

[Cite as *Easley v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-5478.]

ANDRE W. EASLEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-01223AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Andre W. Easley, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related on September 23, 2017, while he was housed at defendant’s Allen-Oakwood Correctional Institution (“AOCI”), Corrections Officer (“CO”) Good negligently and intentionally spit on him. Plaintiff states that he was standing in front of Housing Unit 3A when CO Good spit on him. Plaintiff alleges that because of CO Good’s negligent actions, he has suffered severe mental anguish. Plaintiff found CO Good’s conduct to be extreme and outrageous.

{¶2} Plaintiff attached a copy of a Disposition of Grievance dated October 30, 2017. The Disposition of Grievance states in relevant part:

“The following is a result of my investigation: An incident occurred between yourself and Officer Good on 09/23/2017 in front of 3 House prior to the 11:00 a.m. count. Lt. Sanders filed an incident report indicating that he had received a report from you that you had been spit on by Officer Good on the above date and approximate time of 10:25 am – 10:45 am. His report indicated that you informed him Officer Good was sitting in a gator, drinking water, and spit from her position in the gator which landed on your right inner leg during the process.”

IN THE COURT OF CLAIMS OF OHIO

{¶3} Plaintiff's grievance was granted. The Disposition of Grievance further states, "Your grievance is granted as this writer finds that the incident does merit further review and possible corrective action."

{¶4} Plaintiff seeks damages in the amount of \$9,950.00 for the alleged emotional distress and mental anguish he suffered from this incident. Plaintiff was not required to submit the \$25.00 filing fee.

{¶5} Defendant submitted an investigation report denying liability in this matter. Defendant contends that plaintiff's claims are for 8th Amendment of the United States Constitution violations and are therefore not actionable in the Court of Claims. Defendant also contends that any state law claims for excessive use of force are without merit. However, the court disagrees with defendant's assertion that plaintiff's claims are for constitutional violations and/or state law claims for excessive use of force. It appears that plaintiff is attempting to bring a claim for negligence, intentional infliction of emotional distress, and battery.

{¶6} Defendant submitted a copy of a report from the Institutional Inspector, Sherri L. Schnipke. The report states in relevant part:

"On September 23, 2017 at or around the time of 10:35-10:40 am, (inmate Easley) was standing in front of housing unit H3 along with three other offenders. He reported that Correctional Officer A. Good drove up on their location on a JD Gator and ordered them to move. Inmate Easley reported that he asked Officer Good what time it was, as it was getting close to count time (11:00 am). Inmate Easley reported that Officer Good 'said a couple of things', then leaned in his direction and spit on him while he was standing five (5) feet away from her. He stated that he asked her why she did it and she only responded to him with 'Write it up.' He reported that he found this to be 'unprofessional and out of character.' Lt. Sanders responded to the complaint on October 2, 2017 that cameras would be checked and Officer Good would be questioned."

IN THE COURT OF CLAIMS OF OHIO

{¶7} Plaintiff filed a response to defendant's investigation report. He states that he is not bringing any constitutional or excessive use of force claims.

CONCLUSIONS OF LAW

{¶8} In order to prevail in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his damages. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984).

{¶9} "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided ... by the court ..." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 2003-Ohio-5333, 798 N.E.2d 1121, ¶ 41 (2nd Dist.), citing *Miller v. Paulson*, 97 Ohio App.3d 217, 221, 646 N.E.2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶10} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University*, 76-0368-AD (1977).

{¶11} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶12} In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 118 N.E.2d 147 (1954).

IN THE COURT OF CLAIMS OF OHIO

{¶13} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E.2d 548 (1964).

{¶14} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988). Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). Reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. of Ohio*, 102 Ohio App.3d 782, 658 N.E.2d 31 (12th Dist. 1995).

{¶15} The court finds that plaintiff has proven by a preponderance of the evidence that CO Good spit in his direction and that fluids landed on his inner leg. Although CO Good's conduct was very unprofessional, unprofessional conduct does not rise to a level of negligent conduct in this case. Plaintiff has failed to prove that defendant breached any duty of care to him. Further, plaintiff has failed to provide any evidence other than his own statements that he suffered any mental harm as a result of this incident.

{¶16} Plaintiff also appears to make a claim for intentional infliction of emotional distress. In order for plaintiff to recover for intentional infliction of emotional distress, there must be facts that show defendant's "conduct is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Meminger v. Ohio State Univ.*, 10th Dist. Franklin No. 17AP-489, 2017-Ohio-9290, ¶ 15, quoting

IN THE COURT OF CLAIMS OF OHIO

Mendlovic v. Life Line Screening of Am., Ltd., 173 Ohio App.3d 46, 2007-Ohio-4674, 877 N.E.2d 377, ¶ 47 (8th Dist.).

{¶17} The allegations that CO Good spitting at plaintiff and spit landing on his inner leg caused him to suffer emotional distress are nearly devoid of factual support, let alone facts that would demonstrate the extreme and outrageous conduct necessary to sustain a claim of intentional infliction of emotional distress. See *Oglesby v. Columbus*, 10th Dist. Franklin No. 01AP-1289, 2002-Ohio-3784, ¶ 19. Therefore, this claim fails as a matter of law.

{¶18} Inasmuch as plaintiff raises a claim for internal rule violations, it is well settled that these claims are not actionable in the Court of Claims. While plaintiff alleged that defendant's personnel violated prison regulations and procedures, defendant's internal rules, policies, procedures, and regulations are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates. *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 683 N.E.2d 1139 (1997); *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-1048, 2015-Ohio-2668. Accordingly, there is no claim for relief based upon the violation of internal rules and policies. *Triplett v. Warren Corr. Inst.*, 10th Dist. No. 12AP-728, 2013-Ohio-2743, ¶ 10.

{¶19} Plaintiff alleges that CO Good's conduct would be considered a battery under Ohio law. The Supreme Court of Ohio established that an employer is liable for the tortious conduct of its employee only if the conduct is committed within the scope of employment and, if the tort is intentional, the conduct giving rise to the tort must facilitate or promote the business of which the employee was engaged. *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584 (1991), citing *Little Miami R.R. Co. v. Wetmore*, 19 Ohio St. 110 (1869), and *Taylor v. Doctors Hosp.*, 21 Ohio App.3d 154, 486 N.E.2d 1249 (10th Dist. 1985).

IN THE COURT OF CLAIMS OF OHIO

{¶20} “[T]he scope of employment is a fact-based inquiry that turns on proof of the employee’s specific job description with the state and focuses on whether the employee’s conduct is related to and promotes the state’s interests.” *Ries v. Ohio State Univ. Med. Ctr.*, 137 Ohio St.3d 151, 2013-Ohio-4545, 998 N.E.2d 461, ¶ 23.

{¶21} To determine if defendant should bear responsibility for an employee’s wrongful act, a finding must be made, based on the facts presented, whether or not the injury-causing act was manifestly outside the course and scope of employment. *Elliott v. Dept. of Rehab. & Corr.*, 92 Ohio App.3d 772, 775, 637 N.E.2d 106 (10th Dist. 1994); *Thomas v. Dept. of Rehab. & Corr.*, 48 Ohio App.3d 86, 89, 548 N.E.2d 991 (10th Dist. 1988); *Peppers v. Dept. of Rehab. & Corr.*, 50 Ohio App.3d 87, 90, 553 N.E.2d 1093 (10th Dist. 1988). It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment. *James H. v. Dept. of Mental Health & Mental Retardation*, 1 Ohio App.3d 60, 439 N.E.2d 437 (10th Dist. 1980). The act must be so divergent that it severs the employer-employee relationship. *Elliott*, at 775, citing *Thomas*, at 89, *Peppers*, at 90. In the case at bar, this court finds CO Good’s action of spitting at plaintiff so divergent as to sever the employer-employee relationship. Accordingly, ODRC is not responsible for the actions of CO Good and is not responsible for the consequences plaintiff suffered from this wrongful act. CO Good’s actions, if considered a battery, would be manifestly outside the scope and course of employment, and therefore ODRC cannot be held liable.

{¶22} Therefore, judgment is rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

ANDRE W. EASLEY

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-01223AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk