[Cite as *Madden v. Lebanon Correctional Inst.*, 2007-Ohio-1928.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

GREGORY MADDEN

Plaintiff

v.

LEBANON CORRECTIONAL INST.

Defendant

Case No. 2006-06116-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} 1) Plaintiff, Gregory Madden, an inmate incarcerated at defendant, Lebanon Correctional Institution, stated several items of his personal property were deliberately destroyed by his cellmate, inmate Melvin Green, on September 19, 2005. Plaintiff related many of his property items were destroyed in a cell fire started by inmate Green and his television set was damaged beyond repair when Green intentionally threw it over the second floor railing of the cellblock.

{¶2} 2) Plaintiff recalled that during and after the property damage incidents he was taking a shower in the LeCI shower facility. Plaintiff explained the shower facility was, "at least 70 to 80 yards away from the area where Green started the fire." Plaintiff related, while he was showering, Green came into the shower facility and physically assaulted him.

{¶3} 3) According to plaintiff, Green started a fire, destroyed property and committed an assault while LeCI employees Officer Blair and Officer Proctor, who were on duty at the time, but did nothing to prevent or inhibit these criminal acts. Plaintiff contended Blair and Proctor either "knew or should have known that inmate Green was out of control," after Green started a fire and destroyed property. Plaintiff argued Blair and Proctor were negligent in failing to prevent Green from assaulting him. Plaintiff stated inmate Green had previously displayed violent and destructive behavior when he, "[tour] [sic] up a room in the Hamilton County Justice Center where he knock big holes in the walls." Plaintiff maintained LeCI staff knew about inmate Green's past destructive behavior. Plaintiff also maintained he had prior to September 19, 2005, asked for a new cell assignment because he was "not getting along" with Green, but the request was ignored by defendant.

{¶4} 4) Plaintiff contended the property loss he sustained and the physical injuries he suffered at the hands of Melvin Green were proximately caused by negligence on the part of defendant in failing to curtail the known violent behavior of an unruly inmate. Plaintiff filed this complaint seeking to recover the statutory maximum amount permitted $2,500.00, of which $159.00 is for the replacement cost of a television set, $226.99, represents the value of fire damaged property, and $2,114.01, is considered mental anguish based on property loss and for injuries received from the assault. The filing fee

was paid. Plaintiff has not provided any evidence to establish he was injured as a result of the altercation with Green.

{¶5} 5) Plaintiff recalled he was showering in the second floor shower room of the LeCI cellblock J at approximately 8:05 p.m. on September 19, 2005, when he noticed "a lot of smoke outside the shower" and then "heard a very loud sound." Plaintiff recorded, "[a] few minutes after I heard the loud sound," he observed inmate Green pulling down the shower board. Plaintiff noted as he turned toward Green, he was abruptly attacked, being kicked and pummeled about his body.

{¶6} 6) Plaintiff submitted a written statement from Peter J. Atakpu, a fellow inmate who witnessed certain events relevant to this claim since he was present on the first floor of the LeCI cellblock J at approximately 8:05 p.m. on September 19, 2005. Atakpu stated he was standing at the first floor shower when he saw "smoke shooting out of the opening of room 2-J-43," (plaintiff's cell on the second floor). Atakpu further stated he observed the smoke "for about five minutes." During this period that he noticed the smoke, Atakpu related he saw to LeCI Corrections Officers standing on the first floor of the cellblock engrossed in conversation. Atakpu reported, "[a]fter a while the door came open to room 2-J-43 and a burst of smoke came out of the room, along with Inmate Green #496-636, carrying a television down the walkway of the second floor, dragging the television antenna behind him." Atakpu noted he then saw Green throw the television set over the railing of the second floor cellblock. According to Atakpu, the LeCI Corrections Officers who had been talking on the first floor of cellblock J eventually looked up to the second floor, apparently saw Green beating plaintiff, and then went to the second floor to stop Green from continuing the assault.

{¶7} 7) Plaintiff submitted another written statement from inmate, Trenton Pope, who witnessed the events of September 19, 2005, from the first floor of LeCI cellblock J. Pope recorded he saw two LeCI officers standing on the first floor of cellblock J having a conversation. Pope also recorded he observed smoke emanating from 2-J-43, saw inmate Green throw a television set over the second floor railing of cellblock J, and witnessed Green assaulting plaintiff.

{¶8} 8) Defendant acknowledged inmate Green on September 19, 2005, started a cell fire, damaged a television set, and assault plaintiff. However, defendant denied any

liability for any loss or injury plaintiff may have suffered at the hands of inmate Green. Defendant contended it cannot be held liable for the intentional acts of other inmates unless plaintiff can offer sufficient proof of negligence on the part of defendant in failing to prevent a foreseeable act. Defendant stated, "[t]here is no evidence to support the allegation that the defendant's agents knew or should have known of an alleged propensity of inmate Green to destroy property." Additionally, defendant stated, "[t]here is no evidence that inmate Green 'tore up a room' at the Hamilton County Justice Center, and the defendant's agents would not know about such an incident as the county facility is not under the jurisdiction or control of the defendant."

{¶9} 9) Defendant investigated the incidents forming the basis of plaintiff's claim and offered a perspective of the events of September 19, 2005, at LeCI. On that date, LeCI employee, Officer Proctor, was assigned to range 2 (second floor) of cellblock J and LeCI employee, Officer Blair, was assigned to range 1 (first floor) of cellblock J. Defendant noted, Office Proctor was required to make rounds every thirty minutes on range 2 and had apparently just completed a range check when he moved to range 1 to relay information to Officer Blair. At approximately 8:13 p.m., when Officer Proctor was still on range 1 talking to Officer Blair, the Officers, "saw inmate Green come out of cell 2-J-43 and throw a television off the second range onto the first range of the cell block." Defendant recorded, Blair and Proctor, upon witnessing Green's actions, activated the "man down alarm" and hastened to the second range to subdue Green who was already involved in a fight with plaintiff in the second range shower. Apparently after Green was physically restrained, the Officers were informed about a fire in cell 2-J-43 started by Green. Defendant related the fire was immediately extinguished by responded LeCI personnel and the fire damage was minimal; reportedly limited to a mattress and blanket, with no other property being destroyed. Defendant explained, an Investigator with the Division of State Fire Marshall estimated the fire had been burning for about five minutes prior to being extinguished. Defendant denied any of plaintiff's property was destroyed by the fire except for perhaps a green blanket and one towel, although there is no record plaintiff legitimately possessed a blanket. Plaintiff provided a receipt indicating a blanket was purchased.

{¶10} 10) Defendant denied having any knowledge prior to September 19, 2005, regarding any conflict between plaintiff and inmate Green. LeCI personnel do not recall

plaintiff requesting a cell transfer or having problems with Inmate Green before the incidents forming the basis of the present action. Conversely, plaintiff insisted in his response to defendant's investigation report that he informed defendant's staff he was having problems with Green and requested a cell change just days before the September 19, 2005, events. Plaintiff supplied a written statement from a fellow inmate, Eric Brand, who asserted he heard plaintiff inform a LeCI Unit Sergeant about problems with inmate Green. Brand wrote he also heard plaintiff ask for a room change based on his situation with Green. Brand recalled he heard this exchange between plaintiff and the LeCI Unit Sergeant on or about September 14, 2005.

CONCLUSIONS OF LAW

{¶11} 1) This court does not recognize any entitlement to damages for mental distress and extraordinary damages for simple negligence involving property loss. Galloway v. Department of Rehabilitation and Correction (1979), 78-0731-AD; Berke v. Ohio Dept. of Pub. Welfare (1976), 52 Ohio App. 2d 271.

{¶12} 2) Although not strictly responsible for a prisoner's property, defendant had at least the duty of using the same degree of care as it would use with its own property. Henderson v. Southern Ohio Correctional Facility (1979), 76-0356-AD.

{¶13} 3) This court in Mullett v. Department of Correction (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶14} 4) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. Barnum v. Ohio State University (1977), 76-0368-AD.

{¶15} 5) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. Parks v. Department of Rehabilitation and Correction (1985), 85-01546-AD.

{¶16} 6) Defendant is not responsible for actions of other inmates unless an agency relationship is shown or it is shown that defendant was negligent. Walker v. Southern Ohio Correctional Facility (1978), 78-0217-AD.

{¶17} 7) In order to prevail, plaintiff must prove, by a preponderance of the

evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his injuries. Armstrong v. Best Buy Company, Inc. 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, ¶8 citing Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio Misc. 3d 75, 77.

{¶18} 8) "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided by . . . the court ..." Pacher v. Invisible Fence of Dayton, 154 Ohio App. 3d 744, 753, 2003-Ohio-5333, at ¶41, citing Miller v. Paulson (1994), 97 Ohio App. 3d 217, 221; and Mussivand v. David (1989), 45 Ohio St. 3d 314, 318.

{¶19} 9) 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. Reasonable or ordinary care is that degree of caution and foresight which an ordinarily prudent person would employ in similar circumstances. Smith v. United Properties, Inc. (1965), 2 Ohio St. 2d 310.

{¶20} 10) Defendant, however, is not the insurer of inmate safety. Mitchell v. Ohio Dept. of Rehab. and Corr. (1995), 107 Ohio App. 3d 231. Where one inmate intentionally assaults another inmate, a claim for negligence arises only where there was adequate notice of an impending attack. Mitchell, supra at 235.

{¶21} A custodial officer is not obligated to act until he knows, or should know, that the custodial charge is endangered. The legal concept of notice is one of two distinguishable types: actual or constructive.

{¶22} "The distinction between actual and constructive notice has long been recognized. The distinction is in the manner in which notice is obtained or assumed to have been obtained rather than in the amount of information obtained. Wherever, from competent evidence, either direct or circumstantial, the trial of facts is entitled to hold as a conclusion of fact and not as a presumption of law that the information was personally communicated to or received by the party, the notice is actual. On the other hand, constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice or knowledge." In re Estate of Fahle (1950), 90 Ohio App. 195, 197-198.

{¶23} 11) In Baker v. State (1986), 28 Ohio App. 3d 99, the Tenth District Court of

Appeals reviewed a prisoner's claim for damages under similar facts. In that case, plaintiff was assaulted by other inmates shortly after plaintiff had made some "vague statements" to prison guards about his need to be relocated. Plaintiff had also been slapped in the face by one of his assailants on the day of the assault. In affirming the trial court's judgment in favor of defendant, the Court of Appeals held that the prison guards did not have adequate notice of an impending assault and, therefore, were not negligent in failing to prevent the assault. Id. at 100. In so holding, the court emphasized the fact that plaintiff had never requested protective custody or directly expressed his fears of an impending assault to any of defendant's employees. Id at 100.

{¶24} 12) In order to prevail, a plaintiff must show the actions causing his injuries were foreseeable. In the case of an inmate upon inmate assault, actionable negligence arises only where defendant's staff had adequate notice of an impending attack (emphasis added). See Metcalf v. Ohio Dept. of Rehab. & Corr., 2002-Ohio-5082, 2002 Ohio App. LEXIS 5125; Kordelewski v. Ohio Dept. of Rehab. & Corr., 2001 Ohio App. LEXIS 2730 (June 21, 2001), Franklin App. No. 00AP-1109. Plaintiff, in the instant claim, has failed to establish defendant either knew or should have known of an impending attack by inmate Green on plaintiff.

{¶25} 13) Plaintiff has failed to show any causal connection between any damage to his television set or other property damage and any breach of a duty owed by defendant in regard to protecting inmate property. Druckenmiller v. Mansfield Correctional Inst. (1998), 97-11819-AD; Melson v. Ohio Department of Rehabilitation and Correction (2003), 2003-04236-AD, 2003-Ohio-3615.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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