

long, heavy chain called a "rec chain," along with as many as ten other inmates tethered at two-foot intervals. The rec chain allows a group of inmates to be moved together in single file from their cells to the rec pod.

{¶ 4} COs Randy Cooper and Donald Good were escorting a group of tethered inmates up a narrow staircase when Cooper observed plaintiff and inmate Wynn head-butting each other. Cooper knew that a fight between two inmates on the rec chain puts all of the inmates on the chain at great risk of injury, and he quickly interceded by grabbing Wynn's coveralls and holding him away from plaintiff. During the struggle with Wynn, Cooper was knocked to the ground and injured his shoulder. Cooper stated he did not see anyone slam plaintiff against the wall, or stomp on his hand, or strike him with a baton. Cooper testified that defendant had trained him on the proper use of force during orientation and during annual reviews. He explained that he properly followed defendant's use-of-force procedures to stop the fight between Wynn and plaintiff.

{¶ 5} Good also saw plaintiff and Wynn begin to head-butt each other as they ascended the stairs. Good stated that he gave Wynn a direct order to stop fighting and, when the order was disobeyed, he grabbed Wynn by his right arm. Before Good could subdue Wynn, Wynn was knocked to the ground. Almost immediately, several COs responded to the disturbance and quickly subdued plaintiff and Wynn. The inmates were taken to the infirmary to be checked for injuries before being returned to their cells. Good explained that he saw plaintiff fall from the middle of the flight of steps to the bottom landing, but did not see anyone strike plaintiff or throw

him against the wall. Good further testified that he followed the institution's use-of-force policy to stop the fight.

{¶ 6} Inmate Demond Randolph testified that he was on the rec chain when he observed Good slam plaintiff to the floor and CO Euton strike plaintiff on the forehead with a baton. Randolph also testified that plaintiff was kicked by COs while on the floor. Randolph asserted that plaintiff and Wynn were merely having a "civilized conversation" when the COs ascended upon them, knocked them to the ground, kicked them, and struck them.

{¶ 7} Wynn admitted that he engaged in a heated argument with plaintiff while on the rec chain and ignored Good's direct order to stop, but denied that he ever head-butted or touched plaintiff. Wynn said that the argument with plaintiff began the night before and carried over to the next day. He admitted that their argument escalated on their way to the rec pod when the two were fastened next to each other on the rec chain.

{¶ 8} Wynn testified that COs knocked him to the ground and kicked and punched him after he ignored Good's order to be quiet. He acknowledged that he did not see what happened to plaintiff because the small area was crowded with inmates and COs.

{¶ 9} According to plaintiff, the COs use force on him whenever they get the opportunity. He admitted that he was talking "kinda loud" to Wynn as they ascended the staircase on their way to the rec pod. He denied that he had any physical contact with Wynn. He alleged that as he was talking to Wynn, Good slammed him against a gate, Euton hit him with a baton, and CO Gleim stomped on his hand and spit on him. Plaintiff claimed that Sergeant Smith and CO Cooper were not present when COs assaulted him. Finally, plaintiff stated that the COs falsified their reports regarding their

participation in the incident and falsely claimed they were injured in order to receive medical leave and disability payments.

{¶ 10} Plaintiff's complaint alleges that defendant was "negligent" in permitting its employees to utilize excessive force in "attacking" plaintiff. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. 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.

{¶ 11} The Ohio Administrative Code sets forth the circumstances under which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) states in relevant part:

{¶ 12} "(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.

{¶ 13} "***

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

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

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

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

{¶ 18} 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. *** 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. (Internal citations omitted.)

{¶ 19} With respect to the October 24, 2003, incident there is no dispute that COs used force to subdue plaintiff and Wynn; however, the issue is whether the force used by the officers was in the performance of their official duties and whether such force was excessive under the circumstances. The testimony was conflicting.

{¶ 20} In considering conflicting testimony and the credibility of witnesses, the court finds more credible the testimony of Sergeant Smith and COs Cooper and Good that plaintiff and Wynn head-butted each other and ignored a direct order to stop. In fact, Wynn admitted that he and plaintiff disobeyed Good's direct order to stop talking, although he denied that the two engaged in head-butting. In the face of two inmates fighting on the rec chain and ignoring the CO's order to cease, the officers' reactions in grabbing the inmates by their coveralls and physically restraining them did not constitute an unnecessary use of force. Rather, the court finds that the COs properly intervened to end the

confrontation so as to prevent possible harm to the other inmates on the rec chain and the COs escorting those inmates.

{¶ 21} Additionally, plaintiff's credibility regarding his version of the incident was undermined by the medical report indicating that he suffered only minor injuries. (Plaintiff's Exhibit 1.) Specifically, plaintiff's contention that he was slammed against a gate, hit with a baton, spit on, and stomped on was not consistent with the findings in the medical report made shortly after the incident. The small lump on plaintiff's forehead was more consistent with being head-butted than being struck with a baton. The small abrasions on plaintiff's right ankle and the one-half inch laceration on his finger are consistent with plaintiff's falling down the stairs to the landing.

{¶ 22} Based upon the evidence presented, plaintiff has failed to establish that defendant or its employees used excessive force against him. Based upon the foregoing, plaintiff has failed to prove his claims of negligence by a preponderance of the evidence. Therefore, judgment is recommended in favor of defendant.

{¶ 23} *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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