



sides "A" and "B." The corrections officers' area separates side A from side B. The recreation cages for each side are located outdoors and are accessed through the officers' area. A door separates the officers' area from side A.

{¶3} The work was to be performed in a cell located in side A and occupied by inmates May and Gormon. Prior to plaintiff's arriving at the segregation unit, May and Gormon were handcuffed and escorted by Corrections Officer (CO) Patrick O'Neill to the side B recreation area so that the work could be performed.

{¶4} Plaintiff, another inmate, and two supervisors (maintenance worker Jeff Blevins and CO Bailey) participated in removing the sink panel. After the work was completed, CO O'Neill escorted May and Gormon in handcuffs back to their cell. Plaintiff was standing outside the cell putting tools into the tool cart. When CO O'Neill opened the cell door, Gormon walked into the cell, but May broke away and ran over to plaintiff, striking him with his handcuffs and knocking him to the floor. Gormon then came out of the cell and he and May started kicking plaintiff. Blevins subdued May and CO O'Neill subdued Gormon. Plaintiff testified that the assault lasted approximately thirty-five to forty seconds. He was sent to the infirmary after the assault.

{¶5} CO O'Neill testified that prior to the assault, he had no knowledge that either May or Gormon had a problem with plaintiff.

{¶6} Plaintiff alleges that defendant was negligent in allowing

the assault to occur. Plaintiff further alleges that since he was a general population inmate working in segregation, defendant violated Post Order 310-30, Section VII, subsection H, which states the following: "Inmates in this unit [segregation] are not to have contact with general population inmates in any way, form, or means."

{¶7} In order for plaintiff to prevail on his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136. However, the state is not an insurer of inmate safety. See *Williams v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 699, 702.

{¶8} The law is well-settled in Ohio that the state is not liable for the intentional attack by one inmate on another unless there is adequate notice of an impending assault. See *Baker v. State* (1986), 28 Ohio App.3d 99; *Williams v. S. Ohio Correctional Facility* (1990), 67 Ohio App.3d 517; *Belcher v. Ohio Dept. of Rehab. and Corr.* (1991), 61 Ohio Misc.2d 696. The legal concept of notice comprises two distinguishable types, actual and constructive. See *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶9} Plaintiff asserts that inmates May and Gormon were intoxicated and hostile and that defendant should have known that they would be angry when they learned that their cell had been searched for homemade wine. Inmate May testified that he did not remember anything about the incident and denied assaulting plaintiff. Inmate Gormon admitted that he drank homemade wine that day, and that he knew that the maintenance workers were called in to look for his contraband. However, Gormon also stated that plaintiff was supposed to have brought him other contraband that day, and that he was upset with him for failing to do so. The court finds that the testimony of May and Gormon was not credible. Assuming, *arguendo*, that either one or both of them were intoxicated, that fact alone is insufficient to prove that defendant had notice of their intent to assault plaintiff. Plaintiff himself testified that he knew of May and Gormon, but had no trouble with them before the day in question. Therefore, plaintiff has failed to prove by a preponderance of the evidence that defendant had either actual or constructive notice of May or Gormon's intent to assault him.

{¶10} Plaintiff further argues that defendant violated its post orders by not having shackles or leg-irons on May and Gormon while escorting them to recreation; by not having one escort per inmate; and by allowing May and Gormon to be in the vicinity of plaintiff who was a general population inmate. Regarding plaintiff's first assertion, Post Order 310-30, Section VI, subsection N(2)(c) states

that, "[i]nmates will be transferred to the exercise area and returned to their cells with handcuffs on." Therefore, since handcuffs were used in escorting inmates May and Gormon, the court finds that plaintiff has failed to prove defendant violated its post orders. In addition, plaintiff was unable to reference a specific policy that requires one CO per segregation inmate during escorts to recreation. Therefore, plaintiff has failed to prove that defendant violated any specific policy in that regard. As to plaintiff's assertion that defendant was negligent in allowing segregation inmates to come into contact with a general population inmate, the court finds that it was reasonable to allow plaintiff, who was accompanied by a CO and a maintenance supervisor, to work in the segregation unit. The court also finds that defendant followed established procedures when it escorted the segregation inmates in handcuffs to their cell. While it is unfortunate that plaintiff was assaulted, defendant had no notice of any inmate's intent to assault. Accordingly, judgment shall be rendered in favor of defendant.

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FRED J. SHOEMAKER  
Judge

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