

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

ABDUL ABDULRAHAMAN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2008-07004

Judge Joseph T. Clark

Magistrate Steven A. Larson

DECISION

{¶ 1} On October 28, 2008, defendant filed a combined motion for summary judgment and to dismiss pursuant to Civ.R. 56(B) and 12(B)(1), respectively. Plaintiff did not file a response. The motion is now before the court for non-oral hearing.

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

{¶ 3} “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.

{¶ 4} "The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock* (1989), 42 Ohio St.3d 77, 80.

{¶ 5} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C. 5120.16. Plaintiff alleges that employees of defendant used excessive force against him during an incident on May 1, 2008, and that he suffered injury as a result. Plaintiff also asserts a claim of negligent training and supervision and he alleges that defendant's employees are guilty of "dereliction of duty."

{¶ 6} "Dereliction of duty" is a criminal offense as defined in R.C. 2921.44. "The Court of Claims does not have jurisdiction over any criminal matters against the state." *Howard v. Supreme Court of Ohio*, Franklin App. No. 04AP-1093 & 04AP-1272, 2005-Ohio-2130, ¶ 17; citing *Troutman v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 03AP-1240, 2005-Ohio-334, ¶ 10. Accordingly, defendant's motion to dismiss plaintiff's "dereliction of duty" claim shall be granted.

{¶ 7} 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:

{¶ 8} "(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:

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

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

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

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

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

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

{¶ 15} The court has recognized that “corrections officers have a privilege to use force upon inmates under certain conditions. * * * However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. * * * 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.)

{¶ 16} In support of its motion for summary judgment defendant filed the affidavits of Arnie Ison, Jason Joseph, Brian Barney, Michael Pearson, Jason Henderson, Michael Humphrey, Corrections Officer (CO) Risner, William Cool, J. Tackett, R.N., Patrick Parsons, T. Hill, R.N., and Betty Coleman, who authenticated a use-of-force summary and various other reports generated as a result of this incident.

{¶ 17} CO Risner states in his affidavit:

{¶ 18} “1. I am currently employed as a full time employee by [defendant] as a [CO] at [SOCF].

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

{¶ 20} “3. On May 1, 2008 while conducting a range check in J1, [plaintiff] stuck a weapon out through the bars of cell 16 and stabbed the back of my right arm.

{¶ 21} “4. At this time [plaintiff] stated ‘Fuck you, I dare you to step in front of my cell. I’ll take your life.’

{¶ 22} “5. Following this incident, I exited the range and contacted the shift captain.”

{¶ 23} Ison states in his affidavit:

{¶ 24} “1. I am currently employed as a full time employee by [defendant] as a Correctional Lieutenant at [SOCF].

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

{¶ 26} “3. On May 1, 2008, I was called to [plaintiff’s] cell because he had stabbed Officer Risner.

{¶ 27} “4. After coming to the scene, I observed [plaintiff] had a sheet wrapped around his head, plastic over his eyes, and a weapon.

{¶ 28} “5. I then saw [plaintiff] attempt to stab Sergeant Haywood.

{¶ 29} “6. [Plaintiff] would not relinquish his weapon and I contacted Captain Gannon that we needed a team to go in.

{¶ 30} “7. I ordered the door opened and the team to go into [plaintiff’s] cell after I had made several more direct orders that [plaintiff] throw out his weapon.

{¶ 31} “8. I witnessed the entire event of the team going in and removing [plaintiff] and at no point was excessive force used by myself or any other member of the prison staff.

{¶ 32} “9. During the alleged use of force incident, no prison staff assaulted [plaintiff].

{¶ 33} “10. During the alleged use of force incident, SOCF and [defendant’s] policy was properly followed by the prison staff.

{¶ 34} “11. After he talked of suicide to Nurse Hill, prison staff escorted [plaintiff] to a cell to be monitored.

{¶ 35} “12. I was properly trained and supervised regarding use of force incidents.

{¶ 36} “13. Following the incident, [plaintiff] was checked by Nurse Hill, sent to the infirmary for a complete check up including X-rays, and then sent to Mental Health for assessment before the inmate was placed in a J-1-2 crisis cell.”

{¶ 37} Corrections Sergeant Humphrey assembled a five-man security team to disarm and subdue plaintiff and he served as the team’s camera operator. COs Joseph, Barney, Pearson, and Henderson were the other members of the team. All five men state in their affidavits that they witnessed plaintiff refuse to relinquish his weapon and refuse direct orders to “cuff up.” Joseph states that he administered “palm strikes” to plaintiff in order to place handcuffs on him because plaintiff had bunched his hands and arms beneath him as he lay facedown on the ground. All four COs state that they

were properly trained and supervised regarding use-of-force and that excessive force was not used against plaintiff.

{¶ 38} Parsons is a mental health staff member at SOCF who acted as a negotiator during this incident. Parsons states that he observed plaintiff refuse to relinquish his weapon after receiving several direct orders to do so. Parsons further states that he did not witness any SOCF staff member use excessive force in subduing plaintiff. Corrections Captain Cool observed plaintiff as he was escorted from his cell to the infirmary by the security team. Cool did not observe any SOCF staff member use excessive force against plaintiff. Nurse Hill examined plaintiff after the incident and states that plaintiff suffered a laceration, bruising and swelling on the bridge of his nose, and tenderness in his left, lower ribs. Nurse Hill further states that the laceration on plaintiff's nose was cleaned and bandaged and that x-rays were ordered, before plaintiff was returned to his housing unit.

{¶ 39} Based upon the undisputed affidavit testimony provided by defendant, the court finds no evidence to support plaintiff's allegation that defendant's employees used excessive force against him on May 1, 2008.

{¶ 40} To the extent that plaintiff asserts a claim of negligent supervision, the court notes that in order to prove such a claim, plaintiff has the burden to establish: "1) the existence of an employment relationship; 2) the employee's incompetence; 3) the employer's actual or constructive knowledge of such incompetence; 4) the employee's act or omission causing plaintiff's injuries; and 5) the employer's negligence in * * * retaining the employee as the proximate cause of plaintiff's injuries." *Evans v. Ohio State University* (1996), 112 Ohio App.3d 724, 739.

{¶ 41} Plaintiff did not file any affidavit to dispute the averments made in the affidavits defendant filed.

{¶ 42} Civ.R. 56(E) provides in part:

{¶ 43} "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.”

{¶ 44} Inasmuch as plaintiff has provided the court with no evidence to support his claims of excessive force, plaintiff’s claim for negligent supervision based upon the alleged use of excessive force fails as a matter of law. Accordingly, defendant’s motion for summary judgment 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 to dismiss and for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant’s motion is GRANTED. Plaintiff’s “dereliction of duty” claim is DISMISSED and judgment is rendered in favor of defendant on the

remainder of plaintiff's claims. 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.

JOSEPH T. CLARK
Judge

cc:

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MR/cmd
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