

Defendant denies liability and asserts that the extraction was performed pursuant to the guidelines set forth in the Ohio Administrative Code.

{¶ 3} Lt. Fout testified that at approximately 6:00 p.m. on April 20, 2003, he was called to J-block and informed that plaintiff had attempted to assault Mansfield with a weapon made of a rolled newspaper with a metal tip. Because of plaintiff's conduct, Captain Roger McAllister ordered that plaintiff be placed in five-point restraints for an initial period of three hours. According to Fout, he then went to plaintiff's cell and told plaintiff of McAllister's order. Fout then left the block to assemble a five-man extraction team that included nurse Kevin Jenkins. When the team arrived at plaintiff's cell, Fout gave plaintiff a direct order to come to the front of the cell to be handcuffed; however, plaintiff ran to the back of his cell. Fout then administered a burst of chemical mace and ordered the team to enter the cell and extract plaintiff. The team placed plaintiff in handcuffs and leg irons and carried him to cell J4-41, where he was placed in five-point restraints and examined by nurse Jenkins. The extraction was videotaped by CO Barney. Fout also testified that Defendant's Exhibit D is a log that shows that plaintiff was observed every 15 minutes after the extraction.

{¶ 4} Inmate Brandon Randolph testified that he was housed in a cell on the upper range of J-block, that he heard Mansfield and plaintiff screaming and cursing at one another, and that he later heard plaintiff yelling during the extraction.

{¶ 5} Major Mark Wynn testified that a cell extraction is used as a "last resort" when an inmate either violates a prison rule or refuses to obey a direct order. According to Wynn, extractions must be authorized by a shift captain. Wynn further testified that COs are subject to use-of-force guidelines during extractions and that a use-of-force committee routinely reviews extractions to assure that guidelines have been followed.

{¶ 6} Wynn also stated that after plaintiff's extraction had been reviewed, the warden instructed him to re-examine videotape procedures with his staff because the quality of the videotape of plaintiff's extraction was poor. Wynn explained that it is

inherently difficult to videotape an extraction because an extraction involves at least five officers and an inmate in a confined space.

{¶ 7} CO Sean Taylor testified that he was chairman of the use-of-force committee that reviewed plaintiff's extraction and that he generated a report as a result of the investigation. (Defendant's Exhibit E.) Taylor stated that all of the officers involved in the extraction related that Lt. Fout gave plaintiff an order to "cuff-up" when the team was assembled but that plaintiff refused to comply with the order and ran to the back of his cell.

{¶ 8} David Newsome, deputy warden of operations, testified that he completed a use-of-force cover sheet regarding plaintiff's extraction. (Plaintiff's Exhibit 6.) Newsome explained that since plaintiff had been placed in five-point restraints, a use-of-force committee was assigned to review the incident as a matter of course. Newsome further testified that the warden concurred with the committee's findings that all force used during the extraction had been justified but directed Major Wynn to re-evaluate videotape procedures with his staff.

{¶ 9} Kevin Jenkins, R.N., a psychiatric nurse at SOCF, testified that the mental health department becomes involved any time an inmate is placed in five-point restraints. Jenkins explained that after obtaining an order from a prison physician, he injected plaintiff with Ativan because plaintiff was so combative that Jenkins feared that plaintiff might harm himself or someone else once his restraints were removed.

{¶ 10} Jenkins further stated that he initially examined plaintiff at 6:20 p.m., and that no physical injuries were noted at that time. (Defendant's Exhibit G.) Jenkins examined plaintiff a second time at 8:25 p.m., and noted that there was a small amount of swelling to the outer portion of plaintiff's bilateral eye organs. According to Jenkins, such swelling required no medical treatment.

{¶ 11} William Prichard, a psychiatric/mental retardation nurse at SOCF, testified that he observed plaintiff constantly after he had been placed in restraints and that he

documented plaintiff's behavior at 15-minute intervals. (Plaintiff's Exhibit 1; Defendant's Exhibit J.)

{¶ 12} Prichard also wrote an assessment of plaintiff's condition once the restraints had been removed. (Plaintiff's Exhibit 5.) According to Prichard, plaintiff complained of pain in both his forearms and frontal lobes. Prichard noted that plaintiff's left eye was red, that plaintiff's right forearm was swollen, and that there were indentations on plaintiff's wrists where the restraints had been. Prichard referred plaintiff to the prison physician. Prichard also stated that he checked on plaintiff after he was returned to his cell to make sure that he was not having an adverse reaction to Ativan.

{¶ 13} David Cox, a psychologist at SOCF, testified that a physician's order is required to administer an injection of sedatives to an inmate. Cox also stated that many different behaviors may warrant a sedative, but that the main criteria is whether an inmate presents a risk of harm to himself, to others, or to property. Cox added that an inmate does not have to be on the mental health caseload to receive an injection of a sedative.

{¶ 14} Gary Beven, a psychiatrist at SOCF, testified that an injection of Ativan would be an appropriate treatment option for an agitated inmate who may pose a threat to himself or others.

{¶ 15} Plaintiff testified that he and CO Powell had been engaged in a series of verbal disagreements in the weeks prior to the extraction and that Powell "fabricated" the incident about the weapon to justify an extraction. According to plaintiff, when Fout appeared at his cell with the extraction team, Fout sprayed him with mace and allowed the team to assault him. Plaintiff denies that he was given the opportunity to voluntarily "cuff up" before he was sprayed with mace. Plaintiff further asserts that Barney intentionally videotaped the floor instead of the extraction team. Plaintiff also denies that he was combative at any time when he was in five-point restraints.

{¶ 16} 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. Additionally, 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. 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 in effect in 2003¹ provided:

{¶ 17} "(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.

{¶ 18} "****

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

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

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

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

{¶ 23} "****

{¶ 24} "(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.

¹The court notes that Ohio Adm.Code 5120-9-01 was amended effective July 1, 2004. Since the incident giving rise to plaintiff's complaint occurred on April 20, 2003, the version of Ohio Adm.Code 5120-9-01 in effect prior to the amendment will be referred to throughout this decision.

{¶ 25} “(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.”

{¶ 26} 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. 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.)

{¶ 27} There is no dispute that plaintiff sustained some minor injuries as a result of the extraction. The issue, however, is whether the use of force by the extraction team was lawful under the circumstances. Based upon the testimony and evidence presented at trial, the court finds that the officers’ testimony was more credible than plaintiff’s testimony regarding the justification for, and the actions taken during, the extraction. Accordingly, the court finds that defendant’s use of force was lawful. Additionally, plaintiff has failed to prove either that he was not adequately monitored while he was in five-point restraints or that the use of Ativan was not warranted. In short, the court finds that plaintiff has failed to prove by a preponderance of the evidence that defendant committed a breach of any duty of care it owed to him.

{¶ 28} Having determined both that the cell extraction was justified and that excessive force was not used, the court finds that Lt. Wayne Fout and CO Powell acted

within the scope of their employment with defendant at all times relevant hereto. The court further finds that Lt. Wayne Fout and CO Powell did not act with malicious purpose, in bad faith, or in a wanton or reckless manner toward plaintiff. Consequently, Lt. Wayne Fout and CO Powell are entitled to civil immunity pursuant to R.C. 9.86 and R.C. 2743.02(F). Therefore, the courts of common pleas do not have jurisdiction over any civil action against them based upon the allegations in this case.

{¶ 29} For the foregoing reasons, the court finds that plaintiff has failed to prove any of his claims by a preponderance of the evidence and accordingly, judgment is recommended in favor of defendant.

{¶ 30} *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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