

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

JUAN REYES

Plaintiff

v.

LEBANON CORRECTIONAL INSTITUTION, et al.

Defendants

Case No. 2007-05491

Judge Joseph T. Clark

Magistrate Steven A. Larson

DECISION

{¶ 1} On July 2, 2007, defendants filed a motion to dismiss plaintiff's complaint. On December 13, 2007, the court issued an entry dismissing all of plaintiff's claims except for his defamation claim. On February 5, 2008, defendants filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court on 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 defendant, Department of Rehabilitation and Correction (DRC), at the Lebanon Correctional Institution (LeCI) pursuant to R.C. 5120.16. Plaintiff alleges that on or about March 20, 2007, LeCI Warden Ernie Moore "signed and transmitted" a document to the Bureau of Classifications that recommended that plaintiff be transferred to another institution and that his security classification be increased. According to plaintiff, the recommendation contained the statement that plaintiff "admitted to striking" another inmate and that Moore knew such statement to be false. Defendants argue that the statement is protected by a qualified privilege.

{¶ 5} In support of the motion for summary judgment, defendants provided the affidavit of Beth Heard, wherein she states:

{¶ 6} "1. I am a Unit Manager at [LeCI] in Lebanon, Ohio. I have been employed by [DRC] for 11 years. In March of 2007, I was a member of the Unit #1 Classification Committee that recommended the security classification and institutional transfer of [plaintiff].

{¶ 7} "2. This recommendation was based upon the committee's review of the investigation of an incident on 2/6/07 which involved [plaintiff].

{¶ 8} "3. On 2/6/07, inmate Bush * * * reported to [LeCI] staff that he had been assaulted by several inmates in his cell. Inmate Bush had red marks and bruising on his face and neck. He stated that [plaintiff] and inmate Barrera * * * had entered his cell on 2/6/07 and hit him.

{¶ 9} "4. Video footage from this date was collected and viewed which showed both inmates entering inmate Bush's cell.

{¶ 10} "5. On 2/21/07, [plaintiff] was interviewed and stated that inmate Bush had owed an old debt, but refused to pay. [Plaintiff] admitted to striking inmate Bush on

one occasion and on another date, he stated that he 'Just went up there to make sure no one else got hurt.'

{¶ 11} "6. Inmate Barrera stated that he and [plaintiff] went to Bush's cell to collect and when inmate Bush refused to pay, they hit him.

{¶ 12} "7. From this information, the Unit Classification Committee concluded that [plaintiff] had displayed assaultive behavior, and due to the nature of the incident, it recommended that [plaintiff] receive a security increase and be transferred to an appropriate level 4B institution. It was noted in the recommendation that [plaintiff] additionally has another institutional separation from inmate Rosales * * * who is housed in Warren Correctional.

{¶ 13} "8. The Committee's 3/6/07 findings and recommendation were then forwarded to Warden Ernie Moore for his approval and from Warden Moore, to the Bureau of Classifications."

{¶ 14} "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.

{¶ 15} 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.

{¶ 16} 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.

{¶ 17} Based upon the unrefuted affidavit testimony of Beth Heard, the court finds that no reasonable trier of fact could conclude that the statements contained in the committee’s recommendation which Moore approved 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.

{¶ 18} Based upon the foregoing, the court finds that no material questions of fact exist for trial and that defendants are entitled to judgment as a matter of law. Accordingly, defendants’ motion for summary judgment shall be granted and judgment shall be rendered in favor of defendants.

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JUDGMENT ENTRY

A non-oral hearing was conducted in this case upon defendants' motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendants' motion for summary judgment is GRANTED and judgment is rendered in favor of defendants. 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.

JOSEPH T. CLARK
Judge

Cc:

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MR/cmd
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