A.2d 996 (Pa. Cmwlth. 2007). Our standard of review is limited to determining whether the trial court committed an error of law or an abuse of discretion. *Laich v. Bracey*, 776 A.2d 1022 (Pa. Cmwlth. 2001). Summary
(Footnote continued on next page…)

I.

Initially, Johnson contends that summary judgment should not have been granted because the trial court erred in granting Prison Officials' objections to his request for their prior disciplinary records and personnel files.

Discovery is not intended to allow parties to embark upon "fishing expeditions," and the reasonableness of a given request, as well as the existence of probable cause and the good faith of the party seeking discovery, are matters for the trial court to determine in the exercise of its sound discretion. *McNeil v. Jordan*, 586 Pa. 413, 894 A.2d 1260 (2006). Discovery requests may be objected to on the grounds that they are irrelevant, prejudicial and not reasonably calculated to lead to the discovery of admissible evidence. *See* Pa. R.C.P. No. 4011. When an appellant seeks no more than a "wholesale inspection" of personnel files, he must advance a greater showing of basis and necessity than simply unsupported speculation. *Commonwealth v. Blakeney*, ___ Pa. ___, 946 A.2d 654 (2008).

Johnson stated that he needed Prison Officials' personnel files to determine if any of the officers had complaints made by other inmates about acts of retaliation, and that this would establish a "pattern and practice" of retaliation towards inmates. Johnson's requests, however, were not supported by any allegation that any of the Prison Officials had engaged in any prior such conduct

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(continued…)

judgment should only be granted in a clear case, and the moving party bears the burden of demonstrating that no material issue of fact remains. The review of the record must be in a light most favorable to the non-moving party. *Id.*

and were only based on unsupported speculation; therefore, they were not reasonable basis for a wholesale inspection.

II.

As to the merits, Johnson contends that the assignment to a top bunk for three days when he possessed a medical order limiting him to a bottom bunk assignment constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.[2] Under *Estelle v. Gamble,* 429 U.S. 97 (1976), a prison official's deliberate indifference to the serious medical needs of an inmate amounts to cruel and unusual punishment and violates the Eighth Amendment. However, as the *Estelle* Court noted: "[I]n the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'" *Id.* at 105. "Deliberate indifference, therefore, requires obduracy and wantonness . . . which has been likened to conduct that includes recklessness or a conscious disregard of a serious risk." *Id.*

No such recklessness or disregard was shown here because after he was placed on a bottom bunk restriction, Johnson remained on the top bunk for only three days before being moved to a bottom bunk assignment. An isolated incident of limited duration does not make out the deliberate indifference to medical needs necessary to constitute cruel and unusual punishment. The trial

[2] U.S. CONST. amend. VIII states that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

court's grant of summary judgment in favor of Prison Officials on this claim is affirmed.

III.

Johnson further contends that misconduct reports filed against him were in retaliation for his filing the original complaint in this matter as was his transfer to a smoking block. To prevail on a retaliation claim under 42 U.S.C. §1983, a plaintiff must show that he engaged in a protected activity, that the government responded in retaliation, and that the protected activity was the cause of the government's retaliation. A burden shifting framework is applied in evaluating such a claim. The moving party bears the initial burden of proving that his protected conduct was a substantial motivating factor in the decision to discipline him, and if he meets this burden, it then shifts to the defendant to prove by a preponderance of the evidence that it would have taken the same disciplinary action, even in the absence of the protected activity.[3] *Rauser v. Horn*, 241 F.3d 330 (3d. Cir. 2001).

In the instant case, Johnson has failed to provide any evidence to meet his initial burden. First, the grievance forms filed by Johnson since 2003 show that his complaints focused on a non-defendant officer's, Officer Hall, filing of misconduct reports. Second, in December 2003, Johnson's grievances were found to be without merit by the Chief Grievance Officer and dismissed on final appeal

[3] Prison Officials contend that they proved that the actions taken against Johnson would have been taken regardless of his complaint. However, because Johnson failed to meet his initial burden, an examination of the Prison Officials' motivations are not necessary.

for lack of evidence. Similarly, in December 2004, additional grievances filed by Johnson concerning retaliation claims were dismissed by the Chief Grievance Officer on final appeal. The actions of filing misconduct reports and transferring Johnson to a different cellblock were deemed appropriate and in accordance with DOC policies and procedures.

Again, we agree with the trial court that Johnson "has failed to present any evidence to support a causal connection between his alleged actions and the filing and/or maintaining of the instant matter," and, therefore, Prison Officials were entitled to summary judgment as a matter of law. (Trial Court Opinion at p. 9.)

IV.

Johnson's final claim is that he was exposed to ETS from 2002 and continuing after April 6, 2003, when SCI-Dallas became a smoke-free institution. A cause of action does exist under the Eighth Amendment when a prisoner alleges that prison officials have exposed him with deliberate indifference to levels of ETS that pose an unreasonable risk of harm to his future health. *Helling v. McKinney*, 509 U.S. 25 (1993).

Helling sets forth a two-part test which a plaintiff must meet to state a claim under the Eighth Amendment entitling the inmate to injunctive relief because it violates his Eighth Amendment right to be free from cruel and unusual punishment. First, a prisoner must prove objectively that he is "being exposed to unreasonably high levels of ETS." *Helling*, 509 U.S. at 35. In assessing this first

factor, the court must inquire into the seriousness of the potential harm and into the likelihood that second-hand smoke will actually cause such harm. *Id.* at 36. The court is further required to determine "whether society considers the risk ... to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk." *Id.* Second, the prisoner must show subjectively that prison authorities demonstrated a "deliberate indifference" to his plight. *Id.*

Johnson alleges that he was transferred to a smoking block and that his cellmate was a "pack-a-day" smoker. It appears that Johnson was exposed to this level of ETS for about a year before SCI-Dallas became a smoke-free institution. Johnson fails to specify the below health/safety risk his exposure to ETS may cause and has not offered evidence that the exposure would violate contemporary standards of decency as required by *Helling*. Moreover, the only remedy that he can receive is a transfer to a non-smoking area which he has already received, making this claim moot. Accordingly, the trial court properly granted Prison Officials' motion for summary judgment on this claim.

For the above reasons, the order of the trial court is affirmed.

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DAN PELLEGRINI, JUDGE

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Lieutenant Cywinski Austin and	:	
McCoy	:	

O R D E R

AND NOW, this 11th day of July, 2008, the order of the Court of Common Pleas of Luzerne County is affirmed.

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DAN PELLEGRINI, JUDGE