

# Court of Claims of Ohio

The Ohio Judicial Center  
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YUSUF BROWN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00158

Magistrate Anderson M. Renick

## DECISION OF THE MAGISTRATE

{¶1} Plaintiff brought this action alleging negligence. 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 was an inmate in the custody and control of defendant pursuant to R.C. 5120.16 at the Allen Oakwood Correctional Institution (AOCI). Plaintiff alleges that on September 28, 2012, he was assaulted by another inmate, Emanuel Newell, in a restroom that is adjacent to the institution gymnasium. Plaintiff asserts that defendant had actual notice of a confrontation he had with Newell which occurred hours before the assault and that an institutional separation order pertaining to plaintiff and Newell was in effect. Plaintiff contends that defendant's employees were negligent in failing to protect him from being assaulted by Newell.

{¶3} "[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 upon the state a duty of reasonable care and protection of its prisoners. *Williams v. S.*

*Ohio Corr. Facility*, 67 Ohio App.3d 517, 526 (10th Dist.1990). “This duty does not, however, make ODRC the insurer of inmate safety.” *Kordelewski v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 00AP-1109 (June 21, 2001).

{¶4} “Where one inmate attacks another inmate, actionable negligence arises only when there was adequate notice of an impending attack.” *Lucero v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-288, 2011-Ohio-6388, ¶ 18. “Notice may be actual or constructive, the distinction being the manner in which the notice is obtained rather than the amount of information obtained.” *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606, 2012-Ohio-1017, ¶ 9. “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.” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14.

{¶5} Plaintiff testified that he had been at AOCI for about two months prior to the incident and that both he and Newell had been housed together in protective custody at Warren Correctional Institution (WCI). According to plaintiff, during that time, he was involved in an altercation with Newell which ended when Newell struck him with a clothing iron and stabbed him with scissors. As a result of the assault, and following a Rules Infraction Board (RIB) hearing, on October 3, 2001, defendant issued an institutional separation order which pertains to plaintiff and Newell and provides: “Inmates with an institution separation shall not be housed in the same institution general population or the same segregation housing area.” (Plaintiff’s Exhibit 2.)

{¶6} Plaintiff testified that on the morning of September 28, 2012, he was exercising in the AOI gym and planning to hear a religious speaker who was to appear at the chapel which was located adjacent to the gym. According to plaintiff, Newell walked down from the upper range and told him “it was on,” meaning that he intended to fight plaintiff. Plaintiff testified that after he walked away, Newell walked toward the chapel and called him a “little bitch.” Plaintiff stated that he asked the CO on duty if he could leave the area, but the CO refused and plaintiff returned to the weight room. Plaintiff related that inmate Johnson, who is known as “Day-Day,” came out of the chapel and told plaintiff that he should fight Newell, but plaintiff ignored the challenge and decided to continue working out rather than going to the chapel to hear the speaker.

{¶7} Plaintiff testified that after Newell and the other inmates were dismissed from the chapel, Johnson returned. Plaintiff explained that he believed he had to fight Newell at that time, otherwise he would be “jumped” by Newell and his friends. Plaintiff testified that he asked Johnson to tell Newell to come fight, but not to jump him. Newell walked through the gym and into the restroom. Plaintiff followed Newell into the restroom, closed the door, and the fight began. According to plaintiff, the CO on duty walked to the restroom several times and looked in, but did not stop the fight. Plaintiff testified that Newell walked out of the restroom and he followed, but Newell informed him that “it’s not over” and spit in his face, whereupon plaintiff said “let’s go in” and they returned to the restroom to fight. Plaintiff related that after the fight, he walked out of the restroom and questioned the CO about whether he had observed the fight, and the CO replied, “act like a man.”

{¶8} Plaintiff testified that he told the unit case manager about both the fight with Newell and the separation order. According to plaintiff, he was escorted to Anthony Godfrey's office and after he again told Godfrey what had happened, he was ordered to "sign something" or go to segregation. Plaintiff was examined by a nurse, who noted in her exam report that plaintiff complained of a headache, left arm pain, and a bite mark on his left bicep. (Plaintiff's Exhibit 6.) Plaintiff was then assigned to a segregation unit.

{¶9} During cross examination, plaintiff admitted that he is affiliated with the Crips gang. Plaintiff testified that he was wearing gloves at the time of the incident because he had been using the weight room earlier that morning. However, plaintiff admitted that he was not authorized to use the weight room.

{¶10} Inmate Newell testified by way of deposition.<sup>1</sup> Newell testified that he met plaintiff in 1998 at WCI, where they fought after Newell became angry about plaintiff playing rap music, his cursing, and his "Crip buddies." Newell stated that he had two physical altercations with plaintiff. During the second altercation, Newell struck plaintiff with an iron and stabbed him with scissors in retaliation for being jumped by members of plaintiff's gang. Newell testified that he arrived at AOCI in 2012 after defendant centralized protective custody at the institution. According to Newell, plaintiff is younger, stronger, and larger than he is.

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<sup>1</sup>Plaintiff states in his post-trial brief that defendant "refused to bring Newell from Allen Oakwood to Allen Correctional Institution because of the separation [order] and the need for security. This in spite of Plaintiff's attorney indicating with Plaintiff's consent, he would be elsewhere during Newell's testimony." The court informed counsel during the proceedings that the court would order defendant to transport Newell the short distance to AOCI for trial; however, the parties declined and defendant presented Newell's testimony via video deposition. (Defendant's Exhibits E1 and E2).

{¶11} Newell recalled that prior to September 28, 2012, he had been physically separated from plaintiff at AOI, but they had called each other names on occasions such as walking to pill call. Plaintiff was housed in unit E1 and Newell was assigned to unit E2. Newell testified that he walked to the restroom after the service in the chapel was over and before he entered, he noticed plaintiff standing nearby with his gloves on. Newell stated that plaintiff followed him into the restroom and slammed the door shut. Newell testified that plaintiff attacked him and that he bit plaintiff in an attempt to stop plaintiff from choking him. After Newell escaped from plaintiff's grasp, he walked out of the restroom, but Newell testified that both he and plaintiff willingly returned to the restroom to continue fighting. Newell testified that neither he nor plaintiff reported the fight to COs immediately afterward; however, Godfrey later took pictures of his injuries and Newell admitted that he and plaintiff had been fighting.

{¶12} Inmate Daniel Mills testified that he attended the meeting in the chapel and that he was present in the gym at the time of the fight between plaintiff and Newell. Mills testified that he saw plaintiff follow Newell into the restroom and slam the door shut. According to Mills, he looked through the restroom door window and saw that plaintiff had a chokehold on Newell. Mills testified that plaintiff taunted Newell after they exited the restroom and that members of the Crip gang were standing around the door while the fight was in progress. During cross examination, Mills admitted that he has been friends with Newell for several years. Mills stated that the fight lasted for three to four minutes, but he did not inform the CO on duty because the CO was in his office.

{¶13} Inmate Donald Soke testified that he was incarcerated at AOI and that plaintiff commented about the September 28, 2012 fight while they were both in the

segregation unit. Soke stated that plaintiff exclaimed that he “finally got that bitch [Newell].” Soke testified that plaintiff stated he had sent inmate Johnson to lure Newell into the restroom under the pretext of working out the differences between them. According to Soke, plaintiff admitted that he was the aggressor in the fight and that Newell bit him while he was choking Newell. Soke admitted that he had had confrontations with both plaintiff and Newell.

{¶14} Anthony Godfrey, who was a case manager at AOCI in 2012, testified that he investigated the incident. Godfrey related that he learned of the incident from Case Manager Hobbs. Godfrey testified that he interviewed both plaintiff and Newell and he viewed the video from a surveillance camera in the gym. Godfrey stated that plaintiff’s version of the incident was not consistent with the video evidence; most notably that plaintiff stated that Newell followed him into the restroom and attacked him, while the video shows that plaintiff walked in behind Newell and shut the door. Godfrey explained that institution rules require the restroom door to remain open at all times. Godfrey acknowledged that the institution separation order was in effect at the time of the incident; however he noted that plaintiff and Newell had both been assigned to the same institution after all protective custody units were consolidated at AOCI. Godfrey stated his belief that the institution separation order was not violated inasmuch as plaintiff and Newell were assigned to separate protective custody units in the same institution.

{¶15} To the extent that plaintiff challenges defendant’s decisions regarding institution assignment and security classification for both plaintiff and Newell, 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*, 14 Ohio St.3d 68, 70 (1984).

{¶16} 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*, 441 U.S. 520 (1979). “[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.*, 10th Dist. Franklin No. 98AP-1105, 1999 Ohio App. LEXIS 2338 (May 20, 1999). The Tenth District Court of Appeals has consistently held security classification decisions are left to the discretion of prison officials. *Swihart v. Chairman/Chairperson of the Ohio Adult Parole Auth.*, 10th Dist. Franklin No. 13AP-993, 2014-Ohio-3305, ¶ 35, citing *Semenchuk v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-19, 2010-Ohio-5551, ¶ 15-16.

{¶17} The court finds that defendant’s decisions pertaining to both plaintiff’s and Newell’s protective custody security classification and institution assignment are characterized by a high degree of official judgment or discretion and that defendant is therefore entitled to discretionary immunity for claims arising from defendant’s decision to assign them to the same institution. Furthermore, the court finds that defendant acted reasonably in implementing its housing policies. In effect, defendant’s policies placed plaintiff and Newell under a “local separation,” which provides that inmates in the

same institution “shall not be assigned to the same work, education, or living area location.” (Plaintiff’s Exhibit 2.) Defendant was aware of the 2001 separation order between plaintiff and Newell and it addressed the concern for inmate safety by housing plaintiff and Newell in separate protective custody units.

{¶18} Moreover, plaintiff’s testimony that he was assaulted by Newell was not credible. Plaintiff admitted that he agreed to fight Newell, that he lied about the incident when defendant conducted an investigation, and that he did not notify defendant’s staff about any threat against him prior to the subsequent altercation with Newell.

{¶19} Although plaintiff contends that defendant failed to protect him from Newell when it was aware that an institutional separation order was in effect, the evidence showed that plaintiff voluntarily participated in the fight and that plaintiff was aware that Newell would walk through the gym after the meeting in the adjacent chapel concluded.

Plaintiff had ample opportunity to inform either the CO on duty or any other member of defendant’s staff of an impending altercation with Newell, but he failed to do so. Instead, plaintiff waited near the bathroom door with his gloves on until Newell arrived. Plaintiff’s testimony that he was threatened by Newell and “forced” to fight him in the restroom to avoid being jumped by Newell’s friends was not credible. Indeed, the court finds that plaintiff planned the altercation, engaged in mutual combat, and closed the restroom door to prevent defendant’s staff from observing the incident. The court is convinced that plaintiff was the aggressor in the physical altercation and that the altercation would not have occurred but for plaintiff’s actions.

{¶20} In short, the court finds that plaintiff failed to prove by a preponderance of the evidence that any breach of defendant’s duty of reasonable care and protection



proximately caused his injuries. Accordingly, judgment is recommended in favor of defendant.

*{¶21} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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ANDERSON M. RENICK  
Magistrate

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