

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

JOSEPH M. SCOTT

Plaintiff

v.

OHIO DEPT. OF REH. AND CORRECTIONS

Defendant

Case No. 2008-08736-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 18, 2008, plaintiff, Joseph M. Scott, an inmate formerly incarcerated at defendant's London Correctional Institution ("LoCI"), was transferred from the LoCI general population to an isolation unit based on a conduct report charging plaintiff with institutional rule violations. On January 23, 2008, plaintiff appeared before the LoCI Rules Infraction Board ("RIB") to answer the charges filed against him. The RIB found plaintiff not guilty of any rules violations and he was released from isolation and returned to the LoCI general population. Plaintiff asserted he was placed in isolation based on a "false" conduct report issued by LoCI employee, Officer Wells. Plaintiff stated he "was placed in isolation for 5 days wrongfully which causes me to not receive institution state pay for 5 days and other institution privileges." Plaintiff contended defendant violated internal administrative regulations by inappropriately supervising Officer Wells in permitting him to issue a false conduct report which constituted a violation of AR 5120-9-04(B).¹ Plaintiff pointed out "inappropriate

¹ Ohio Administrative Code 5120-9-04(B) which contains identical language with AR 5120-9-04(B) covers "Appropriate supervision, discrimination, and racial issues" involving Department of

supervision” includes “writing conduct reports strictly as a means of harassment.”

{¶ 2} Essentially, plaintiff is asserting he has a right to pursue a damage claim in this court based on a violation of the Ohio Administrative Code, specifically Ohio Admin. Code 5120-9-04(B). Plaintiff therefore filed this complaint seeking to recover \$504.50, an amount representing lost state pay for time spent in isolation, along with unspecified damages based on the time period he spent in isolation. Payment of the \$25.00 filing fee was waived.

{¶ 3} Defendant acknowledged the RIB found plaintiff not guilty of violations of disciplinary rules 26 and 8. Defendant explained “Rule 26 prohibits disrespect (and) Rule 8 prohibits threats.” Despite the fact the RIB found plaintiff not guilty of violations charged in a conduct report, defendant argued “[t]his does not mean that the report was false.” Defendant stated “staff members have the authority to write reports for violations they believe (have) occurred (and) [i]t is the job of the (RIB) to determine if the evidence supports the violation specified in the conduct report.” Defendant contended an RIB finding of not guilty of a rules violation does not create a cause of action for damages for the exonerated party. Defendant specifically denied any LoCI personnel violated any internal regulations by charging plaintiff with rules violations and consequently having him transferred to an isolation unit.

{¶ 4} Plaintiff filed a response insisting the conduct report he was issued was false and proper authorities at LoCI failed to adequately investigate the claim of inappropriate supervision. Plaintiff again asserted he was wrongfully placed into segregation for five days and he has suffered wage loss and emotional distress as a direct result of being placed in segregation. Plaintiff did not produce any authority to prove he is entitled to the damages claimed or that he may pursue a claim based on defendant’s alleged violation of an administrative rule.

{¶ 5} Any claim plaintiff may have for state pay loss is denied. Defendant has discretion to make decisions regarding inmate pay. State pay loss is not a compensable element of damages in regard to prisoners. See *Cotten v. Dept. of*

Rehabilitation and Correction personnel and inmates provides:

“(B) As used herein, the term ‘inappropriate supervision’ means any continuous method of annoying or needlessly harassing an inmate or group of inmates, including, but not limited to, abusive language, racial slurs, and the writing of inmate conduct reports strictly as a means of harassment. A single incident may, due to its severity or egregiousness, be considered inappropriate supervision for purposes of this rule.”

Rehab. and Corr. (1993), 92-02013-AD, reversed jud; *Platz v. Noble Correctional Institution* (2001), 2001-02210-AD; *Myers v. Southern Ohio Correctional Facility* (2006), 2005-10063-AD, jud; *Johns v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2006-07724-AD, 2007-Ohio-3748.

{¶ 6} Additionally, an inmate is not entitled to pursue damages under a false imprisonment theory for spending time in disciplinary confinement for rules infractions, which he was ultimately found not to have committed. *Saxton v. Ohio Dept. of Rehab. & Corr.* (1992), 80 Ohio App. 3d 389, 609 N.E. 2d 245. Under this rationale, the court concludes an inmate may not pursue a false imprisonment type action for time spent in segregation.

{¶ 7} Prison regulations “are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates.” *State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 479, 1997-Ohio-139, 683 N.E. 2d 1139, citing *Sandin v. Connor* (1995), 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418. Indeed, the court has held that “even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence.” *Williams v. Ohio Dept. of Rehab. and Corr.* (1993), 67 Ohio Misc. 2d 1, 3, 643 N.E. 2d 1182. Accordingly, to the extent plaintiff asserts claims based upon alleged violations of internal rules and regulations, he fails to state a claim for relief.

{¶ 8} However, allegations that officials of the Department of Rehabilitation and Correction were negligent in hiring, supervising and disciplining a corrections officer, and in failing to protect a prison inmate from a continuing course of abusive and demeaning treatment at the hands of the corrections officer, may be sufficient to state a claim for relief against the state. *Blamer v. Dept. of Rehab. & Corr.* (1987), 36 Ohio App. 3d 134, 521 N.E. 2d 855. Recovery under this premise is based on negligence principles.

{¶ 9} For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472

N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. Plaintiff has contended he suffered emotional distress caused by defendant violating its duty under Ohio Adm. Code 5120-9-04 to properly supervise Officer Wells by permitting him to engage in harassing behavior by issuing a false conduct report. The trier of fact finds plaintiff has failed to offer sufficient evidence to prove defendant violated Ohio Adm. Code 5120-9-04(B), "inappropriate supervision." Furthermore, the trier of fact finds plaintiff did not establish Officer Wells engaged in harassing behavior when he issued a conduct report for certain rule violations. The fact plaintiff was subsequently found not guilty of the charges outlined in the conduct report does not prove the conduct report was false or that the conduct report does not prove the conduct report was false or that the conduct report was issued as a form of harassment proscribed by Ohio Adm. Code 5120-9-04(B).

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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:

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RDK/laa
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