

[Cite as *Jackson v. Dept. of Rehab. & Corr.*, 2017-Ohio-9148.]

DEMETRIUS A. JACKSON

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00633

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff, an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF), brought this action alleging negligence. This action arises out of an allegation that plaintiff was forced to remain in a cell with a toilet that did not function. Plaintiff alleges that he remained in the cell for several days and that as a result, he became ill. The court previously dismissed, for lack of subject matter jurisdiction, any claims premised upon the conditions of confinement. *Brown v. Duvall*, N.D.Illinois No. 15 CV 1672, 2016 U.S. Dist. LEXIS 72474 (June 3, 2016), (an allegation that an inmate was required to remain in a cell with a toilet filled with human waste speaks to the conditions of confinement). 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 5, 2016, he was released from segregation and assigned to the limited privilege housing unit K2 cell 11 (K2-11). According to plaintiff, however, he was escorted to cell 9 rather than cell 11. Plaintiff asserts that when he arrived at his cell, he noticed a bag covering the toilet and objected to being placed in a cell with a toilet that did not function. Plaintiff testified that a corrections officer informed him that the situation would be resolved, but that for the time being, he was required to remain in his cell. Plaintiff testified that for the remainder of the day, he continually informed corrections officers, and even the warden who made

rounds, that the toilet in his cell did not function. Plaintiff also filed an informal complaint resolution (ICR), dated July 5, 2016, concerning the toilet not functioning. (Joint Exhibit A).

{¶3} Plaintiff testified that for the next two days he repeatedly informed corrections officers that he was in a cell that did not have a functioning toilet. According to plaintiff, sergeant Chet Stambaugh and corrections officer Jeremy Oppy both reassured him that he would be moved. Plaintiff reported that overnight on July 6 to July 7, 2016, he felt nauseated, struggled eating and sleeping, and vomited several times. Plaintiff also completed a second and third ICR wherein he again notes that the toilet does not function and that he informed staff regarding the toilet. (Joint Exhibits B and C). Additionally, plaintiff completed a health service request wherein he asked to be seen by a nurse due to vomiting, which he attributed to the smell of urine and feces from the toilet. (Joint Exhibit G). In the health service request, plaintiff states that he vomited and dry heaved during the night of July 6 through 7, 2017. Plaintiff also reports in the health service request that he awoke on July 7, 2016, in a cold sweat and had a pounding headache. The health service request was received at 6:19 p.m. on July 7, 2016. Plaintiff was evaluated by a nurse on July 8, 2016 and reported what he believed to be the cause of his illness—the smell of urine and feces.

{¶4} Plaintiff testified that for the next two days, on July 8 and 9, 2016, he continually informed corrections officers about the toilet and requested to be moved to a new cell. Plaintiff reports that he was informed that cell moves do not occur on weekends. As a result, on July 10, 2016, plaintiff sent an ICR to the warden detailing his situation. (Joint Exhibit D). Plaintiff testified that he was moved to cell K2-2 on July 11, 2016. Plaintiff completed a notification of grievance regarding this issue on July 19, 2016. (Joint Exhibit F).

{¶5} Jeremy Oppy testified that he has been employed at SOCF for 15 years and that for the previous four years he has worked as a unit manager. Oppy explained that

his duties as a unit manager include overseeing inmate living areas to ensure that they are in good working order. Oppy oversees K2 where he performs rounds, addresses inmate concerns, and visually inspects the cells. Oppy testified that he recognizes plaintiff but does not recall plaintiff complaining about a broken toilet in his cell. However, Oppy made a statement to Linnea Mahlman as a part of her investigation into plaintiff's grievance. Oppy admitted to Mahlman that plaintiff complained about his toilet and that he moved plaintiff even though Oppy claims there was nothing wrong with the toilet. (Joint Exhibit L).

{¶6} Chet Stambaugh testified that he has been employed at SOCF for 21 years and in July 2016, he was a sergeant assigned to K2. Stambaugh explained that his job duties at that time included, among other things, making rounds, addressing inmate issues, and hearing tickets. Stambaugh testified that he has a vague recollection of plaintiff but does not recall plaintiff complaining about a problem with the toilet in his cell. Stambaugh stated that if a toilet is not working, he would contact someone from the maintenance department to look at it, and if it could not be quickly resolved, the inmate would be moved to another cell. Stambaugh further testified that as part of his duties, he completes periodic fire, safety, and sanitation inspection reports. Stambaugh explained that the purpose of the reports is to inspect for cleanliness or other major issues, such as a broken toilet that would require a repair beyond what the maintenance department could handle. Stambaugh reviewed such reports dated July 5, 2016, and July 12, 2016, and noted that neither report indicates a problem with a toilet in K2. (Joint Exhibits J and K).

{¶7} Nicholas Gifford testified that he is employed as a corrections officer by defendant at SOCF and during July 2016, he was assigned as a regular officer in K2. Gifford did not recall any broken toilet during that time period. Gifford testified that on July 7, 2016, he signed a cell inspection report, which he asserted is simply to confirm that a cell has been inspected. (Joint Exhibit H). The report identifies plaintiff as being

assigned to cell K2-9. The report also has a slash mark through a box next to the word toilet. Gifford testified that because of the way the document is completed, there is no indication that there is anything wrong with the toilet in plaintiff's cell. Additionally, Gifford added that if there was something wrong with the toilet, it would be specified on the cell inspection report.

{¶8} Kathy Joiner testified that she has been employed as a registered nurse at SOCF for approximately 15 years. Joiner stated that as a part of her duties, she responds to "nurse sick call," which she described as a triage process performed by a nurse following a request for medical care from an inmate. Joiner explained that the process results in either an appointment with an advanced medical provider, or the inmate is treated, if necessary, and released back to his cell. Regardless, Joiner asserted that she completes a progress note as a result of each assessment. Joiner reported that she evaluated plaintiff following complaints that he made regarding being ill. Joiner testified that there are many reasons why a person may be nauseated or have a headache and that she could not conclude as to the cause of plaintiff's complaints. Joiner added that she wrote high environmental heat as a possible source or complicating factor of plaintiff's condition. After completing a physical exam, Joiner concluded that plaintiff was physically fine and noted that she could not find any problem.

{¶9} Linnea Mahlman testified that she has been employed as an inspector at SOCF for 11 years. Mahlman explained that her duties include answering all grievances filed by inmates at SOCF in an attempt to resolve matters. Mahlman asserted that an inmate may file a grievance only after filing an ICR. Mahlman testified that after she received plaintiff's grievance, she looked up plaintiff's cell assignments. Mahlman reported that plaintiff was assigned to K2-11 on July 5, 2016; K2-2 on July 11, 2016; and K2-9 on July 25, 2016. Mahlman testified that the top of the notification of grievance is completed by her, but that someone changed the cell assignment.

According to Mahlman, she wrote K2-2, but plaintiff changed it to K2-9. After investigating, Mahlman completed a disposition of grievance and ultimately denied plaintiff's grievance. (Joint Exhibit L).

{¶10} Joseph Kaut testified that he is employed by defendant at SOCF as a lieutenant. Kaut testified that his duties include, among other things, supervising corrections officers and making daily rounds. Kaut stated that cells K1-20 are "slammer cells" with solid front doors as opposed to cells with bars. Kaut asserted that rounds and any unusual activity are recorded in an electronic log book. (Joint Exhibit I). Kaut testified that he made rounds in plaintiff's unit on July 5 and 7, 2016, but he does not recall plaintiff complaining about his toilet not functioning. According to Kaut, inmates are not to be housed in a cell with a toilet that does not function.

{¶11} William Cool testified that he has been employed by defendant at SOCF for 23 years and that for the previous four years he has been the deputy warden of operations. Cool stated that he received four ICRs written by plaintiff in July 2016. Cool stated that he looked at plaintiff's housing assignment and saw that it was not the assignment plaintiff listed on the ICRs, so he concluded that plaintiff had been moved. Cool added that inmates are not allowed to be housed in cells with a toilet that does not function.

{¶12} Charles Williamson testified that he has been employed at SOCF in the count office and has been assigned the rank of a sergeant for the previous six years. Williamson explained that his duties include keeping track of inmates in segregation and finding housing for them. Williamson testified that inmates may not be placed in a cell with a toilet that does not function and that when he learns of a broken toilet, he tags the cell on the count board so that no inmate is assigned to that cell.

{¶13} Jesse Carver testified that he has been employed at SOCF as a corrections officer for a year and a half. Carver stated that in July 2016, he was a relief officer, meaning he was not assigned to a permanent post and could be assigned to a

different post every day. Carver testified that he does not recognize plaintiff and that he did not recall him complaining about a broken toilet in his cell. Carver asserted that inmates are not to be housed in a cell with a toilet that does not function and that if an inmate raised such a concern, the inmate would get moved to a new cell if the toilet could not be repaired.

{¶14} Gary Daniel testified that he has been employed at SOCF for 23 years and that for the last two years, he has been assigned as a corrections captain. Daniel explained that as a captain, his duties include, among other things, ensuring appropriate staffing levels and making daily rounds. Daniel asserted that if an inmate is placed in a cell with a toilet that does not function, once the staff is aware of the issue, the inmate will be moved to a new cell. Daniel testified that he completed rounds in K2 and does not recall plaintiff complaining about the toilet in his cell.

{¶15} Ken Davis testified that he has been employed at SOCF for two years as a relief officer. Davis stated that he has been assigned for periods of time to K2 and recalls seeing plaintiff. Davis asserted that he does not recall plaintiff complaining about the toilet in his cell not functioning. According to Davis, if an inmate says the toilet is not working, he would call a supervisor and get the inmate moved to a new cell.

{¶16} Joe Aldridge testified that he has been employed as a corrections officer at SOCF for 5 years and that at times he has been assigned to work in K2. Aldridge asserted that he did not remember plaintiff and that he did not recall plaintiff complaining about his toilet not functioning.

{¶17} Jeff Swaney testified that he has been employed at SOCF as a relief officer for more than eight years and that he is familiar with K2. Swaney stated that an inmate is not allowed to be housed in a cell with a toilet that does not function. Swaney testified that he does not recall plaintiff and does not know if plaintiff complained about his toilet not functioning. Swaney explained that if plaintiff had complained, he would have resolved the problem.

{¶18} John Thornhill testified that he has been employed at SOCF for six years as a corrections officer. Thornhill reported that he has previously worked in K2 as a relief officer. According to Thornhill, inmates may not be housed in cells with toilets that do not function. Thornhill testified that he does not recognize plaintiff and does not recall plaintiff complaining about being housed in a cell with a broken toilet. Thornhill added that if plaintiff had made such a claim, he would have moved plaintiff to a new cell.

{¶19} Neil Mullins testified that he has been employed at SOCF for 12 years as a corrections officer and that he was assigned to K2 from February 2016 through February 2017. Mullins testified that he has a vague recollection of plaintiff but does not recall plaintiff complaining about his toilet being broken. Mullins added that if plaintiff had complained, he would have contacted a supervisor to get plaintiff moved to a different cell.

{¶20} Berlin Butterbaugh testified that he has been employed as a corrections officer for seven years and has been assigned to K2 for almost seven years. Butterbaugh asserted that inmates are not to be housed in a cell with a toilet that does not function. Butterbaugh testified that he does not recognize plaintiff and does not recall plaintiff complaining about his toilet being broken. Butterbaugh added that if plaintiff had complained about his toilet, he would have contacted maintenance, and if it was not resolved, he would have moved plaintiff to a new cell.

{¶21} “In order to sustain an action for negligence, a plaintiff must show the existence of a duty owing from the defendant to the plaintiff or injured party, a breach of that duty, and that the breach was the proximate cause of resulting damages.” *Sparre v. Ohio Dept. of Transp.*, 10th Dist. Franklin No. 12AP-381, 2013-Ohio-4153, ¶ 9. “Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners’ health, care, and well-being.” *Ensman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 06AP-592, 2006-Ohio-6788, ¶ 5. Vomiting due to illness is a physical injury for

purposes of an ordinary negligence claim. *Wolfe v. Great Atlantic & Pacific Tea Co.*, 143 Ohio St. 643, 56 N.E.2d 230 (1994), (holding that plaintiffs had suffered a physical injury where they became ill and vomited after eating canned peaches that contained worms).

{¶22} Upon review of the evidence, the magistrate finds that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate notes that within one day of being placed in a cell with a toilet that allegedly did not function, plaintiff claimed to have suffered from vomiting, dry heaving, cold sweat, nausea, and headaches. Plaintiff attributed his symptoms to the smell of urine and fecal matter in his cell. Plaintiff was evaluated by nurse Joiner the day after he completed a health service request form and related his symptoms to her. After documenting plaintiff's statements, Joiner noted that such symptoms could be caused by any number of sources. Joiner also added high environmental heat in his cell as a possible source of plaintiff's symptoms but admitted that it was speculative. Joiner did conclude, however, that she could not find anything physically wrong with plaintiff and reported that plaintiff was fine. Plaintiff remained in his cell for three more days but did not seek any further medical attention and there is no evidence that plaintiff suffered any additional illness.

{¶23} Notably, plaintiff did not present any evidence that he requested that a corrections officer contact medical on his behalf due to his illness, even though he testified that he vomited and dry heaved throughout the night of July 6-7, 2016; rather, he waited until the following evening to complete a health service request form. Furthermore, plaintiff did not offer any evidence that he informed corrections officers regarding his health at any point between July 5 and July 11, 2016. Accordingly, the magistrate finds that plaintiff did not suffer from any illness due to the alleged conditions of his cell. The magistrate further finds that plaintiff failed to prove that any illness he may have suffered in the night of July 6-7, 2016, was proximately caused by the smell of urine and fecal matter in his cell.

{¶24} Finally, to the extent plaintiff presented evidence that defendant violated internal rules or policies, such deviations from internal rules alone do not support an independent cause of action. *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 10.

{¶25} Based upon the foregoing, the magistrate recommends that judgment be entered in favor of defendant.

{¶26} *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

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