

[Cite as *Stewart v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-5755.]

IN THE COURT OF CLAIMS OF OHIO

JAMES L. STEWART :
Plaintiff : CASE NO. 2000-10766
v. : JUDGMENT ENTRY
OHIO DEPARTMENT OF : Judge J. Warren Bettis
REHABILITATION AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

This case was tried to a magistrate of the court. On July 3, 2002, the magistrate issued a decision recommending judgment for defendant.

Civ.R. 53 states: "Within 14 days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision." On July 9, 2002, plaintiff filed a motion for an extension of time either to obtain a transcript of proceedings taken before the magistrate or to file an affidavit of evidence and objections. On July 17, 2002, the court granted plaintiff's motion and extended the deadline for filing objections to August 16, 2002. On August 13, 2002, plaintiff filed his objections to the magistrate's decision, a motion to file an affidavit of evidence and an affidavit of indigency. On August 15, 2002, defendant filed a response to plaintiff's objections. On August 20, 2002, plaintiff filed an amended affidavit of evidence. On September 5, 2002, the court granted plaintiff's motion to file an affidavit of evidence and allowed defendant leave until September

15, 2002, to file a response. On September 13, 2002, defendant filed its affidavit of evidence.

In plaintiff's first objection to the magistrate's decision, he challenges the magistrate's findings that CO Westmoreland was not away from her desk for 15 to 20 minutes, that inmate Chambers was a resident of Monroe-C dormitory, and that the officers attempted to prevent further harm to plaintiff when they separated plaintiff from Chambers. Upon review of the parties' affidavits of evidence, the court finds that all of the factual findings challenged by plaintiff are supported by competent, credible evidence and are not against the manifest weight of the evidence. Indeed, plaintiff's allegation that inmate Chambers was not a resident of Monroe-C dormitory is not supported by his own amended affidavit of evidence and is specifically refuted by defendant's affidavit of evidence. Accordingly, plaintiff's first objection is OVERRULED.

With respect to plaintiff's second objection, the court has reviewed the magistrate's decision and finds that the magistrate's conclusions are supported by the greater weight of the evidence and are in accordance with law. Therefore, plaintiff's second objection is OVERRULED.

Upon review of the record, plaintiff's amended affidavit of evidence, defendant's affidavit of evidence, the magistrate's decision and plaintiff's objections, the court finds that the magistrate correctly analyzed the issues and applied the law to the facts. Having overruled each of plaintiff's objections, the court adopts the magistrate's decision and recommendation as its own. Accordingly, judgment is rendered in favor of defendant. 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:

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068

Attorney for Plaintiff

Anne Berry Strait
65 East State St., 16th Fl.
Columbus, Ohio 43215

Assistant Attorney General

HTS/cmd
Filed 10-8-2002
Jr. Vol. 721, Pgs. 91-93
To S.C. reporter 10-22-2002