

Court of Claims of Ohio

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CHARLES URBAN

Plaintiff

V.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2014-00054-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Charles Urban, an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Corrections (“ODRC”) in which he claimed he was assaulted by another inmate on February 16, 2012. Plaintiff asserted, on multiple occasions he gave defendant adequate notice of an impending attack. He provided a copy of an informal complaint resolution in which he named the inmates from whom he was “experiencing a high level of threats,” and requested that he be separated from them. He contended, “I was forced to integrate with my attacker on February 16, 2012 despite my attempts of seeking segregation from this inmate with a violent background. I was hit repeatedly in the face and head receiving a swollen busted bloody mouth. As a result I have permanent scars inside my mouth.”

{¶2} Plaintiff seeks \$2,500.00 for the injuries to his mouth, humiliation, and great pain of body and mind. He asserted, he is now “seeing mental health” due to this incident, and will likely continue seeking treatment after his release. Plaintiff paid the \$25.00 filing fee.

{¶3} Plaintiff filed a motion for summary judgment based on the contention defendant failed to file an investigation report in a timely manner. This court denied

plaintiff's motion for default judgment, which asserted the same argument. Plaintiff's motion is hereby moot, as defendant filed an investigation report on October 31, 2014.

{¶4} Defendant denied liability for plaintiff's loss based on the contention that it was not aware of an imminent threat to plaintiff's life which required immediate action to protect him. Defendant admitted, on February 14, 2012, plaintiff informed Deputy Warden Fear "of threats from a group of inmates," and "Fear personally told Plaintiff he is being transferred from Toledo Correction Institution (ToCI)." However, it denied having any other notice from plaintiff. Defendant contended plaintiff "suffered a 'small cut' with swelling on both lips. Plaintiff's cut was treated by Defendant by rinsing mouth and applying ice then he was released back to his cell."

{¶5} Plaintiff filed a response to defendant's investigation report in which he asserted defendant did in fact have notice via the informal complaint resolution dated February 13, 2012, and the conversation with Deputy Warden Fear on February 14, 2012. Plaintiff contended he expressed a fear that the inmate who assaulted him would cause him harm, and defendant should have reasonably anticipated the assault would occur based on this particular inmate's violent history.

CONCLUSIONS OF LAW

{¶6} To assert an actionable claim of negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that defendant's 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.*, 15 Ohio St. 3d 75, 77, 472 N.E.2d 707 (1984).

{¶7} "Whether a duty is breached and whether the breach proximately caused an injury are normally questions of fact, to be decided . . . by the court . . ." *Pacher v. Invisible Fence of Dayton*, 154 Ohio App.3d 744, 2003-Ohio-5333, 798 N.E.2d 1121, ¶41 (2nd Dist. 2003), citing *Miller v. Paulson*, 97 Ohio App. 3d 217, 221, 646 N.E.2d 521 (10th Dist. 1994); *Mussivand v. David*, 45 Ohio St. 3d 314, 318, 544 N.E.2d 265 (1989).

{¶8} Plaintiff must produce evidence which affords a reasonable basis for the conclusion that defendant's conduct is more likely a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction*, 85-01546-AD (1985).

{¶9} "It is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.*, 145 Ohio St. 198, 61 N.E.2d 198 (1945), approved and followed. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski*, 14 Ohio St.3d 51, 471 N.E.2d 477 (1984). Although strict rules of evidence do not apply in administrative determinations, plaintiff must prove his case by a preponderance of the evidence. *Underwood v. Dept. of Rehabilitation and Correction*, 84-04053-AD (1985).

{¶10} The law is well-settled in Ohio that ODRC is not liable for the intentional attack of one inmate by another unless there is adequate notice of an impending assault. See *Ford v. Dep't of Rehab. & Corr.*, Ct. of Cl. 2003-01296, 2005-Ohio-1286; *King v. Ross Corr. Inst.*, Ct. of Cl. 99-01322, 2006-Ohio-1112; *Watson v. Ohio Dep't of Rehab. & Corr.*, 10th Dist. No. 11AP-606, 2012-Ohio-1017. Plaintiff provided sufficient evidence from which this court can conclude defendant had notice of an impending assault and failed to act accordingly.

{¶11} The credibility of witnesses and the weight attributable to their testimony are primarily matters for the trier of fact. *State v. DeHass*, 10 Ohio St. 2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court is free to believe or disbelieve, all or any part of each witness's testimony. *State v. Antill*, 176 Ohio St. 61, 197 N.E.2d 548 (1964). The court finds plaintiff's version of the facts persuasive, especially in light of the fact defendant considered the threats serious enough to warrant a transfer. Plaintiff informed defendant of threats from other inmates, including the one who ultimately

assaulted him, and specifically requested separations from those who threatened him. His requests were ignored, and he had his mother contact defendant to ensure something was being done to ensure his safety. He then filed the informal complaint, and discussed the matter with Deputy Warden Fear, who affirmed the conversation occurred, and indicated a transfer was occurring.

{¶12} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988). Plaintiff claims he has permanent scars in his mouth, suffered great bodily pain, and continues to suffer mental anguish, requiring visits with mental healthcare practitioners. However, he provided no evidence related to any mental health treatment. Based on the medical records, plaintiff suffered a minor injury, which required minor treatment, including rinsing his mouth with warm water and applying ice. This court does not doubt plaintiff experienced substantial physical pain and mental anguish. However, there is no evidence from which this court can infer plaintiff suffers from any permanent injuries, or that his mental anguish requires ongoing treatment.

{¶13} Consequently, judgment is rendered in favor of plaintiff in the amount of \$250.00, plus \$25.00 for the filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction*, 62 Ohio Misc. 2d 19, 587 N.E. 2d 990 (Ct. of Cl. 1990).

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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 plaintiff in the amount of \$275.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk