

Court of Claims of Ohio

The Ohio Judicial Center
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LYNDSEY HOWELL

Plaintiff

v.

OHIO UNIVERSITY POLICE DEPARTMENT

Defendant

Case No. 2013-00001

Judge Patrick M. McGrath
Magistrate Holly True Shaver

{¶1} Plaintiff brought this action alleging negligence. On March 31, 2014, the court conducted a trial on both the issues of liability and damages, and on June 23, 2014, the magistrate issued a decision recommending judgment for plaintiff.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On July 7, 2014, defendant filed a motion for an extension to file objections, and the court granted the extension on July 11, 2014. On July 21, 2014, defendant filed objections to the magistrate’s decision. Plaintiff filed a memorandum contra on July 28, 2014.

{¶3} According to the magistrate’s decision, plaintiff was a student at Ohio University and was pulled over by defendant’s employee, Lieutenant Eric Hoskinson, on January 21, 2012 for suspicion of driving under the influence of alcohol. After Lt. Hoskinson requested plaintiff to perform a series of sobriety tests, he placed her under arrest. During the arrest, Lt. Hoskinson placed handcuffs on plaintiff and escorted her to the cruiser. Plaintiff alleges that as a result of the handcuffing, she sustained a fracture to her left thumb.

{¶4} Plaintiff testified that prior to being pulled over, she had no injuries to her left hand. Lt. Hoskinson also testified that he asked plaintiff if she was injured before he began the field sobriety tests, and she stated that she was not. Plaintiff further testified that during the handcuffing procedure, she felt a “pop” in her left thumb and severe pain immediately afterward. Based upon a medical exam, plaintiff was diagnosed with a “non-displaced fracture of the proximal metacarpal of the left hand.” (Magistrate’s decision, p. 3.)

{¶5} The magistrate determined that “Lt. Hoskinson failed to use ordinary care when he placed handcuffs on her.” (Magistrate’s decision, p. 4.) Additionally, the magistrate determined that based on the testimony, plaintiff’s testimony was credible and that it was “more probable than not that Lt. Hoskinson’s actions of pulling plaintiff’s fingers downward behind her back while placing handcuffs on her resulted in the injury to her left hand.” *Id.* Accordingly, the magistrate recommended judgment for plaintiff.

{¶6} Defendant contends that there was an error of law in the magistrate’s decision because the magistrate found that defendant was negligent without finding a breach of duty. Defendant argues that the magistrate applied a *res ipsa loquitur* analysis, which was improper, and that the doctrine “does not apply when the facts are such that an inference that the accident was due to a cause other than defendant’s negligence could be drawn as reasonably as that it was due to his negligence.” *Loomis v. Toledo Rys. & Light Co.*, 107 Ohio St. 161 (1923). Defendant presented expert testimony that often times similar fractures can go unnoticed and that plaintiff could have injured her thumb prior to the arrest and just did not know about it.

{¶7} Based upon the magistrate’s decision and the objections, the court concludes that the magistrate did not err in her conclusions. The magistrate found a violation of the duty of ordinary care required by a law enforcement officer during an arrest. State law enforcement officers owe a duty of ordinary care to drivers encountered within the scope of the officers’ duties. *See Burr v. Ohio State Highway*

Patrol, 10th Dist. Franklin No. 12AP-26, 2012-Ohio-4906, ¶ 24. Furthermore, the magistrate found plaintiff reasonably credible and found that her timeline of events as well as her injury were supported and corroborated by the evidence. Moreover, the court is not convinced of defendant's attempt to distinguish between pulling on plaintiff's fingers and the injury to her thumb. Accordingly, the court's review of the magistrate's decision reveals that the facts found by the magistrate are sufficient to sustain the magistrate's conclusions, and that the magistrate's conclusions are consistent with law.

{¶8} Upon review of the record, the magistrate's decision, and plaintiff's objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law with regard to the objections presented.¹ Therefore, the objections are OVERRULED and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of plaintiff in the amount of \$22,554.06. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

¹Although not set forth in plaintiff's complaint and not addressed specifically in defendant's objections, the court finds that plaintiff did not prove a claim of battery by the preponderance of the evidence as stated in the magistrate's decision. "In tort, an assault is the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact. *Smith v. John Deere Co.* (1993), 83 Ohio App.3d 398, 406. A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results." *Love v. Port Clinton* (1988), 37 Ohio St.3d 98, 99. However, "[o]fficers are privileged to commit battery when making a lawful arrest, but the privilege is negated by the use of excessive force." *Alley v. Bettencourt* (1999), 134 Ohio App.3d 303, 313. "[O]nly in cases where excessive force is used, that is, force going clearly beyond that which is reasonably necessary to make an arrest, can such force be claimed an assault and battery by the person arrested." *Schweder v. Baratko* (1957), 103 Ohio App. 399, 403. The court finds that Lt. Hoskinson was privileged to place handcuffs on plaintiff and did not use excessive force. Accordingly, Lt. Hoskinson cannot be found to have committed a battery upon plaintiff.

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JUDGMENT ENTRY

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