

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

CHARLES HUGHES

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-03331

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

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Allen Correctional Institution (ACI) pursuant to R.C. 5120.16. This case arises out of a July 24, 2006 incident in which plaintiff was assaulted by inmate Shawn Banks.

{¶ 3} The incident took place in housing unit 3A, where both plaintiff and Banks lived. Banks had recently been transferred there from the residential treatment unit (RTU) at ACI, which is a housing unit dedicated to inmates with mental health issues. Banks was assigned to a four-man cell in unit 3A that included inmates Jose Martinez and Kenneth Wright. Banks was on a psychotropic medication regimen at the time, but Martinez and Wright testified that Banks stopped taking his medication a few days prior to the incident. According to Martinez and Wright, after Banks stopped taking his medication, he slept very little, mumbled to himself a lot, and seemed agitated.

Martinez and Wright testified that they were concerned with Banks' behavior such that they reported it to Corrections Officer (CO) William Snider on July 23, 2006.

{¶ 4} According to Snider, immediately after hearing these concerns, he referred the matter to his supervisor, who instructed him to notify the mental health department. When Snider contacted the mental health department, a nurse requested that Banks be sent there for an evaluation. According to Snider, he then ordered Banks to report to the mental health department immediately and Banks left unit 3A ostensibly for that purpose. However, Banks never appeared for the evaluation.

{¶ 5} Unit 3A is connected by a hallway to unit 3B, and together they comprise a building known as "3 House." In each unit, one CO supervises 140-165 inmates. However, defendant's policy allows for the CO posted in either unit to leave his or her post if called upon to assist with a disturbance in the adjacent unit.

{¶ 6} Snider was posted in unit 3A during the first shift on July 24, 2006. At approximately 1:30 p.m., the CO posted in unit 3B pressed a "man-down" alarm to request assistance with breaking up a fight. Snider responded to the scene, helped break up the fight, and then went to a sergeant's office in unit 3B to complete a report. During the 10-15 minutes that Snider was absent from unit 3A, plaintiff was assaulted.

{¶ 7} Plaintiff testified that he remembers nothing of the assault and that his last memory beforehand was standing near a pool table waiting to play. Inmate Garrett Turner, who testified by way of deposition, stated that he too was waiting to play pool when the assault took place. According to Turner, Banks was playing in the current game but lost, at which point plaintiff reached for a ball rack to arrange the balls for a new game. Turner stated that Banks then proceeded, unprovoked, to punch plaintiff in the head twice.

{¶ 8} Plaintiff fell to the floor and lost consciousness. Inmate James Wright, who was playing table tennis nearby, testified that Banks stood over plaintiff in a trance with clenched fists until other inmates told him to go to his cell, which he did. Snider

returned to unit 3A a minute or two after the assault and promptly requested additional COs and medical personnel. Plaintiff was transported to St. Rita's Medical Center in Lima, where he underwent emergency surgery for head injuries. Plaintiff testified that he remained under observation in the hospital and then the Corrections Medical Center in Columbus through approximately August 9, 2006.

{¶ 9} Plaintiff alleges that defendant was negligent in failing to prevent the assault. 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 defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and protection of its prisoners; however, the state is not an insurer of inmate safety. *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App.3d 517, 526.

{¶ 10} Defendant is not liable for the intentional attack on one inmate by another unless it has adequate notice, either actual or constructive, of an impending assault. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235; *Metcalf v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-292, 2002-Ohio-5082. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶ 11} The evidence demonstrates that defendant did not have actual notice of the impending assault. According to Martinez and Kenneth Wright, their conversation with Snider on the day before the incident pertained to Banks not taking his medication and behaving erratically, but they did not inform Snider that Banks posed a threat to

anyone. Plaintiff admitted that Banks had never threatened him and that he did not even know Banks. Indeed, Banks testified that he did not know whom he assaulted and he offered no explanation for the assault.

{¶ 12} Plaintiff contends, though, that defendant had constructive notice that Banks was dangerous due to his history of mental illness. However, Banks had been under treatment for mental illness since entering defendant's custody in 2000, and the testimony at trial regarding his conduct during that time proved only that his behavior was erratic, not violent or threatening. For instance, CO Shanell Thompson testified that she had observed Banks acting "bizarre" at various times throughout his incarceration at ACI, but that she never knew of him threatening anyone. Sergeant Phillip Colley testified that he became familiar with Banks when Banks lived in the RTU, but that he never observed violent behavior from him. Snider testified that he was posted in housing unit 3A throughout July 2006 and that he never knew of Banks threatening anyone. Kenneth Wright testified that he never observed Banks threaten anyone. According to Turner, Banks acted strangely and appeared to be a "loose cannon" during the time in which he lived in housing unit 3A, but Turner stated that Banks' behavior never concerned him enough to report it to defendant's staff.

{¶ 13} In spite of Banks' mental health issues, nothing in the evidence suggests that he showed any propensity for assaultive behavior such that defendant should have known of the impending assault upon plaintiff. Upon review, the court finds that plaintiff has failed to establish that defendant had either actual or constructive notice of the assault.

{¶ 14} Plaintiff contends that defendant is nonetheless liable for inadequate security procedures that permitted unit 3A to go unsupervised at the time of the assault. However, Major Mark Bishop, chief of security at ACI, credibly testified that the security procedures for unit 3A were appropriate in that ACI is a minimum-to-medium security

institution, and he further testified that such procedures were complied with at all times relevant.

{¶ 15} Moreover, the Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined * * * in accordance with the same rules of law applicable to suits between private parties * * *’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State* (1984), 14 Ohio St.3d 68, 70. Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish* (1979), 441 U.S. 520, 547.

{¶ 16} The court finds that defendant's decisions pertaining to the allocation of COs are characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising therefrom.

{¶ 17} Based upon the foregoing, the court finds that plaintiff has failed to prove his claim of negligence by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

STEVEN A. LARSON
Magistrate

cc:

Daniel R. Forsythe
Eric A. Walker
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Richard F. Swope
6504 East Main Street
Reynoldsburg, Ohio 43068-2268

Magistrate Steven A. Larson

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