

Court of Claims of Ohio

The Ohio Judicial Center
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Columbus, OH 43215
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SONYA JACKSON

Plaintiff

v.

NORTHEAST PRE-RELEASE CENTER

Defendant

Case No. 2008-01715

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

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging civil conspiracy and intentional infliction of emotional distress. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. This case arises as a result of an altercation between plaintiff and fellow inmate Lavetta Jones in June 2007. Plaintiff claims that Jones and inmates Ebony Bowie and Marilyn Scott gave written statements to defendant's staff in which they falsely accused plaintiff of touching Jones' feet with her breast. Plaintiff testified that the false accusations were a pretext to have her removed from the cubicle she shared with Jones, Bowie, and Scott. According to plaintiff, Jones, Bowie, and Scott disliked her because she had admitted that she was attracted to women.

{¶ 3} Plaintiff testified that as a result of the inmates' statements, she was placed in segregation and subsequently interviewed by the State Highway Patrol, but

that no formal criminal charges were ever filed against her. Plaintiff also testified that the frequency of counseling sessions that she was required to attend increased from twice per month, to once per week as a result of the false accusations. Plaintiff also alleges to have suffered post-traumatic stress disorder, depression, nightmares, and other emotional difficulties as a result of the false accusations. According to plaintiff, corrections officers failed to follow proper procedure in handling the accusations and failed to punish the inmates for filing false statements, in furtherance of a civil conspiracy against her.

{¶ 4} Civil conspiracy is “a malicious combination of two or more persons to injure another in person or property, in a way not competent for one alone, resulting in actual damages.” *Kenty v. Transamerica Premium Ins. Co.*, 72 Ohio St.3d 415, 419, 1995-Ohio-61, quoting *LeFort v. Century 21-Maitland Realty Co.* (1987), 32 Ohio St.3d 121, 126. However, “[a]n underlying unlawful act is required before a civil conspiracy claim can succeed.” *Williams v. Aetna Fin. Co.*, 83 Ohio St.3d 464, 475, 1998-Ohio-294. “The malice involved in the tort is ‘that state of mind under which a person does a wrongful act purposely, without reasonable or lawful excuse, to the injury of another.’” *Id.*, quoting *Pickle v. Swinehart* (1960), 170 Ohio St. 441, 443.

{¶ 5} To prevail on a claim of intentional infliction of emotional distress, 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.

{¶ 6} Corrections Officer (CO) Carletta Pearson testified that the written statements presented to her by Jones, Bowie, and Scott were both unsolicited and voluntary. Pearson also testified that she did not have any reason either to believe or to

disbelieve the substance of the statements. Pearson stated that she instructed the inmates to turn the statements over to Corrections Sergeant Fowler.

{¶ 7} Institutional investigator Melissa Cantoni testified that, according to established policy, inmates are immediately separated and sent to “medical” when an accusation of sexual assault is made. Thereafter, the alleged perpetrator is placed in segregation where she is to remain until the investigation is completed.

{¶ 8} Sergeant Fowler testified that when Jones, Bowie, and Scott presented their written statements to him, he issued a conduct report and began an investigation. Sergeant Fowler took additional statements from the inmates, prepared a questionnaire for plaintiff, and conducted an interview with her. Sergeant Fowler stated that, as a result of the investigation, he concluded that plaintiff had touched Jones inappropriately and he cited her for a violation of institutional rules.¹ In his report, Sergeant Fowler noted that plaintiff had admitted that her breast came into contact with Jones’ foot but stated that the contact was accidental.

{¶ 9} Corrections Lieutenant Vizcarrondo testified that, based upon a previously conducted investigation and Sergeant Fowler’s recommendation, plaintiff remained in segregation. Corrections Lieutenant Kevin Callari testified that whenever an inmate is placed in segregation, a report of security patrol must be completed, that such a report was filled out with regard to plaintiff, and that he signed the report. Lieutenant Callari stated that plaintiff was placed in segregation based upon a recommended action from Sergeant Fowler and Lieutenant Cantoni, and after the investigation into the alleged sexual assault. He testified that he signed an incident report placing plaintiff on “constant watch” while in segregation because plaintiff had made statements to the effect that she would harm herself if placed in segregation. He testified that there is no need for such a report in a typical segregation case, but that this incident was out of the ordinary.

{¶ 10} According to Cantoni, plaintiff was ultimately found not guilty of sexual assault by the Rules Infraction Board (RIB). The RIB made no determination whether inmates Jones, Bowie, and Scott falsified their reports of a sexual assault. According to Lieutenant Vizcarrondo, the RIB was responsible for determining whether witnesses have made false allegations, and what discipline, if any, should be handed down to those who make such allegations.

{¶ 11} Based upon the totality of the evidence, the court finds that plaintiff has failed to demonstrate that defendant's staff conspired with inmates Jones, Bowie, and Scott to inflict serious emotional distress. The testimony at trial established that the inmates filed unsolicited, voluntary statements alleging sexual assault by plaintiff. As a result of the voluntary statements, an investigation was commenced by defendant's staff in the ordinary course of business. That investigation resulted in a recommendation that plaintiff be placed in segregation.

{¶ 12} Plaintiff alleges that Jones, the alleged victim, was never taken to medical and that, as a result, defendant should be held liable. However, even assuming that Jones was never taken to medical, that alone does not establish that defendant conspired with the inmates. Indeed, given the non-violent nature of the alleged assault, a medical evaluation was clearly unnecessary.

{¶ 13} All of the testimony persuades the court that defendant took required action when confronted with unsolicited statements made by inmates Jones, Bowie, and Scott. CO Pearson testified that she did not have any reason to disbelieve the inmates who made the voluntary statements. Additionally, following the decision of the RIB, plaintiff made a written inquiry of Lieutenant Cantoni as to the procedure for filing a suit against inmates who had "lied to staff." (Defendant's Exhibit L.) In short, without evidence establishing that defendant knew or should have known the statements were

¹A Mr. Bertram is identified as an "investigator" in Sergeant Fowler's "Investigatory Interview Disposition." (Defendant's Exhibit N.) Bertram did not testify in this matter.

false, the court must conclude that defendant acted without the required intent to conspire against plaintiff and without the necessary malice toward plaintiff.

{¶ 14} Furthermore, plaintiff failed to establish that defendant's conduct was "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 Restatement of the Law 2d, Torts (1965) 73, Section 46, Comment d. "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.

{¶ 15} As stated above, defendant followed established procedure for dealing with accusations of sexual assault. Although defendant knew that placing plaintiff in segregation would cause her to suffer emotional distress, in the context of the custodial relationship and in light of the obvious institutional security issues that arise out of an accusation of sexual assault, such conduct was neither outrageous in character nor extreme in degree. Additionally, plaintiff was promptly released from segregation upon being found not guilty of the charge.

{¶ 16} Based upon the foregoing, the court finds that plaintiff failed to prove any of her claims against defendant by the preponderance of the evidence. Accordingly, it is recommended that judgment be entered 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

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Magistrate Steven A. Larson

LP/GWP/cmd
Filed September 8, 2009
To S.C. reporter October 6, 2009