

[Cite as *Cook v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-5479.]

JOHNNIE D. COOK

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2018-01377AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

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### FINDINGS OF FACT

{¶1} Plaintiff, Johnnie Cook, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction (“ODRC”). Plaintiff related in September of 2018, he was escorted to sick call by Correctional Officer (“CO”) Colver. Plaintiff was seeing Nurse Hill. Plaintiff requested that CO Colver leave the sick call area while he consulted with Nurse Hill, but CO Colver refused. Plaintiff stated Nurse Hill then read plaintiff’s request for a HIV test in front of CO Colver. Plaintiff asserted reading his request for a HIV test in front of CO Colver violated his right to medical confidentiality. Plaintiff asserted Nurse Hill violated ODRC’s 07-ORD-11, confidentiality of medical files. Furthermore, CO Colver disseminated this information to other inmates, placing plaintiff in a position of ridicule.

{¶2} Plaintiff seeks damages in the amount of \$10,000 for severe depression, emotional distress, and harassment. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Defendant submitted an investigation report denying liability. ODRC asserted that requiring a CO to be present at nurse sick call was a security measure. ODRC points out that decision concerning placement of CO’s is a basic policy decision for which defendant cannot be sued. ODRC cites the judicial case, *McDougald v. Ohio Dept. of Rehab & Corr.*, 2017-00616 (2017), wherein the court found that permitting a CO to remain in the consultation room while his medical file was being discussed with a physician via satellite, was a security function which involved an executive decision.

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Furthermore, plaintiff in the *McDougald* case stated no cause of action for violation of ODRC's internal rules or policies. *McDougald* appealed this decision to the 10th District Court of Appeals. The Tenth District affirmed the decision of the Court of Claims. *McDougald v. Ohio Department of Rehabilitation and Correction*, No. 17AP-776 (June 14, 2018).

{¶4} With respect to the dissemination of plaintiff's medical information by CO Colver to other inmates, plaintiff has failed to prove this took place. Plaintiff offered no information, other than his own statement that this occurred. Finally, ODRC asserted plaintiff has failed to prove any damages related to severe depression, emotional distress, and harassment. Accordingly, plaintiff's claim should be denied.

{¶5} Plaintiff submitted a response to defendant's investigation report. Plaintiff restated that when he went to nurse sick call he informed Nurse Hill that he did not wish CO Colver to be present. However, Nurse Hill ignored his request. Plaintiff asserted his confidentiality was violated when CO Colver was allowed to remain during his consultation with Nurse Hill. Finally, plaintiff asserted that CO Colver told other inmates about plaintiff's request and he was harassed by other inmates. However, plaintiff has presented no evidence other than his own word that the dissemination occurred.

### CONCLUSIONS OF LAW

{¶6} As an initial matter, while "the constitutional right to privacy in one's medical information exists in prison[,] \* \* \* [the inmate's] constitutional right is subject to substantial restrictions and limitations in order for correctional officials to achieve legitimate correctional goals and maintain institutional security." *Doe v. Delie*, 257 F.3d 309, 316-319 (3rd Cir.2001). However, this court is without jurisdiction to consider claims for relief premised upon alleged violations of the United States Constitution. *Guillory v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-861, 07AP-928, 2008-Ohio-2299, ¶ 12; *Burkey v. Southern Ohio Correctional Facility*, 38 Ohio App.3d 170, 528 N.E.2d 607 (10th Dist. 1988). Furthermore, insofar as the complaint may be

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construed as challenging the conditions of confinement, such claims are treated as arising under Section 1983, Title 43, United States Code. *State ex rel. Carter v. Schotten*, 70 Ohio St.3d 89, 91, 637 N.E.2d 306 (1994). The court has no jurisdiction over claims arising under Section 1983, Title 42, U.S. Code. *Guillory* at ¶ 12, citing *Bleicher v. Univ. of Cincinnati Coll. of Med.*, 78 Ohio App.3d 302, 604 N.E.2d 783 (10th Dist. 1992). Rather, the Court of Claims is a court of limited jurisdiction, having exclusive jurisdiction over civil actions against the state for money damages that sound in law. *Windsor House, Inc. v. Ohio Dept. of Job & Family Services*, 10th Dist. No. 11AP-367, 2011-Ohio-6459, ¶ 15. To the extent that plaintiff's complaint may be interpreted to include constitutional violations, the court lacks jurisdiction over such claims.

{¶7} In Ohio law, “an independent tort exists for the unauthorized, unprivileged disclosure to a third party of nonpublic medical information that a physician or hospital has learned within a physician-patient relationship.” *Biddle v. Warren Gen. Hosp.* 86 Ohio St.3d 395, 1999-Ohio-115, 715 N.E.2d 518, paragraph one of the syllabus. The crux of plaintiff's complaint is that a correctional officer was present during the medical consultation.

{¶8} Recently, the Ohio Supreme Court used the term “‘discretionary-function doctrine’ as shorthand to mean that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision that is characterized by the exercise of a high degree of official judgment or discretion.” (Footnote omitted.) *Risner v. Ohio Dept. of Transp.*, 145 Ohio St.3d 55, 2015-Ohio-4443, 46 N.E.3d 687, ¶ 12; see *Deavors v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 98AP-1105 (May 20, 1999), citing *Reynolds v. State*, 14 Ohio St.3d 68, 70, 471 N.E.2d 776 (1984). “[W]ith respect to penal institutions, prison administrators must be accorded deference in adopting and executing policies and procedures to maintain order. *Bell v. Wolfish* (1979), 441 U.S. 520, 547, 99 S. Ct. 1861,

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60 L. Ed.2d 447 (stressing the need for prison administrators to be accorded deference in adopting and executing policies and practices to preserve internal order and to maintain institutional security).” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 17. Accordingly, “decisions relating to the allocation and location of correctional staff concern prison security and administration and, as such, are executive functions that involve a high degree of official discretion.” *Hughes* at ¶ 18. Plaintiff challenges the placement of a correctional officers in the medical exam room where a medical consultation between plaintiff and Nurse Hill occurred. However, given the discretion defendant has in allocating its correctional staff to preserve institutional security, defendant authorized or privileged the correctional officers to be present during the consultation. Moreover, the discretionary-function doctrine provides that defendant may not be sued regarding the allocation or location of its correctional staff.

{¶9} Insofar as plaintiff alleges that defendant violated its own internal rules or policies, there is no cause of action for a violation of internal rules or policies. *Peters v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-1048, 2015-Ohio-2668, ¶ 10. Indeed, internal prison 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). “Thus, those violations will not support a cause of action by themselves, even though violations of internal rules and policies may be used to support a claim of negligence.” *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 10.

{¶10} Finally, plaintiff has presented no evidence, other than his unsupported statements that CO Colver told other inmates about his condition and he was harassed by these inmates as a result. Accordingly, plaintiff’s claims for severe depression, emotional distress, and harassment are denied.

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

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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.

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DANIEL R. BORCHERT  
Deputy Clerk