

Court of Claims of Ohio

The Ohio Judicial Center
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RAYSHAN WATLEY

Case No. 2007-02378

Plaintiff

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

v.

JUDGMENT ENTRY

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

{¶1} On May 24, 2007, plaintiff filed a motion for summary judgment. On June 4, 2007, defendant filed a cross-motion for summary judgment and a memorandum contra plaintiff's motion for summary judgment. On July 20, 2007, the court attempted to conduct an oral hearing on the motions; however, plaintiff refused to participate. As a result, a non-oral hearing was held on the motions pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C.

Case No. 2007-02378	- 2 -	JUDGMENT ENTRY
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5120.16. Plaintiff filed this case alleging libel. Specifically, plaintiff asserts that defendant's employee, Brian Felts, authored a false conduct report wherein he accused plaintiff of disrespecting a corrections officer (CO), creating a disturbance, and extortion. Plaintiff states that he was subsequently found not guilty of both creating a disturbance and extortion by the Rules Infraction Board. Defendant argues that plaintiff cannot show injury to his reputation and therefore cannot establish a prima facie case of defamation. Defendant further argues that even if plaintiff were able to establish a prima facie case, Felts' statements are protected by qualified privilege.

{¶5} Plaintiff submitted his own affidavit in support of his motion wherein he restated several of the allegations contained in his complaint.

{¶6} In support of its motion for summary judgment, defendant submitted the affidavit of CO Brian Felts, who described the events that prompted the issuance of the conduct report as follows:

{¶7} "3. On January 24, 2007, while working as a correctional officer at SOCF, I observed [plaintiff] shout at me, 'Hey Felts, I'm writing Stefek's lawsuit unless you drop my charges, Bitch;'

{¶8} "4. Based on my senses, knowledge, and experience as a correctional officer, I wrote a conduct report on [plaintiff] for (a) disrespect to an officer, (b) encouraging or creating a disturbance, and (c) extortion by threats of violence or other means;

{¶9} "5. This conduct report was written as part of my duty, on behalf of [defendant], to maintain the safety and security of SOCF;

{¶10} "6. When I wrote the conduct report, it was my belief that [plaintiff] had violated the rules listed in the conduct report * * *."

{¶11} "Defamation is defined as 'the unprivileged publication of a false and defamatory matter about another * * * which tends to cause injury to a person's reputation or exposes him to public hatred, contempt, ridicule, shame or disgrace * * *.' *McCartney v.*

Case No. 2007-02378	- 3 -	JUDGMENT ENTRY
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Oblates of St. Francis deSales (1992), 80 Ohio App.3d 345, 353. As suggested by the definition, a publication of statements, even where they may be false and defamatory, does not rise to the level of actionable defamation unless the publication is also unprivileged. Thus, the threshold issue in such cases is whether the statements at issue were privileged or unprivileged publications.” *Sullivan v. Ohio Dept. of Rehab.& Corr.*, Ct. of Cl. No. 2003-02161, 2005-Ohio-2122, ¶8.

{¶12} Privileged statements are those that are “made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a right or duty, if made to a person having a corresponding interest or duty on a privileged occasion and in a manner and under circumstances fairly warranted by the occasion and duty, right or interest. The essential elements thereof are good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, publication in a proper manner and to proper parties only.” *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, 244.

{¶13} Furthermore, a qualified privilege can be defeated only by clear and convincing evidence of actual malice. *Bartlett v. Daniel Drake Mem. Hosp.* (1991), 75 Ohio App.3d 334, 340. “Actual malice” is “acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity.” *Jacobs v. Frank* (1991), 60 Ohio St.3d. 111, 116.

{¶14} Based upon the un rebutted affidavit testimony of Brian Felts, the only reasonable conclusion to draw is that the statements contained in the conduct report prepared by Felts were not made with “actual malice” and are protected by a qualified privilege. Therefore, defendant is entitled to judgment as a matter of law. Accordingly, plaintiff’s motion for summary judgment is DENIED and defendant’s motion for summary judgment is GRANTED and 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.

Case No. 2007-02378	- 4 -	JUDGMENT ENTRY
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CLARK B. WEAVER SR.
Judge

cc:

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MR/cmd
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