

[Cite as *Strothers v. Dept. of Rehab. & Corr.*, 2002-Ohio-6011.]

IN THE COURT OF CLAIMS OF OHIO

PAULA STROTHERS	:	
Plaintiff	:	CASE NO. 2000-08354
v.	:	<u>MAGISTRATE DECISION</u>
OHIO DEPARTMENT OF REHABILITATION AND CORRECTION	:	Steven A. Larson, Magistrate
Defendant	:	
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{¶1} Plaintiff brought this action against defendant alleging negligence. The case was tried to a magistrate of the court on the issue of liability.

{¶2} At all times relevant hereto, plaintiff was an inmate at the Marysville Reformatory for Women in the custody and control of defendant pursuant to R.C. 5120.16. Her complaint sets forth four separate allegations of negligence.

{¶3} Plaintiff's first claim is that on or about March 22, 2000, defendant negligently placed her in a segregation cell that was infested with ants and where she was forced to sleep on a concrete floor. Plaintiff maintains that defendant ignored her complaints about the ants and that she suffered permanent scarring over her body as a result of an allergic reaction to ant bites.

{¶4} Plaintiff's second claim is that on or about December 29, 1999, she was assaulted by a corrections officer (CO) in violation of defendant's regulations prohibiting excessive use of force.¹

¹To the extent that plaintiff's complaint alleges that the CO assaulted

Plaintiff alleges that the officer entered her cell and threw her against a metal stool and a brick wall even though she was causing no disturbance that would warrant such action.

{¶5} The third claim alleges that during the cold weather months of 1999 and 2000, defendant negligently confined plaintiff to a cell where the temperature was approximately 30 degrees, and that she was kept there for at least 40 days despite her complaints and despite defendant's admission that the temperature control was defective.

{¶6} Finally, plaintiff alleges that when she arrived at Marysville on December 8, 1999, the COs refused her request for shower shoes, and that her personal shower shoes were confiscated. Plaintiff contends that she was exposed to mold, bacteria and filth in the institution's shower stalls and that this alleged negligence caused her to suffer permanent and progressive damage to her feet.

{¶7} In order to prevail on her claims of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The duty of care owed to an inmate by the custodian is one of ordinary care in the furtherance of the custodial relationship. See *Jenkins v. Krieger* (1981), 67 Ohio St.2d 314. Reasonable or ordinary care is that degree of caution and foresight that an ordinarily prudent person would employ in similar circumstances. *Antenori v. Ohio Dept. of Rehab. and Corr.*, Franklin App. No. 01AP-688, 2001-Ohio-3945.

her and that defendant was "negligent" in allowing unnecessary force to be used against her, plaintiff's cause of action is in the nature of an intentional tort. See *Williams v. Pressman* (App.1953), 69 Ohio Law Abs. 470, 472 ("An assault and battery is not negligence, for such action is intentional, while

{¶8} With regard to the first claim, Plaintiff's Exhibit 3, which consists of 12 pages, demonstrates that plaintiff made numerous complaints and filed at least two grievances regarding ants in the segregation area. She claimed that she was forced to sleep on the floor because defendant did not accommodate her lower bunk restriction. However, plaintiff's complaints also state that the ants climbed up the walls and bedframes, and that she was bitten even when she was not sleeping on the floor. Additionally, inmate witness Jamey Renee Berry testified that she had also been bitten by ants. According to Berry, all of the inmates complained about the ants in the segregation unit.

{¶9} While there is no question that plaintiff complained about an ant problem, the evidence fails to establish that the condition was attributable to any breach of duty on the part of defendant or that plaintiff's placement in the affected cells fell below the required standard of care. Rather, defendant's staff members consistently responded to plaintiff's complaints stating that they were looking into the matter; assuring plaintiff that the cells had been sprayed or were investigating to determine the extent of the problem.

{¶10} Specifically, in a March 26, 2000, response to plaintiff's March 22, 2000, complaint, (at page two of Plaintiff's Exhibit 3) Vicky Bowers, defendant's Health and Safety Coordinator, stated: "ARN [segregation] has been sprayed on several occasions. Your concerns will be addressed *** I have had no other complaints of ants in A-4." In Defendant's Exhibit C, dated March 30, 2000, Mrs. Bowers responded to another complaint stating: "A-4 will be sprayed and has been sprayed for ants.

*** After talking with CO Bell ants are only noted in 403 and they have moved you to 440 for your comfort.”

{¶11} Although plaintiff’s pleadings refer to an ant problem that existed on or about March 22, 2000, her exhibits also include similar complaints for a period of time in early 2001. For example, at page six of Exhibit 3, plaintiff’s February 1, 2001, complaint states that she was provided with cleanser to scrub her cell floor; however, she further states that she was unable to complete the scrubbing because her feet were being bitten by ants. On February 7, 2001, Mrs. Bowers responded: “I spoke w/the staff at A-4 they stated they have had no reports of ants ***.” At page 9 of Exhibit 3, Gregory Gossard, defendant’s Maintenance Supervisor II, responded to plaintiff’s March 3, 2001, complaint by stating that he had sprayed for ants on March 5, 2001.

{¶12} Additionally, the exhibits show that plaintiff was examined by nursing staff for ant bites. She was able to purchase ointment at the commissary to treat the bite areas. Although the nursing notes indicate that plaintiff reported having an allergy to ant bites, there is no medical evidence to substantiate that condition. Even inmate Berry testified that her own ant bites looked the same as plaintiff’s and that she did not seek any treatment other than applying ointment. Inmate Rosalind Adams testified that she saw marks on plaintiff’s arms but had not personally observed any ants in ARN-4. The evidence is also conflicting as to whether plaintiff was, in fact, “forced” to sleep on the floor. For example, Lieutenant Putt testified that sleeping on the floor was considered an “out of place” violation for inmates. She further testified that she never observed plaintiff sleeping on the floor when she was on duty in ARN-4. Moreover, Captain Jerry Tucker testified that he had never

been advised that plaintiff was sleeping on the floor and that he would have been informed of it if it had occurred.

{¶13} In summary, the court does not find plaintiff's allegations to be credible with respect to either the extent of ant infestation or any physical reaction to it. Additionally, the court finds that defendant exercised all due care to guard her from injury. Accordingly, plaintiff cannot prevail on her first claim.

{¶14} Plaintiff's second claim concerns an incident that occurred on December 29, 1999, several weeks after her transfer to the Marysville Reformatory. On that date, plaintiff had placed toilet paper over her cell window. She maintains that she placed the paper on the window to signal the COs on duty because she was in need of blood-pressure medication and did not have a pencil to draft a "kite" to the medical unit. Plaintiff contends she was sitting on her bunk when five COs burst in. She further claims that Capt. Jerry Tucker lifted her up from the bunk and slammed her against a wall and a metal stool. She testified that Capt. Tucker placed his hand over her mouth and stated "I don't care about you, I'll beat your mother-fucking ass." As a result of the incident, plaintiff sustained a scratched ear, bruises and a bump on her head.

{¶15} The four other officers involved in the incident were Lieutenant Jennifer Beth Griffith (nka Sachs), CO Mary Kay Miller, CO Dustin Jay Ward and CO Steven R. Neimeyer, all of whom testified at trial. Capt. Tucker also testified. According to the officers, covering a cell window is a rule violation. Lt. Griffith testified that the institution affords zero tolerance for the covering of cell windows due to concerns for inmate safety and security. When plaintiff was ordered to remove the

toilet paper from her cell window, she refused to obey. Failure to comply with a direct order is also a rule violation.

{¶16} Cos Ward and Neimeyer stated that plaintiff was yelling and banging on her cell door. To address the situation, officers were required to follow a pre-existing order mandating that two supervisors be present to enter plaintiff's cell. One of the COs called for Capt. Tucker; both Capt. Tucker and Lt. Griffith responded. Capt. Tucker removed the paper without incident; however, plaintiff replaced it within minutes. At that point, all five officers returned to the cell. Capt. Tucker removed the paper and ordered that plaintiff's cell be stripped. Lt. Griffith was ordered to remove the sheets from plaintiff's bunk. Lt. Griffith testified that plaintiff was seated on the bunk and refused to move even after being ordered to do so by herself and Capt. Tucker. The officers stated that Capt. Tucker assisted plaintiff to her feet and moved her back against the cell wall. All of the officers stated that plaintiff was acting aggressively, waving her fists and appearing ready to spit on them. Captain Tucker stated that he placed his hand over plaintiff's mouth to avoid being spat upon. None of the officers completed use of force reports until several weeks later when they were instructed to do so by Capt. Tucker. According to the officers, reports were not previously completed because none of them believed that force had been applied.

{¶17} Ohio Adm.Code 5120-9-01 provides in pertinent part:

{¶18} “***

{¶19}“(1) ‘Excessive force’ means an application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which is reasonably necessary under all the circumstances surrounding the incident.”

{¶20}Based upon the totality of the evidence submitted on this claim, the court again finds that plaintiff’s allegations are disingenuous. The evidence simply does not substantiate that actions of the officers constituted an excessive use of force under the circumstances. Moreover, even if some degree of force had been used, 5120-9-01, Section (C), provides that there are six general situations in which a staff member may legally use force against an inmate:

{¶21}“(1) Self-defense from an assault by an inmate;

{¶22}“(2) Defense of third persons, such as other employees, inmates, or visitors, from an assault by an inmate;

{¶23}“(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations;

{¶24}“(4) Prevention of crime, such as malicious destruction of state property or prison riot;

{¶25}“(5) Prevention of escape; and

{¶26}“(6) Controlling an inmate to prevent self—inflicted harm.”

{¶27}In the present case, the court finds that the preponderance of the evidence demonstrates that force would have been justified pursuant to (1), (2) or (3) of the above-listed situations. Moreover, this court has previously noted that “corrections officers have a privilege to use force upon inmates under certain conditions. *** However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances.

*** Force may be used to control or subdue an inmate in order to enforce the institution's rules and regulations. *** Obviously, 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Citations omitted.)

{¶28} Plaintiff's testimony regarding the circumstances of this incident and the actions of the officers is not credible. Although they are not decisive factors in evaluating credibility, the court cannot ignore the fact that plaintiff was a large, physically imposing individual in a segregation unit under a special order concerning the opening of her cell door. Considering all the surrounding circumstances, the court concludes that plaintiff failed to prove that defendant was in any way negligent, much less that she was a victim of an excessive use of force.

{¶29} Plaintiff's third claim concerns the temperature of her cell in the segregation unit. The evidence shows that defendant responded to plaintiff's complaints of freezing cell temperatures in the same manner as her complaints regarding ant infestations. Specifically, plaintiff was consistently assured that her complaints were being taken care of and/or investigated. For example, Plaintiff's Exhibit 5 shows that on April 19, 2000, a maintenance supervisor responded to plaintiff's April 10, 2000, complaint that the temperature in her cell was "about 30 degrees." The response states: Temps were taken. No temp in any room was less than 69f. We turned heat up. This time of year it is impossabel [sic] to keep temp. exact. We are working to correct."

{¶30} Lt. Griffith testified that individual cells are checked for room temperature only when the weather is extremely hot or cold, and that cells can be shut down if either circumstance occurs. She

also stated that inmates sometimes block the vents in their cells, which interferes with overall temperature in the unit. Therefore, officers check the temperature approximately every thirty minutes. According to Gregory Gossard, federal guidelines provide that a cell must be shut down if the temperature falls below 68 degrees. Gossard also stated that inmates interfere with the overall temperature by blocking their individual vents. He advised that the heat is controlled by a balanced, hot-water gravity system with air vents, and that each cell receives the same amount of heat, unless the vents are blocked.

{¶31}Page 4 of Plaintiff's Exhibit 5 shows that on September 2, 2000, plaintiff filed a complaint stating that her cell was too hot. In that complaint, plaintiff stated that the temperature was 90 degrees in her cell. Defendant's response assures plaintiff that temperatures are taken on a routine basis in the unit, but not in each particular cell. The response further states: "However, we are aware when temps. reach above 85 to open flaps and to provide fans. All temps are documented in the log book."

{¶32}Upon consideration of all of the evidence and testimony submitted on this claim, the court finds that plaintiff failed to prove that defendant's control of the heating systems fell below the standard of reasonable or ordinary care under the circumstances. Further, the evidence fails to demonstrate that defendant, at any time, admitted that the heating system was defective. The coldest months of the year are generally from December to March. Plaintiff's first written complaint was dated April 10, 2000. There is no persuasive evidence to substantiate plaintiff's claim that she made verbal complaints prior to

that time or that she was exposed to below-freezing cell temperatures for a period of forty days. Thus, plaintiff's complaints again appear to be without merit.

{¶33} Plaintiff's fourth claim concerns the confiscation of her shower shoes and exposure to allegedly unhealthy conditions when using shower stalls. Plaintiff testified that she had shower shoes in her personal belongings when she arrived at Marysville; that she was not permitted to keep them; and that the shoes defendant provided to her were not the type that she wanted. She stated that the showers in the admissions unit contained black mold on the floors and walls and that she developed problems with her feet approximately six to seven days after she had arrived at the reformatory. She further stated that her feet had developed sores, and that they were itching and the skin was cracking by December 16, 1999. She maintains that her feet are permanently damaged.

{¶34} CO Shirley Daum, the admissions reception officer on duty when plaintiff arrived at Marysville on December 8, 1999, testified that all inmates are provided with shower shoes that are similar to spongy house-slippers. She did not recall whether plaintiff requested her own shoes or whether she refused to shower because of the alleged condition of the stalls. She did relate that plaintiff was bossy and uncooperative during the admission process. She also stated that the showers in admissions were cleaned every morning, and sometimes again in the evenings, using disinfectant and a cream cleanser. She said that the showers were inspected before inmates were taken in to use them.

{¶35} The first written complaint in evidence concerning this claim was submitted as Defendant's Exhibit D. In that complaint, dated January 19, 2000, plaintiff stated that she had a severe

athlete's foot condition and that her feet were bleeding and the skin was cracking; however, she made no mention of any unhealthy condition associated with the showers. Moreover, the complaint reflects that plaintiff received treatment for her foot condition on January 17, 2000. She also was referred to a podiatrist, with whom she met in February 2000.

{¶36} Nurse Jean Gellbaugh testified that she examined plaintiff on December 22, 1999, and that she was provided with a prescription for velva/sal. to treat the condition for her feet. She also stated that plaintiff often rejected both foot cream and the velva/sal. during nurse call. She did note that the medical history and admissions record did not contain any reference to an athlete's foot problem. However, she stated that plaintiff arrived at Marysville with a host of other medical conditions such as arthritis, asthma, hypertension, sinusitis, edema, obesity and ulcer. Finally, inmate Karen Sue Seymore testified that she did not observe any mold in the admissions shower stalls when she arrived on December 8, 1999. She said that she bought from the commissary for 80 cents the type of shower shoes that she wanted.

{¶37} Considering all of the testimony and exhibits submitted in regard to this claim, the court again finds that the evidence fails to demonstrate that defendant's actions fell below the standard of reasonable or ordinary care. Rather, the evidence shows in general that plaintiff was a habitual complainer and that she routinely exaggerated the extent of every condition about which she complained. Plaintiff's testimony lacks credibility as to every claim that she has asserted in her complaint. In sum, plaintiff failed to prove any of her claims by a preponderance of the evidence.

{¶38} For all of the foregoing reasons, judgment is recommended in favor of defendant.

STEVEN A. LARSON
Magistrate

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LH/cmd/Filed 10-17-2002/To S.C. reporter 11-4-2002