

Court of Claims of Ohio

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YUSUF BROWN

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2013-00158

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

JUDGMENT ENTRY

{¶1} Plaintiff brought this action alleging negligence. On May 15, 2014, the court conducted a trial on both the issues of liability and damages, and on October 3, 2014, the magistrate issued a decision recommending judgment for defendant.

{¶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 October 9, 2014, plaintiff filed a motion for an extension to file objections, and the court granted the extension on October 22, 2014. On November 25, 2014, plaintiff filed objections to the magistrate’s decision. Plaintiff also filed a motion to accept an affidavit of indigency and an affidavit of evidence pursuant to Civ.R. 53(D)(3)(b)(iii), a motion to proceed in forma pauperis, and both the affidavit of indigency and affidavit of evidence. On December 22, 2014, plaintiff also filed supporting documentation to supplement the motion to proceed in forma pauperis. Defendant did not file a response. Upon review, plaintiff’s motion to proceed in forma pauperis is GRANTED.

{¶3} According to the magistrate's decision, plaintiff was an inmate at Allen Oakwood Correctional Institution (AOCI). On September 28, 2012, plaintiff was allegedly assaulted by Emanuel Newell (Newell), another inmate at AOCI. Prior to this incident, plaintiff and Newell had two altercations, one of which resulted in Newell striking plaintiff with an iron and stabbing him with scissors. Defendant had an institutional separation order in place for plaintiff and Newell, which provided that "[i]nmates with an institution separation shall not be housed in the same institution general population or the same segregation housing area." Magistrate's decision, at p. 2.

{¶4} Plaintiff testified that on the day of the altercation, Newell taunted him and plaintiff believed that he had to fight Newell or be jumped by Newell and his friends. The same morning, an event was taking place in the chapel and while Newell attended the event, plaintiff used the weight room, which he admitted he was not authorized to use. Plaintiff further testified that after Newell left the event in the chapel, plaintiff followed him into the bathroom and shut the door. A fight ensued and plaintiff testified that a corrections officer (CO) witnessed the fight but did not stop it. However, the testimony from Newell and two other inmates, Daniel Mills (Mills) and Donald Soke (Soke), indicates that plaintiff was the aggressor in the fight and that Newell only fought plaintiff in self-defense. Mills also testified that the CO was in his office during the fight and that he did not inform the CO about the fight.

{¶5} Anthony Godfrey (Godfrey), the case manager who investigated the incident, confirmed that the video surveillance showed plaintiff following Newell into the restroom and shutting the door. The institution rules required that the restroom door be open at all times. Godfrey also testified that he believed that the separation order was not violated because plaintiff and Newell were assigned to separate protective custody units in the same institution.

{¶6} The magistrate found that “defendant’s decisions pertaining to both plaintiff’s and Newell’s protective custody security classification and institution assignment” were covered by discretionary immunity. The magistrate also found that defendant was reasonable in its implementation of its housing policies by keeping plaintiff and Newell under a “local separation.” Furthermore, the magistrate concluded that plaintiff’s testimony was not credible and that the evidence showed that plaintiff “planned the altercation, engaged in mutual combat, and closed the restroom door to prevent defendant’s staff from observing the incident.” Magistrate’s decision, at p. 7.

{¶7} Civ.R. 53(D)(3)(b)(iii) states that “[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Plaintiff filed with his objections an affidavit of evidence. “An affidavit under [Civ.R. 53] must contain a description of all relevant evidence, not just the evidence deemed relevant by the party objecting to the magistrate’s findings.” *Gumins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 10AP-941, 2011-Ohio-3314, ¶ 13. Although plaintiff’s affidavit is fairly thorough, a review of the affidavit along with the magistrate’s decision and plaintiff’s objections indicates that plaintiff’s affidavit omits some evidence, and the court cannot conclude with certainty that the evidence offered by plaintiff includes all of the relevant evidence presented during trial. Therefore, the statement fails to meet the requirements of Civ.R. 53(D)(3)(b)(iii). Accordingly, plaintiff’s motion to accept the affidavit of indigency and the affidavit of evidence is DENIED. Inasmuch as plaintiff has failed to support his objections with a transcript or an affidavit of all relevant evidence, the court must overrule plaintiff’s objections to the extent that they relate to the magistrate’s factual findings.

{¶8} Plaintiff presents nine objections to the magistrate’s decision. The first, fourth, and fifth objections contend that the magistrate erred by not allowing Newell to

testify in person and by permitting the use of his deposition instead. Furthermore, plaintiff states that the magistrate failed to rule on the objections in two depositions presented at trial. In his decision, the magistrate includes in a footnote that he informed counsel that he would order Newell to AOCI for trial, but that the parties declined and the testimony was presented by video deposition. Magistrate's decision, at p. 3. Therefore, plaintiff has waived his right to object on that ground. With regard to plaintiff's objection that the magistrate failed to rule on the deposition objections, Civ.R. 53(D)(3)(b)(ii) states that "[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." The court notes that because no transcript was provided and plaintiff's objections to the magistrate's decision fail to describe the objections in the depositions with sufficient detail for the court's consideration, plaintiff has failed to comply with the specificity requirement in Civ.R. 53(D)(3)(b)(ii).

{¶9} With regard to plaintiff's seventh objection that the magistrate erred in admitting the investigation report of the incident, the court finds that although the investigation may be considered hearsay under Evid.R. 803, there is no indication in the magistrate's decision that he relied on the report in rendering his conclusions. Furthermore, without the transcript, the court is unable to determine if the report was admitted for the truth of the content in the report or rather admitted for the purpose of showing that an investigation was conducted.

{¶10} In plaintiff's third and eighth objection, he argues that the magistrate erred by overruling a motion to compel the security tapes of the gymnasium on the day of the incident as well as the Rules Infraction Board tapes and records related to Soke. Plaintiff states that it provided defendant with discovery requests for these records but received responses of unavailability, prior production, or the right to supplement. Additionally, plaintiff filed a motion to compel the discovery on March 27, 2014. In the court's entry following the pretrial conference, the magistrate denied plaintiff's motion to

compel “inasmuch as counsel for defendant informed the court that defendant has produced all requested records that it has in its possession.” Therefore, in overruling these objections, the court finds that the magistrate did not err in denying the motion to compel because he reasonably relied upon defendant’s assertion that it had provided all of the requested records it possessed.

{¶11} Lastly, plaintiff’s second, sixth, and ninth objections address the magistrate’s conclusions of law with regard to discretionary immunity and defendant’s negligence. The magistrate found 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.” Magistrate’s decision, at p. 6. The magistrate further found that “defendant acted reasonably in implementing its housing policies.” *Id.* To support his conclusions, the magistrate noted that plaintiff’s testimony was not credible because he admitted that he agreed to the fight, that he lied about the incident during the investigation, and that he did not notify any staff at AOCI about any threat from Newell prior to the altercation. Upon review of the magistrate’s determination, the court finds 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.

{¶12} Accordingly, 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 in this case. 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 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.

PATRICK M. MCGRATH
Judge

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