

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

JAMES ELAM, Admr.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-07728

Judge J. Craig Wright

DECISION

{¶ 1} Plaintiff brought this action alleging negligence and wrongful death. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant, plaintiff's decedent, Rex Elam III, was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF) pursuant to R.C. 5120.16. On September 26, 2005, Elam was fatally stabbed by inmate Gerald Catchings with a "shank" which Catchings had fashioned out of glass that he had removed from a window in his cell.

{¶ 3} Plaintiff alleges that defendant was negligent in failing to prevent Catchings' attack. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed Elam a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused Elam's injury. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio

St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and protection of its prisoners; however, the state is not an insurer of inmate safety. *Williams v. Southern Ohio Correctional Facility* (1990), 67 Ohio App.3d 517, 526.

{¶ 4} Defendant is not liable for the intentional attack on one inmate by another unless it has adequate notice, either actual or constructive, of an impending assault. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235; *Metcalf v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 01AP-292, 2002-Ohio-5082. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197-198.

{¶ 5} It is undisputed that defendant lacked actual notice that Catchings would attack Elam. Plaintiff contends, rather, that based upon Catchings' history of breaking windows and engaging in other misconduct at SOCF, defendant should have foreseen such an attack and should therefore have housed Catchings in a cell without a breakable glass window. Plaintiff introduced incident reports and other documents to establish that Catchings' prior misconduct included the following: on both May 30 and June 16, 1995, he was cited for removing a windowpane from his cell window (Plaintiff's Exhibits 2, 3-1); on June 23, 1995, he was cited for intentionally overflowing his toilet (Plaintiff's Exhibit 3-2); on July 22, 1995, he was cited for removing putty from around the frame of his cell window (Plaintiff's Exhibits 4-1 to 4-2); on August 15, 1995, he was cited for removing and throwing a windowpane out of his cell and threatening a corrections officer (Plaintiff's Exhibit 5); on October 9, 2003, he was cited for breaking a window and brandishing a shard of glass while corrections officers were attempting to handcuff him (Plaintiff's Exhibits 1-1 to 1-6); and, in April 2004, he was cited for possessing two shanks made of unspecified materials (Plaintiff's Exhibit 6).

{¶ 6} Donald Morgan, the chief of security at SOCF at the time of the attack, and David Newsome, the deputy warden of operations at SOCF at the time of the attack, each testified that Catchings' behavior was not unusual relative to the other

inmates at SOCF inasmuch as the prison houses only maximum security inmates, most of whom are violent and/or difficult to manage. Corrections Officer Brian Payne, who was involved in the October 9, 2003 incident, similarly testified that Catchings' behavior during that incident was not unusual for an inmate at SOCF.

{¶ 7} Gordon Bullion, who was the maintenance superintendent at SOCF from approximately 1993 to 2004, and Payne each testified that inmates were known to occasionally break their cell windows. However, Morgan and Payne also stated that inmates very rarely made weapons out of glass. Morgan further stated that the exterior of the building is inspected at least twice daily to identify security issues such as broken windows.

{¶ 8} Morgan testified that after the October 9, 2003 incident, Catchings' security classification was elevated to level "4B" status, which, among other restrictions, generally requires an inmate to be housed in a windowless cell. However, according to Morgan, defendant's policies do not allow inmates to be permanently classified as 4B, and in mid-2005, Catchings' classification was lowered to level 4A, the same level as Elam. Morgan testified that defendant complied with its policies regarding security classification and cell assignment at all times relevant to Catchings' placement in the institution.

{¶ 9} Upon review, the court finds that plaintiff has failed to establish that defendant had constructive notice of the attack. Although the evidence demonstrates that Catchings had some history of breaking or removing glass from windows, all but one of these episodes occurred more than ten years prior to his attack upon Elam. The testimony of Payne, Morgan, and Newsome established that Catchings' prior behavior was typical for an SOCF inmate and, moreover, there is no evidence that Catchings had ever before exhibited violence toward another inmate. In short, Catchings did not exhibit a propensity for violence such that defendant should have known of the impending attack upon Elam.

{¶ 10} Furthermore, to the extent that plaintiff challenges defendant's decisions regarding Catchings' security classification, 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.

{¶ 11} 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.

{¶ 12} The court finds that defendant’s decisions pertaining to Catchings’ security classification are characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising therefrom.

{¶ 13} Based upon the foregoing, the court finds that plaintiff has failed to prove his claims by a preponderance of the evidence. Accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

J. CRAIG WRIGHT
Judge

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