[Cite as *Crutcher v. Ohio Dept. of Rehab. & Corr.*, 2014-Ohio-5915.]

Court of Claims of Ohio
The Ohio Judicial Center
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Columbus, OH 43215
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WILLIS CRUTCHER

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00226

Judge Patrick M. McGrath
Magistrate Robert Van Schoyck

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On October 11, 2013, plaintiff filed four separate motions, with various captions, in which he "requests permission to proceed on discovery" in order to depose several employees of defendant and obtain certain documents and other material from defendant. Insofar as proof of service was not endorsed on the motions or separately filed, Civ.R. 5(B)(3) provides that they "shall not be considered." Moreover, if plaintiff intended for the motions to serve as discovery requests, such requests were to be served upon counsel for defendant rather than being filed with the court. Furthermore, to the extent that the motions were filed after the October 8, 2013 deadline for conducting discovery, as established in the court's order of June 24, 2013, there has been no showing of good cause to extend the time for conducting discovery. *See* Civ.R. 6(B). And, if plaintiff intended for the motions to serve as motions for an order compelling discovery, they were not accompanied by a statement reciting any efforts made to resolve the matter, as required by Civ.R. 37(E).

{¶2} On another matter, on October 16, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4.

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

{¶4} "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 Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶5} Plaintiff, an inmate in the custody and control of defendant, alleges that on January 25, 2013, at about 6:00 a.m., corrections officers entered his cell at the Toledo Correctional Institution (ToCI) to conduct a "shakedown," or inspection, to look for contraband. Plaintiff states that he was placed in handcuffs, and that one of the officers then remarked that plaintiff appeared to be concealing a cell phone in his buttocks. According to plaintiff's complaint, the officers then removed his clothing and ordered him to get on his knees. Plaintiff alleges that an officer named Jameson then asked him where the phone was, and after he denied having a phone, Jameson discharged pepper spray at him. Plaintiff states that officers then escorted him to a "strip-out-cage," but failed to secure medical treatment for him until two and a half hours later, after he started "throwing up liquids." Plaintiff adds that, at Jameson's request, medical personnel took an x-ray which confirmed that he did not have a phone.

{¶6} Plaintiff's complaint refers to several legal theories, including negligence, assault, and battery. "[I]n order to establish actionable negligence, one seeking

recovery must show the existence of a duty, the breach of the duty, and injury resulting proximately therefrom." *Strother v. Hutchinson*, 67 Ohio St.2d 282, 285 (1981). "Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners' health, care, and well-being." *Ensman v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-592, 2006-Ohio-6788, ¶ 5.

{¶7} "To prove assault under Ohio law, plaintiff must show that the defendant willfully threatened or attempted to harm or touch the plaintiff offensively in a manner that reasonably placed the plaintiff in fear of the contact. To prove battery, the plaintiff must prove that the intentional contact by the defendant was harmful or offensive. Ohio courts have held that, in a civil action for assault and battery, the defendant has the burden of proving a defense of justification, such as the exercise of lawful authority." (Citations omitted.) *Miller v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 12AP-12, 2012-Ohio-3382, ¶ 11.

{¶8} "[T]he use of force is an obvious 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." *Ensman* at ¶ 23. "In Ohio Adm.Code 5120-9-01, the Ohio Administrative Code sets forth the circumstances under which correctional officers are authorized to use force against an inmate." *Id*. at ¶ 6.

{¶9} Ohio Adm.Code 5120-9-01 provides, in pertinent part:

{¶10} "(C) Guidelines regarding the use of force. * * *

{¶11} "(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:

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

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

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

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

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

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

{¶18} In support of its motion, defendant submitted affidavits from three of its employees, including Training Officer B. Jameson, who avers, in part:

{¶19} "3. On January 25, 2013, the ToCI Investigator gave me a list of inmates' cells to search for contraband. Based on information from a confidential informant DRC believed Inmate Crutcher was in possession of a cell phone;

{¶20} "4. When I entered into his cell, based on my training and experience, I believed he was trying to hide something, so I placed him in hand restraints;

{¶21} "5. At the same time I observed Inmate Crutcher squeezing his buttocks and trying to reach into his pants. Based on my training and experience Inmate Crutcher's conduct indicated to me that he was hiding something in his anal cavity;

{¶22} "6. I then asked Inmate Crutcher if he was hiding contraband in his anal cavity, and started giving him instructions for the process of inspecting whether an inmate is hiding something in their anal cavity[;]

{¶23} "7. This process for this inspection includes having the inmate drop their pants, squat down and cough. At this point we do not physically touch the inmate;

{¶24} "8. At this point Inmate Crutcher became aggressive and defiant, and I administered a short burst of OC (pepper spray) on him to securitize the situation so it would not escalate to a dangerous level;

{¶25} "9. Inmate Crutcher was then escorted to segregation by other DRC staff members."

{¶26} The affidavit of Corrections Officer S. Hughs provides, in part:

{¶27} "3. On January 25, 2013, the ToCI Inspector * * * provided a list of inmates' cells to search for contraband. Based on information from a confidential informant DRC believed Inmate Crutcher was in possession of a cell phone;

{¶28} "4. Officer Jameson and I entered into Inmate Crutcher's cell to search for contraband;

{¶29} "5. I observed Inmate Crutcher becoming aggressive and defiant;

{¶30} "6. Officer Jameson administered a short burst of OC (pepper spray) on him to securitize the situation so it would not escalate to a dangerous level;

{¶31} "7. Inmate Crutcher was then escorted to segregation by other DRC staff members."

{¶32} The affidavit of Corrections Officer S. Bertwell provides, in part:

{¶33} "3. On January 25, 2013, I was assigned to work in the segregation unit of ToCI;

{¶34} "4. Inmate Crutcher was brought to segregation after being sprayed with OC (pepper spray);

{¶35} "5. I contacted ToCI's medical staff and they came to segregation to perform an anatomical medical exam on Inmate Crutcher;

{¶36} "6. After medical staff completed their first exam on Inmate Crutcher I observed that Inmate Crutcher appeared to have vomited something that looked like blood. I, for a second time, contacted ToCI's medical staff;

{¶37} "7. Once again medical staff returned to segregation and they took Inmate Crutcher to the infirmary[.]"

{¶38} As stated above, plaintiff did not file a response to defendant's motion, nor did he provide the court with any affidavit or other evidence to support his allegations. Civ.R. 56(E) states, in part, that "[w]hen 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."

{¶39} Based upon the uncontested affidavit testimony provided by defendant, reasonable minds can only conclude that plaintiff became aggressive and defiant with corrections officers during the contraband inspection and that Jameson therefore had lawful authority and privilege to use such force as may have reasonably appeared necessary under the circumstances to control or subdue plaintiff. It can only be concluded that the use of force during the incident, including the discharge of pepper spray, was indeed justified and privileged, and satisfied the duty of reasonable care. Furthermore, in contrast to plaintiff's unsupported allegations, the affidavits demonstrate that plaintiff received medical attention once he was escorted away after this incident, and that he received further medical attention after he vomited. To the extent that plaintiff's complaint includes a conclusory allegation regarding some unspecified personal property of his being seized and not returned, plaintiff fails to identify any such property, much less produce evidence supporting a claim for relief.

{¶40} Finally, insofar as plaintiff alleges that the officers' actions violated various prison regulations, plaintiff has identified no authority to maintain a claim for monetary damages in this court predicated upon such violations by themselves. *See Triplett v. Warren Corr. Inst.*, 10th Dist. No. 12AP-728, 2013-Ohio-2743, ¶ 10. The prison regulations relied upon by plaintiff "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).

{¶41} For the foregoing reasons, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law.

{¶42} Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. 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.

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PATRICK M. MCGRATH
Judge

cc:

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