[Cite as *Smith v. Ohio Dept. of Youth Serv.*, 2002-Ohio-3514.]

IN THE COURT OF CLAIMS OF OHIO

ERIC SMITH, et al. :

Plaintiffs : CASE NO. 2000-05860

v. : ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

DEPARTMENT OF YOUTH SERVICES :

Defendant :

: : : : : : : : : : : : : : : : : :

{¶1} On April 10, 2002, defendant filed a motion for summary judgment. On April 11, 2002, in support of its motion defendant filed the transcript of the December 19, 2000, evidentiary hearing to determine the civil immunity of Sharon Cantleberry, defendant's former employee. The transcript was the only evidence submitted to the court for review. On May 17, 2002, plaintiff filed a memorandum contra. This matter is now before the court for a non-oral hearing on the motion for summary judgment.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "*** Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. *** " See, also, *Williams v. First United*

Church of Christ (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} It is not disputed that plaintiff, Johnathan Smith, was in the custody and care of defendant at defendant's Mohican Youth Camp from approximately March 3, 1999, through September 19, 1999. There is also no dispute that Sharon Cantleberry was employed as a Juvenile Corrections Officer (CO) during plaintiff's incarceration at the camp. Plaintiff had met CO Cantleberry for the first time in August 1999.

{¶5} According to plaintiff: on several occasions during his stay at the camp, CO Cantleberry allowed him to touch her buttocks and breasts over her clothes without objection; and she watched other inmates while they were showering and allowed other inmates to touch her buttocks over her clothes; that she contacted him after his release from the camp and eventually engaged in sexual intercourse with him on one occasion. There is no dispute that the single incident of sexual intercourse occurred after plaintiff's release and that CO Cantleberry had never touched plaintiff in a sexual manner at any time during his stay at the camp.

{¶6} Plaintiff admits that he never told any other CO or supervisor about the touching incidents with CO Cantleberry and that he has no knowledge whether any other inmates reported their own encounters with her. In fact, plaintiff testified that CO Cantleberry waited for other COs to go on break before allowing him to touch her.

{¶7} On January 3, 2001, the court issued an entry denying civil immunity to CO Cantleberry. Therein, the court stated, in relevant part, "*** Cantleberry acted outside the scope of her employment with defendant during all interactions regarding plaintiff ***."

{¶8} Despite this finding by the court, plaintiff contends that defendant is still liable for negligent supervision. In order to prevail on a claim of negligent supervision, plaintiff must show: 1) the existence of an employment relationship; 2) the employee's incompetence; 3) the employer's actual or constructive knowledge of the incompetence; 4) the employee's act or omission causing plaintiff's injuries; and, 5) the employer's

negligence proximately caused plaintiff's injuries. *Steppe v. K Mart Stores* (1999), 136 Ohio App.3d 454, 465.

{¶9} In this case, there is no evidence upon which a reasonable trier of fact could conclude that there was any failure of supervision on the part of defendant or that any act or omission by defendant proximately caused the single incident of sexual intercourse which occurred subsequent to plaintiff's release. The fact that CO Cantleberry obtained plaintiff's address from another inmate who corresponded with plaintiff does not permit the inference of causal negligence on the part of defendant.

{¶10} In short, upon review of defendant's motion, the memoranda submitted by the parties and the transcript of the evidentiary hearing, the court finds that there are no genuine issues of material fact to be decided and that defendant is entitled to judgment as a matter of law.

{¶11} For the foregoing reasons, defendant's motion for summary judgment is GRANTED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
J. WARREN BETTIS
Judge

Entry cc:

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