



{¶3} An argument ensued that attracted the attention of Sergeant Shannon. The sergeant came to the scene and ordered plaintiff to report to the dialysis center; otherwise, he would be taken to "the hole." Plaintiff agreed to work. However, as Sergeant Shannon was leaving the area he heard a heated argument begin between plaintiff and CO Streightenberger. Consequently, he returned to the scene. CO Coy was also present at the time and became involved to help handcuff and subdue plaintiff.

{¶4} Plaintiff claims that Sergeant Shannon and Officer Coy slammed him into a wall, knocking a lens out of his eyeglasses and that, when he attempted to reach for the lens, further force was used against him. After he was successfully cuffed and subdued, plaintiff was taken to the infirmary. Later, he was taken to the hole. Plaintiff was cited for, and found guilty of, a rules infraction for refusing to go to work. In December 2002, plaintiff was released from prison. He contends that he repeatedly asked for and never received the lens that was knocked from his eyeglasses.

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.

{¶5} The Ohio Administrative Code sets forth the circumstances under which COs are authorized to use force against an inmate. Ohio Adm.Code 5120-9-01 provides:

{¶6} "(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.

{¶7} \*\*\*\*

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

{¶9} \*\*\*\*

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

{¶11} \*\*\*\*

{¶12} "(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."

{¶13} In the present case, plaintiff's version of the incident differs from that of defendant's employees, but on the other hand he did not deny that he vehemently protested the order to work a second shift. Based upon the totality of the evidence presented, and assessing the credibility of the witnesses, the court is persuaded that plaintiff refused a direct order and that his conduct required intervention by defendant's employees. The court is further persuaded that the COs did not violate the provisions of Ohio Adm.Code 5120-9-01 in their efforts to subdue and control plaintiff. Specifically, the court finds that the COs used only the amount of force that was reasonably necessary to enforce the lawful rules and regulations of the institution and to control an inmate who refused to obey a direct order. Simply stated, no force would have been required if plaintiff had followed the order to work in the dialysis area.

{¶14} For these reasons, the court concludes that plaintiff failed to prove his negligence claim by a preponderance of the

evidence. Accordingly, judgment shall be rendered in favor of defendant.

{¶15} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

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FRED J. SHOEMAKER  
Judge

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