[Cite as *Griffin v. Dept. of Rehab. & Corr.*, 2009-Ohio-4015.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
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www.cco.state.oh.us

MARK GRIFFIN, SR.

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant
Case No. 2005-10861

Judge J. Craig Wright
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 before a magistrate on the issue of liability.

{¶ 2} At all times relevant, plaintiff was an inmate at the Mansfield Correctional Institution pursuant to R.C. 5120.16. On August 31, 2005, at 6:00 p.m., plaintiff was using the prison library when he was approached by Corrections Officer (CO) Lyn R. Lewis regarding the daily "pill call." Plaintiff wished to go to pill call to receive his mental health medication but he did not have his pass. According to plaintiff, his pass had been in his pants pocket and it was destroyed when his pants were washed. Lewis told plaintiff that he could not go to pill call without a pass and instructed him to either remain in the library and read a book or return to his bunk. Plaintiff refused to go to his bunk and responded by saying, "No, I'm not going to get a book and read it." Lewis interpreted plaintiff's response as insubordination, a violation of prison rules, and he ordered plaintiff into the hallway to be handcuffed. Once plaintiff was handcuffed, Lewis

contacted "the foot patrol" to escort plaintiff back to his pod where plaintiff was to pack up his belongings and go to segregation. Plaintiff claims that during the process of being handcuffed his wrist and thumb were twisted, causing him injury.

{¶ 3} After plaintiff was removed from the library and handcuffed, the foot patrol officer, CO Paul Frye, escorted plaintiff to the captain's office where Lewis' handcuffs were removed and another set applied. During the process of removing the first set of handcuffs, the key broke in the lock; the cuffs were eventually unlocked and removed. Next, plaintiff was taken to the medical facility where he was checked for any injures. The medical exam report (Plaintiff's Exhibit D) notes, "slight bruising to wrist, mostly right wrist." No medical treatment was required.

{¶ 4} Plaintiff alleges that CO Lewis was negligent for failing to allow him to go to pill call and, further, that the manner in which Lewis handcuffed him constituted excessive force. Plaintiff admits, however, that he did not have his pill call pass; that he told Lewis, "you can't make me read a book" and "this isn't over, I'll see you in court"; and that his scratches could have been caused by the removal of the handcuffs in the captain's office. Plaintiff also admits that failing to receive his medication did not cause him any harm and that he had voluntarily skipped pill call in the past because "it was no big deal!"

{¶ 5} Lewis explained that inmates are required to carry a white copy of their pill pass and, without such a pass, they are not permitted to go to pill call. The purpose of the pass is to assure that the inmate will not be cited for being "out of place" in the institution. Lewis testified that the incident with plaintiff started in the prison library. As he released inmates for pill call, plaintiff failed to display his pass and was not permitted to go to pill call. Lewis stated that plaintiff became loud and told him he "did not need no fuc * * * * pass." When plaintiff resorted to profanity and threats, Lewis removed him from the library and into the hallway where he proceeded to handcuff plaintiff behind his

back. Lewis called for an escort to take plaintiff to segregation. According to Lewis, plaintiff did not complain that the handcuffs were too tight while in his presence.

{¶ 6} CO Frye was working in zone one, foot patrol when he was called by Lewis to escort plaintiff back to his block to pack up and then be taken to disciplinary segregation. During the transport, plaintiff complained that the handcuffs were too tight and requested that Frye check them. While checking the handcuffs, Frye broke the key in the lock. Plaintiff was then escorted to the captain's office where the original handcuffs were eventually removed and a second set applied. Frye testified that handcuffs often malfunction and it is not unusual that they have to be removed and reapplied. He further testified that he did not observe any injuries to plaintiff's hands when reapplying the handcuffs.

{¶ 7} Although plaintiff claims that defendant negligently denied him the opportunity to go to pill call, the testimony establishes that prison rules require inmates to display a pass to permit them to go to medical. The Supreme Court of Ohio has held that "[p]rison regulations * * * are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson, 79* Ohio St.3d 477, 479, 1997-Ohio-139. "A breach of [defendant's] internal regulations in itself does not constitute negligence. *Williams v. Ohio Dept. of Rehab. & Corr.* (1993), 67 Ohio Misc.2d 1,3. See also *Horton v. Ohio Dept. of Rehab. & Corr.,* Franklin App. No 05AP-198, 2005-Ohio-4785. Therefore, to the extent plaintiff alleges that defendant was negligent in not permitting him to go to pill call without his pass, such a claim is without merit.

{¶ 8} With regard to plaintiff's claim that the COs used excessive force while handcuffing him, the Ohio Administrative Code sets forth the circumstances under which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) provides, in relevant part:

{¶ 9} "(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate or third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

{¶ 10} "(a) Self-defense from physical attack or threat of physical harm;

{¶ 11} "(b) Defense of another from physical attack or threat of physical attack;

{¶ 12} "(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders;

{¶ 13} "(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;

{¶ 14} "(e) Prevention of an escape or apprehension of an escapee; or

{¶ 15} "(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm."

{¶ 16} The court has recognized that "corrections officers have a privilege to use force upon inmates under certain conditions. * * * Obviously 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Internal citations omitted.)

{¶ 17} Plaintiff testified that Lewis unnecessarily twisted his wrist and thumb while handcuffing him outside of the library. He also claimed that the key broke in the handcuffs when the transport CO tried to exchange handcuffs and that it took more than one CO to free him from the original set of handcuffs.

{¶ 18} The court finds that the CO's actions complied with Ohio Adm.Code 5120-9-01(C)(2)(c) inasmuch as Lewis used minimal force to subdue and control plaintiff after he refused to follow a direct order and used both profanity and threats in defiance of such order. For the foregoing reasons, the court finds that plaintiff failed to prove any of the claims alleged in his complaint and judgment is therefore 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).

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STEVEN A. LARSON
Magistrate

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Magistrate Steven A. Larson

SAL/cmd
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