

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

PATRICK J. DAVIS

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-11036-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Patrick J. Davis, a former inmate incarcerated at defendant, Southern Ohio Correctional Facility (“SOCF”), alleged he was harassed, intimidated, and verbally abused by SOCF employee, Officer Gunn. Plaintiff related Officer Gunn constantly brandished the canister of mace he carried while making security rounds in plaintiff’s cellblock. Plaintiff also related Officer Gunn used racial slurs when talking to him specifically calling him derogatory names. Plaintiff noted Officer Gunn told him “that his power was in his ‘night stick’ and (mace).” Plaintiff stated Officer Gunn “caused me emotional distress, by intentionally inflicting emotional distress upon me.” Plaintiff filed this complaint seeking damages in the amount of \$1,000.00, claiming he “suffered an extreme amount of distress” due to the alleged acts of Officer Gunn. Plaintiff contended Officer Gunn “attacked me racially, using both verbal and visual tactics to instill fear in me, causing me to avoid eating, recreating, and (showering) for 3 days until he was removed.” Payment of the \$25.00 filing fee was waived.

{¶ 2} On September 18, 2008, plaintiff filed a grievance with defendant outlining the issues he had with Officer Gunn regarding racial slurs and perceived intimidation. Plaintiff requested Officer Gunn be removed from his designated work assignment in

plaintiff's cellblock. In responding to plaintiff's grievance, defendant noted Officer Gunn was "no longer a regular officer in J3 (plaintiff's cellblock)."

{¶ 3} Initially, defendant argued plaintiff failed to offer sufficient evidence to prove the elements constituting intentional infliction of emotion distress. Defendant stated, "[i]n order to prevail on a claim of intentional infliction of emotional harm, the plaintiff must prove by a preponderance of the evidence that (1) the defendant intended to cause the plaintiff serious emotional distress, (2) the defendant's conduct was extreme and outrageous, and (3) the defendant's conduct was the proximate cause of plaintiff's serious emotional distress." *Phung v. Waste Management Inc.* 71 Ohio St. 3d 408, 1994-Ohio-389, 644 N.E. 2d 286. Defendant asserted Officer Gunn specifically denied any of the conduct alleged in plaintiff's complaint. Defendant acknowledged Officer Gunn was issued a canister of OC spray and a PR 24 (stick) as part of normal equipment issue and these items were worn on his belt therefore making the items visible to inmates housed in the J-3 cellblock. Defendant denied Officer Gunn threatened plaintiff with the canister of OC spray or PR 24 or acted in any way that would be considered "extreme and outrageous." Additionally, defendant denied Officer Gunn directed any racial slur or racial epithet to plaintiff. Defendant cited *Yeager v. Local Union 20* (1983), 6 Ohio St. 3d 369, 6 OBR 421, 453 N.E. 2d 666, contending plaintiff failed to establish the standard to prove an action for intentional infliction of emotional distress as promulgated in that case. In *Yeager*, the Supreme Court of Ohio stated at pages 374-375:

{¶ 4} " * * * 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. Liability has been found only where the conduct has been 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. 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!'

{¶ 5} "The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities. The rough edges of our society are still in need of a good deal of filing down, and in the meantime plaintiffs must

necessarily be expected and required to be hardened to a certain amount of rough language, and to occasional acts that are definitely inconsiderate and unkind....”

{¶ 6} Alternatively, defendant argued that if the facts prove Officer Gunn did engage in conduct constituting intentional infliction of emotional distress then he would have acted outside the course and scope of employment and the Court of Claims does not exercise jurisdiction to determine such cases. Defendant related “it cannot be held responsible for actions by its employees that are outside the scope of their employment.” See *Fair v. Ross Correctional Institution*, Ct. of Cl. No. 2002-08441-AD, 2003-Ohio-2164, also *Glover v. Chillicothe Correctional Inst.*, Ct. of Cl. No. 2002-02809-AD, 2003-Ohio-2963.

{¶ 7} Defendant submitted an affidavit from Officer Benjamin L. Gunn in which he denied all conduct alleged in this complaint. Gunn denied he ever threatened plaintiff and specifically denied ever harassing or intimidating plaintiff. Additionally, Gunn denied directing any racial epithet toward plaintiff.

{¶ 8} Furthermore, defendant maintained plaintiff has failed to offer any evidence other than his own assertion that he actually suffered emotional distress. Defendant asserted plaintiff failed to show his interaction with Officer Gunn had “any significant emotional impact on him.” Defendant suggested plaintiff’s stated refusal to eat, engage in recreation, and bathe for a three day period was not motivated by fear of Officer Gunn, but was staged as part of a group demonstration by inmates housed in the J-3 cellblock. Defendant pointed out plaintiff “had previously been found guilty of engaging in some sort of group demonstration (Rule 16) about 10 days prior to the incidents alleged in this complaint.” Defendant contended the evidence available does not support a finding plaintiff suffered any “serious emotional distress” brought on by any act of Officer Gunn. Plaintiff did not respond.

{¶ 9} Plaintiff has construed the present action 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, 603 N.E. 2d 1126; citing *Pyle v. Pyle* (1983), 11 Ohio App. 3d 31, 34, 11 OBR 63, 463 N.E. 2d 98

{¶ 10} 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*, 6 Ohio St. 3d at 375, 6 OBR 421, 453 N.E. 2d 666, quoting 1 Restatement of the Law 2d, Torts (1965), 73 Section 46, Comment d.

{¶ 11} Upon review, the court finds no reasonable trier of fact could find the conduct alleged by plaintiff to be of such extreme and outrageous character necessary to support a claim for intentional infliction of emotional distress. Accordingly, plaintiff’s claim of intentional infliction of emotional distress must fail.

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

PATRICK DAVIS

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant

Case No. 2008-11036-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth

in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Patrick Davis
303 Elverne Avenue
Dayton, Ohio 45404

Gregory C. Trout, Chief Counsel
Department of Rehabilitation
and Correction
770 West Broad Street
Columbus, Ohio 43222

RDK/laa
6/2
Filed 7/23/09
Sent to S.C. reporter 12/4/09