

# 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  
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TIMOTHY C. JONES

Plaintiff

v.

LEBANON CORRECTIONAL INSTITUTION

Defendant

Case No. 2007-07167

Judge Joseph T. Clark

Magistrate Steven A. Larson

## DECISION

{¶ 1} On August 8, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4.

{¶ 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 the Department of Rehabilitation and Correction (DRC) at the Lebanon Correctional Institution (LeCI) pursuant to R.C. 5120.16. Plaintiff asserts claims of "harassment," defamation, and negligent supervision arising out of several incidents with corrections officers employed by defendant. Defendant argues that plaintiff cannot establish a prima facie case for any of his claims.

{¶ 5} In support of its motion, defendant provided the affidavits of Corrections Officer (CO) Dana James, Corrections Sergeant Gary Brooks, Corrections Lieutenant Jon Tabor, and the institutional inspector, April Barr. All affiants authenticated the documents attached to their affidavits.

{¶ 6} The first incident plaintiff describes occurred on January 3, 2007. Regarding this incident, James states:

{¶ 7} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 8} "3. On January 3, 2007, while monitoring inmate movement in the west corridor at LeCI, I observed [plaintiff] trying to go to the school area without a school pass. I gave [plaintiff] two direct orders to return to his block. After [plaintiff] ignored my direct orders, I handcuffed him and escorted him out of the area. In addition, I wrote a conduct report against [plaintiff] for violating prison rule #21: disobedience of a direct order."

{¶ 9} Plaintiff alleges that James discovered that he was on the mental health case load at LeCI and called him a "crash dummy." James testifies in his affidavit that he "never referred to [plaintiff] as a 'crash dummy.'"

{¶ 10} In regard to the January 3, 2007 incident, Lieutenant Tabor states:

{¶ 11} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 12} "3. On January 3, 2007, I observed Officer James give [plaintiff] a direct order to return to his cell \* \* \*. [Plaintiff] ignored Officer James' order and approached

me about going to school. I told [plaintiff] that he needed to comply with Officer James' order. [Plaintiff] again ignored this order and then I had Officer James handcuff [plaintiff]. While waiting to be processed into segregation, [plaintiff] acted very disrespectfully towards Officer James and even later referred to the officer as a "bitch";

{¶ 13} "4. During this situation, Officer James acted professionally and with great restraint after having [plaintiff] disrespect him."

{¶ 14} Both James and Tabor also stated that they each maintained a professional demeanor while conducting their respective duties, that they were properly trained and supervised, and that they followed all relevant DRC and LeCI policies when interacting with plaintiff.

{¶ 15} The second incident outlined in plaintiff's complaint occurred on March 8, 2007. Regarding this incident, James states:

{¶ 16} "4. On March 8, 2007, while monitoring inmate movement, I observed [plaintiff] trying to go to the school area, but I told him it was too late and to therefore return to his block. [Plaintiff] nonetheless returned again and when I asked him where he was going, [plaintiff] stated that he was going to the captain's office "on [my] ass." I then handcuffed [plaintiff] and escorted him out of the area. While we were waiting for him to enter the isolation area, [plaintiff] threatened me by stating that he was not in prison for life and that he would see me at the Dayton Mall or somewhere else and he would do something to me, because he was not scared. In addition, I wrote a conduct report against [plaintiff] for violating prison rules #8: threatening bodily harm to another with or without a weapon; and #21: disobedience of a direct order."

{¶ 17} The third incident involves a "theft-loss" report that plaintiff submitted concerning a pair of shoes. Sergeant Brooks investigated plaintiff's report and states in his affidavit:

{¶ 18} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 19} "3. As part of my duties as a sergeant, I investigated a theft-loss report submitted by [plaintiff], in which he claimed that his Nike shoes were taken to the property room when he had been sent to segregation, but were then missing. During my investigation, I discovered the following: [plaintiff] either left his Nike shoes in A-

Block or never had the shoes to begin with, and then [plaintiff] tried to have Inmate Smith lie and say that [plaintiff] did pack up his Nike shoes. Based on this investigation, I determined that the theft-loss report that [plaintiff] submitted was false. In addition, I wrote a conduct report against [plaintiff] for violating prison rule #27: lying to departmental employees;

{¶ 20} “4. Based upon my senses, knowledge, and experience as a correctional officer, I wrote the conduct report on [plaintiff] for violating the above stated rule;

{¶ 21} “5. The conduct report was written as part of my duty, on behalf of DRC, to maintain the safety and security of LeCI;

{¶ 22} “6. When I wrote the conduct report, it was my belief that [plaintiff] had violated the rule listed in the conduct report;

{¶ 23} “7. While performing my duties in writing the conduct report on [plaintiff] and in conducting the theft-loss investigation, LeCI and DRC policy was properly followed;

{¶ 24} “8. I was properly trained and supervised regarding the writing of conduct reports and in conducting investigations;

{¶ 25} “9. I maintain a professional demeanor in conducting my duties as a sergeant. At no time relative to this Complaint, nor any other time, have I spoken words of a harassing nature to [plaintiff].”

{¶ 26} April Barr was the institutional inspector during the time Sergeant Brooks was investigating plaintiff’s claims. She states:

{¶ 27} “2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶ 28} “3. [Plaintiff] filed numerous grievances regarding a theft-loss report that he had submitted as well as a conduct report filed by Sgt. Brooks against [plaintiff] for submitting a false theft-loss report. [Plaintiff] alleged that Sgt. Brooks acted disrespectfully towards [plaintiff] regarding the investigation and that the investigation was not conducted properly. I investigated these grievances by interviewing various staff members as well as reviewing DRC and LeCI policies. Based upon my investigation, I denied all of [plaintiff’s] grievances regarding these matters. After [plaintiff] appealed my decisions, the Chief Inspector affirmed each decision.

{¶ 29} “4. Based on my senses, knowledge, and experience as institutional inspector, I investigated [plaintiff’s] grievances and properly denied each one;

{¶ 30} “5. While performing my duties in investigating and deciding [plaintiff’s] grievances, LeCI and DRC policy was properly followed;

{¶ 31} “6. I maintained a professional demeanor in conducting my duties as institutional inspector. At no time relative to this Complaint, nor any other time, have I spoken words of a harassing nature to [plaintiff].”

{¶ 32} The court construes plaintiff’s claim for “harassment” as a claim for intentional infliction of emotional distress. In order to sustain such a claim, plaintiff must show that: “(1) defendant intended to cause emotional distress, or knew or should have known that actions taken would result in serious emotional distress; (2) defendant’s conduct was extreme and outrageous; (3) defendant’s actions proximately caused plaintiff’s psychic injury; and (4) the mental anguish plaintiff suffered was serious.” *Hanly v. Riverside Methodist Hosp.* (1991), 78 Ohio App.3d 73, 82; citing *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 34.

{¶ 33} To constitute conduct sufficient to give rise to a claim of intentional infliction of emotional distress, the conduct must be “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” *Yeager v. Local Union 20, Teamsters* (1983), 6 Ohio St.3d 369, 375, quoting 1 Restatement of the Law 2d, Torts (1965) 73, Section 46, Comment d.

{¶ 34} “It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by ‘malice,’ or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. \* \* \* Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’ The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” *Id.* at 374-375.

{¶ 35} Upon review, the court finds that no reasonable trier of fact could find the alleged conduct either extreme or outrageous as is necessary to support a claim for

intentional infliction of emotional distress. Accordingly, plaintiff's claims of "harassment" and intentional infliction of emotional distress must fail.

{¶ 36} "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. 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.

{¶ 37} 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.

{¶ 38} 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.

{¶ 39} Based upon both the unrefuted affidavit testimony provided by defendant, and a review of the attached conduct reports, the court finds that no reasonable trier of fact could conclude that the statements contained in such reports were made either with knowledge that they were false or with reckless disregard as to their truth or falsity. Thus, the statements are protected by a qualified privilege as a matter of law.

{¶ 40} In order for plaintiff to prevail on a claim for negligent hiring or retention, he must prove: 1) the existence of an employment relationship; 2) the employee's

incompetence; 3) the employer's actual or constructive knowledge of such incompetence; 4) the employee's act or omission causing plaintiff's injuries and 5) the employer's negligence in hiring or retaining the employee as the proximate cause of plaintiff's injuries. *Evans v. Ohio State University* (1996), 112 Ohio App.3d 724.

{¶ 41} Based upon the affidavits provided by defendant, and the fact that plaintiff has not provided the court with any evidence to the contrary, the court finds that plaintiff has failed to produce any evidence to support a finding either that defendant's employees involved in this case were incompetent or that defendant had any knowledge of alleged incompetence. Therefore, plaintiff's claim of negligent hiring, training, and supervision is without merit.

{¶ 42} For the foregoing reasons, the court finds that no material questions of fact exist for trial and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.



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## JUDGMENT ENTRY

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, 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.

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JOSEPH T. CLARK  
Judge

cc:

Daniel R. Forsythe  
Assistant Attorney General  
150 East Gay Street, 18th Floor  
Columbus, Ohio 43215-3130

Timothy C. Jones  
1104 Baltimore Street  
Middletown, Ohio 45044

MR/cmd  
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