[Cite as *Reid v. Dept. of Rehab. & Corr.*, 2009-Ohio-4696.]

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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MAURICE REID

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant
Case No. 2009-01948

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

DECISION

{¶ 1} On June 9, 2009, defendant filed a combined motion for summary judgment pursuant to Civ.R. 56(B) and for judgment on the pleadings pursuant to Civ.R. 12(C). On July 29, 2009, plaintiff filed a "motion to stay consideration of defendant's motions" to obtain opposing affidavits.

{¶ 2} On June 25, 2009, the court issued a scheduling entry setting defendant's motion for a non-oral hearing on July 7, 2009. Civ.R. 56(C) provides, in part, that "[t]he adverse party prior to the day of hearing may serve and file opposing affidavits." The court finds that plaintiff was given sufficient notice of the hearing date and did not comply with Civ.R. 56(C). Accordingly, plaintiff's "motion to stay" is DENIED. Defendant's motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

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

{¶ 4} "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.

{¶ 5} Civ.R. 12(C) provides:

{¶ 6} "After the pleadings are closed but within such times as not to delay the trial, any party may move for judgment on the pleadings."

{¶ 7} A motion for judgment on the pleadings presents only questions of law and it may be granted only where no material factual issues exist and when the moving party is entitled to judgment as a matter of law. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165-166. "Pursuant to Civ.R. 12(C), the pleadings must be construed liberally and in a light most favorable to the party against whom the motion is made along with the reasonable inferences drawn therefrom." *Burnside v. Leimbach* (1991), 71 Ohio App.3d 399, 402.

{¶ 8} At all times relevant, plaintiff was an inmate in the custody and control of defendant at the Ross Correctional Institution (RCI) pursuant to R.C. 5120.16. Plaintiff alleges that RCI Corrections Officer (CO) Cook and CO Warner wrote false conduct reports about him. Plaintiff further alleges that he reported the actions of Cook and Warner and that thereafter the two COs "harassed" him by telling other inmates that he was a "snitch," by having other inmates pour urine on his bed, and by having an inmate "plant hooch" in his cell. Finally, plaintiff alleges that defendant improperly confined him to his cell and failed to transfer him to a new cell block upon his request.

{¶ 9} In support of its motion for summary judgment defendant provided the affidavits of Cook and Warner. Cook states:

{¶ 10} "1. I am currently employed as a full time employee by [defendant] as a [CO] at [RCI] in Chillicothe Ohio.

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

{¶ 12} "* * *

{¶ 13} "4. I have never made any untrue statements, in writing or spoken, about [plaintiff].

{¶ 14} "5. Any reports, oral or written, I made about [plaintiff] were made on behalf of [defendant] and RCI as part of my duties to maintain safety and security at RCI.

{¶ 15} "6. I have never given a false report, oral or written about [plaintiff].

{¶ 16} "7. I have never harassed [plaintiff].

{¶ 17} "8. I have never asked an inmate at RCI to put hooch in [plaintiff's] cell. Hooch is jail made wine and is considered contraband.

{¶ 18} "9. I have never told any inmates at RCI that [plaintiff] was a 'snitch', or that he tells staff which inmates break into cells, fight or steal food from the kitchen.

{¶ 19} "10. I have never authored false reports about [plaintiff].

{¶ 20} "11. I have never filed conduct reports about [plaintiff] in an attempt to harass him."

{¶ 21} Warner makes the same averments in his affidavit: that he never made false statements about plaintiff, that he never authored false reports about plaintiff, that he never told other inmates that plaintiff was a "snitch," and that he never harassed plaintiff.

{¶ 22} "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.

{¶ 23} 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.

{¶ 24} 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 defined as "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.

{¶ 25} Plaintiff did not file an affidavit either in support of his claims or to dispute the averments of Cook and Warner.

{¶ 26} Civ.R. 56(E) provides in part:

{¶ 27} "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

{¶ 28} Based upon the undisputed affidavits provided by Cook and Warner the court finds that they did not make any defamatory statements about plaintiff. Accordingly, defendant is entitled to judgment as a matter of law on plaintiff's defamation claim.

{¶ 29} 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.

{¶ 30} 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.

{¶ 31} “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.

{¶ 32} Based upon the undisputed affidavit testimony offered by defendant, the court finds that plaintiff cannot establish a claim for the intentional infliction of emotional distress. Accordingly, defendant is entitled to judgment as a matter of law on plaintiff’s claims alleging “harassment” by, or at the orders of, Cook and Warner.

{¶ 33} With regard to plaintiff’s claims that he was improperly confined to his cell and denied a transfer to a different housing unit, 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.

{¶ 34} 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. "[D]ecisions relating to a prisoner's transfer to different institutions, classification and security status concern prison security and administration and are executive functions that involve a high degree of official discretion." *Deavors v. Ohio Dept. of Rehab. & Corr.* (May 20, 1999), Franklin App. No. 98AP-1105.

{¶ 35} The court finds that defendant's decisions to confine plaintiff to his cell and to assign him to a housing unit are characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising therefrom.

{¶ 36} Based upon the foregoing, the court finds that defendant is entitled to judgment as a matter of law on all of plaintiff's claims. Accordingly, defendant's combined motion for summary judgment and judgment on the pleadings 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 combined motion for summary judgment and for judgment on the pleadings. For the reasons set forth in the decision filed concurrently herewith, defendant's motion 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.

_____
CLARK B. WEAVER SR.
Judge

cc:

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MR/cmd
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