

{¶4} In 1998, plaintiff and inmate Oscar Gonzalez were transferred to WCI from the Southern Ohio Correctional Facility (SOCF). Both inmates were separated from the general inmate population and placed in PC because they were witnesses in a drug investigation at SOCF. PC consists of an “A” unit and an “AB” unit separated by a locked gate. Each unit has two tiers of cells located around a recreation area where inmates may congregate. Because plaintiff and Gonzalez were perceived to be disruptive when together, Gonzalez was transferred to the PC unit at Marion Correctional Institution (MCI).

{¶5} From May 6, 1998, through June 11, 1998, plaintiff directed a series of written complaints to Warden Brigano, PC Unit Manager Kemp, WCI’s Institutional Inspector, and the Bureau of Classification in Columbus. He complained that inmates had discovered the reason that he was in PC and that they were threatening him. Defendant argued that plaintiff’s complaints regarding threats of harm were not specific and that their real purpose was to either keep plaintiff and Gonzalez together at WCI or, once Gonzalez had been transferred to MCI, to secure plaintiff’s transfer there so that he could be with Gonzalez.

{¶6} Prison administrators responded to plaintiff’s complaints by requesting that he name or identify anyone who had threatened to harm him. When plaintiff told Kemp that he did not know the names of the inmates making threats, Kemp offered to show plaintiff the unit’s “census book” containing the names and photographs of all inmates in PC. Kemp admitted that plaintiff complained on several occasions regarding inmates who were planning to harm or to kill him. However, when Kemp asked plaintiff who the inmates were, he was unwilling or unable to identify anybody.

{¶7} On July 23, 1998, plaintiff signed a document stating in part, “I, Inmate Brown A322-388 do not wish to be placed in segregation, nor isolated in my cell ***. If I have further problems with the inmates named, I will immediately notify Unit Staff. I do not feel my life is in danger at this point.” (Defendant’s Exhibit C.) Plaintiff admitted that he signed the document which he said pertained to the Arian Brotherhood whom he did not fear. He also stated that he was forced to sign the document or go to segregation, an individual cell known as the “hole.”

{¶8} On October 21, 1998, Kemp investigated an anonymous tip that plaintiff and Newell had been involved in a fight. He interviewed both parties but they denied engaging in a fight and would not acknowledge that any problem existed between them. Plaintiff was offered but declined the opportunity to be placed in segregation or isolated in his cell while the matter was investigated. At some point, plaintiff admitted that he had been in a fight with Newell; nevertheless, when questioned by Kemp, he denied that it had occurred in order to avoid being sent to the hole.

{¶9} Plaintiff had no further problems with Newell until the October 27, 1998, assault. Newell used scissors and an iron which he had obtained from the community service room next to the sergeant's office. He came from behind plaintiff without warning and struck him in the back of the head with the iron. Newell then stabbed plaintiff in the forearm with the scissors.

{¶10} Sergeant Rodriguez exited his office when he observed the altercation and directed plaintiff into the office for protection. Newell, with the handle of the iron in one hand and the scissors in the other, moved around the unit threatening other inmates. Thomas Schweitzer, Case Manager, responded to the scene from the A side of the PC unit, twenty-five to thirty feet away. He confronted Newell on the stairs leading to the second tier of cells and ordered him to drop his weapons and return to his cell.

{¶11} CO Sexton was working in the PC unit when the assault occurred. At the direction of Rodriguez, Sexton had been on the second tier of cells helping inmate Kidd pack his belongings in order to change cells. Kidd, who was Newell's cell mate, had asked to move because Newell was pressing him for sex. Sexton testified that he observed Newell dart into the community service room, then quickly exit and proceed past the officer's desk toward plaintiff. He saw Newell strike plaintiff with the iron but did not initially see the scissors. After the attack on plaintiff, Newell threw a chair and threatened to stab other inmates and the responding COs. Eventually, Schweitzer and Sexton convinced Newell to enter his cell, lay on the floor, and consent to be handcuffed. Sexton further testified that Newell had never exhibited violent behavior prior to attacking plaintiff.

{¶12} When one inmate intentionally attacks another inmate, actionable negligence may arise only where there was adequate notice of an impending attack. *Baker v. State* (1986), 28 Ohio

App.3d 99. Plaintiff argues that defendant was put on notice by the correspondence he had directed to prison administrators and the statements he had made directly to COs.

{¶13} Upon review of plaintiff's correspondence, the court finds that plaintiff failed to identify any particular person who threatened his safety. Even when Kemp gave him the opportunity to review the census book, plaintiff failed or refused to identify anyone who might harm him.

{¶14} On July 23, 1998, plaintiff signed a document stating he was not in danger and that he would immediately notify staff if he needed protection. He declined the offer of segregation or isolation in his cell. On October 21, 1998, plaintiff lied to Kemp when asked if he had been in a fight or had any problem with Newell. Once again, he told Kemp he was not in any danger and refused segregation or isolation.

{¶15} Since there had been no prior notice to defendant of a threat made to plaintiff, defendant could not have suspected that another inmate would use items in the community service room to attack plaintiff. Newell had been screened to participate in projects performed in the community service room and had previously used tools in that room without incident. The ends of the scissors had been dulled to make them safer. Storing the scissors and iron in the community service room did not violate any prison policy. Under the circumstances, plaintiff did not prove that Newell's access to the tools was a breach of defendant's duty of care.

{¶16} Likewise, Sexton had no reason to suspect that Newell would suddenly grab tools from the community service room and attack plaintiff. By leaving his desk to supervise inmate Kidd's move, he did not violate any prison policy or breach any duty of care owed to plaintiff.

{¶17} For these reasons, plaintiff has failed to prove any negligence on the part of defendant. Judgment is recommended in favor of defendant.

STEVEN A. LARSON
Magistrate

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