

from Ratliff. According to CO Meadows, when plaintiff continued to struggle, Meadows restrained plaintiff by placing him on the floor. Plaintiff claims that Meadows jumped on him and caused a right hip fracture.

{¶4} After he was restrained, plaintiff complained of pain in his right leg. He was taken to the institution infirmary where he was diagnosed with a fracture of the right hip. Plaintiff was subsequently treated at the Ohio State University Medical Center. Plaintiff also claims that he now suffers from post-traumatic stress syndrome as a result of the incident.

{¶5} Plaintiff's complaint alleges that defendant and its employees were "negligent" in utilizing unnecessary and undue force in "attacking" plaintiff.¹ In addition to allegations of excessive force on the part of the two COs, the court construes plaintiff's complaint to include claims against defendant for negligent supervision or training, and negligence in failing to intervene to protect plaintiff. In order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached such duty, and that the breach proximately caused plaintiff's 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.

1

To the extent that plaintiff's complaint alleges that defendant's COs were "negligent" in utilizing unnecessary force in "attack[ing]" and "assault[ing]" him, plaintiff's cause of action with respect to the conduct of the COs 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 negligence connotes an unintentional act.")

{¶6} The Ohio Administrative Code sets forth the circumstances during which COs are authorized to use force against an inmate.

{¶7} Ohio Adm.Code 5120-9-01 provides:

{¶8} "(A) As the legal custodians of a large number of inmates, some of whom are dangerous, prison officials and employees are confronted with situations in which it is necessary to use force to control inmates. This rule identifies the circumstances when force may be used lawfully.

{¶9} "****

{¶10} "(C) There are six general situations in which a staff member may legally use force against an inmate:

{¶11} "****

{¶12} "(1) Self-defense from an assault by an inmate;

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

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

{¶15} "****

{¶16} "(D) Force or physical harm to persons shall not be used as prison punishment. This paragraph shall not be construed to affect or limit the disciplinary measures authorized in rules 5120-9-06 and 5120-9-07 of the Administrative Code.

{¶17} "(E) The superintendent, administrator, or staff member of a correctional institution is authorized to use force, other than deadly force, when and to the extent he reasonably believes that such force is necessary to enforce the lawful rules and regulations of the institution and to control violent behavior."

{¶18} Plaintiff argues that under Ohio Adm.Code 5120-9-01 the use of force in his case was not authorized because he did not commit an act of violence or threaten death or serious physical harm. Plaintiff's argument is not well-taken.

{¶19} Ohio Adm.Code 5120-9-01 (C) (3) authorizes COs to control or subdue inmates who refuse to obey the institution rules and regulations, including a direct order from a CO. Although plaintiff's version of the events in question differed from the testimony of the COs, plaintiff admitted that he ran from CO Ratliff after she ordered him to stop and that he kicked her in an attempt to flee the cell block.

{¶20} CO Ratliff testified that the incident began when plaintiff became upset because his identification badge had not been returned to him and he could not go to the commissary without it. Ratliff testified that she decided to take plaintiff to the shift captain's office and that plaintiff kicked her after he was placed in handcuffs. Ratliff testified that plaintiff ran away from her and that she chased plaintiff approximately 30 feet down the range before apprehending him. CO Ratliff further testified that she fell to the floor when plaintiff kicked her in the abdomen. After CO Meadows arrived, CO Ratliff activated the "man down" alarm for additional assistance.

{¶21} With regard to the cause of his injury, plaintiff testified that CO Ratliff used her fist and a flashlight to strike him several times in the face after he had been handcuffed. Plaintiff also testified that he fell as he ran from CO Ratliff and that Ratliff fell when she attempted to jump over plaintiff. Plaintiff contends that he did not resist attempts to restrain him while he was on the floor and that CO Meadows jumped on him without

warning, struck his mouth, and broke his hip. CO Ratliff denied that she struck plaintiff. According to Ratliff's testimony and an accident report filed on September 9, 1996, she suffered a severe contusion of the abdomen as a result of being kicked by plaintiff.

CO Meadows also reported injuries to his right hand and fingers that occurred during his struggle with plaintiff.

{¶22} As a result of the incident, CO Ratliff filed an unusual incident report and a conduct report that charged plaintiff with assault. CO Meadows also filed a "use of force report" wherein he stated that plaintiff was very aggressive and fought him while he restrained plaintiff until other COs arrived.² Ohio State Highway Patrol Trooper Zaborowski also investigated the incident by conducting interviews and obtaining statements from plaintiff, defendant's COs and inmate witnesses. In his statement to Trooper Zaborowski, plaintiff denied kicking CO Ratliff. Zaborowski referred the case to the Warren County Court of Common Pleas where plaintiff was tried and subsequently found guilty of assaulting Ratliff.

{¶23} As stated previously, Ohio Adm.Code 5120-9-01 (C)(3) authorizes COs to control or subdue inmates who refuse to obey the institution rules and regulations, including a direct order from a CO. Although plaintiff's version of the events in question differed from the testimony of the COs, plaintiff admitted that he kicked Ratliff after he had been handcuffed. The court finds that plaintiff's assertion that CO Ratliff tripped and fell while running after him lacks credibility. Furthermore, plaintiff's

2

Although use of force reports that were filed after the incident state that CO Livengood helped CO Meadows restrain plaintiff by holding his legs, neither CO Ratliff nor CO Meadows recalled at trial that Livengood had assisted. Plaintiff did not identify CO Livengood as a cause of his injuries.

trial testimony that he kicked CO Ratliff contradicts his written statement to Trooper Zaborowski that he did not. The court further finds that CO Meadows had a duty to subdue and restrain plaintiff when he arrived at the cell block and observed CO Ratliff lying on the floor. CO Meadows' testimony that plaintiff was violent and kicked CO Ratliff was credible. The court finds that it was reasonable for defendant's COs to use force to restrain plaintiff after he became uncooperative and assaulted CO Ratliff. The court concludes that plaintiff has failed to prove that the COs used excessive force or acted negligently in their efforts to subdue plaintiff once he became violent.

{¶24} For the foregoing reasons, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that defendant breached any duty of care owed to him and accordingly, judgment is recommended in favor of defendant.

{¶25} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

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- 7 -

MAGISTRATE DECISION

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