

[Cite as *Acts 17:28 Ministries, Inc. v. Dept. of Rehab. & Corr.*, 2018-Ohio-4166.]

ACTS 17:28 MINISTRIES, INC., et al.

Plaintiffs

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2017-00355JD

Magistrate Robert Van Schoyck

DECISION OF THE MAGISTRATE

{¶1} Plaintiffs, who had a contract with defendant to provide chaplain services at a prison, brought this action claiming that defendant breached the contract by terminating it before its expiration date. The case was referred to the undersigned magistrate and proceeded to trial.

{¶2} Plaintiff, Mark Butler, testified at trial that he does business through plaintiff, Acts 17:28 Ministries, Inc., and serves as its Managing Director. Butler described his educational background and religious training and explained the services that he offers. The parties entered into a contract for plaintiffs to provide protestant chaplain services at Noble Correctional Institution (NCI) from July 7, 2015, through June 30, 2017, Butler stated. (Defendant's Exhibit A.) Butler recited his contractual duties and terms of compensation, being that he could work up to 28 hours a week at a \$20 hourly rate. Butler admitted that by signing the contract he acknowledged receiving the Standards of Conduct for Contractors and agreed "to comply with these standards and with safety rules and procedures." Butler also acknowledged going through an orientation program for contractors. (Defendant's Exhibit B.)

{¶3} The Standards of Conduct for Contractors, Butler acknowledged, set forth guidelines for contractors, including a Personal Conduct section which identified types of behavior that would not be tolerated, and under the Responsibilities section it was stated that violations of institutional guidelines may result in contract termination.

(Defendant's Exhibit B.) According to Butler, he always abided by institutional rules and regulations and never violated the Standards of Conduct for Contractors nor did anything to compromise the safety and security of NCI. Butler admitted, though, that he had some disagreements with the staff at NCI. Still, according to Butler, any such disagreements never became heated, he never shouted or raised his voice with anyone, and he thought he got along well with everyone.

{¶4} Describing some of the issues he had with others at NCI, Butler recalled, for example, being involved in a fundraiser there for the National Association for the Advancement of Colored People (NAACP) and having problems with prison officials about the number of attendees and about race-related statements he made about defendant, which in his view were pertinent to some remarks he gave on the history of the NAACP. Butler also recalled a time when he tried to bring a three-foot-long ram's horn into NCI, apparently for religious purposes. According to Butler, he had obtained prior approval to bring the ram's horn, but no documentation could be found on the day he brought it and security staff told him to return it to his vehicle.

{¶5} Butler testified that he had a disagreement with security staff on or about March 3, 2016, when he sought approval to bring some books into NCI. Butler testified that he was involved with putting on some programs at NCI for Black History Month, including a presentation from a college professor. According to Butler, the professor wanted the books to be brought into the institution, so Butler sought approval but was denied by security staff on the basis that the books were racist. Butler recounted having a disagreement over that decision with a Lieutenant McConkey. During a discussion between the two of them in McConkey's office, Butler testified, McConkey called him a "black ass" and in turn he called McConkey racist. Butler stated that this was the only time he ever got into an argument with anyone at NCI.

{¶6} Butler also told of an incident where an inmate Smoot missed a dose of medication due to being at a Bible study at the appointed time when medications were

dispensed to inmates in the infirmary. Butler recounted subsequently accompanying Smoot to the infirmary to verify to the medical staff that Smoot had been at Bible study. According to Butler, he did not demand that the medical staff provide Smoot with medication nor did he argue or take Smoot's side against staff. Butler testified at one point that he "advocated" for Smoot, but characterized it as merely verifying that Smoot had been at Bible study. Butler stated that advocacy was a role of his as a spiritual counselor, at least in the sense that he advocated for inmates "to know the Lord." Butler recalled being told by the staff in the infirmary that he was not supposed to be there and that he consequently turned around and left, although he thought he had access to all areas of NCI. Butler testified that he did not refuse any instructions given to him by the staff in the infirmary and that he never yelled or screamed. Butler testified that he was not aware anyone in the infirmary took issue with his actions and he denied encouraging or advising staff members to not prepare any Incident Reports about what happened in the infirmary that evening. The next day, Butler recalled, Sergeant Alfred Strickland spoke with him about what happened. When asked if he challenged institutional procedures during that discussion, Butler denied doing so. Butler stated that Strickland insultingly called him "Chaplain Boy" and at that point he walked away.

{¶7} Butler was asked if he recalled there being a separate issue arising from another inmate Bible study on May 25, 2016, but he stated that he had no such recollection. When asked more specifically if he told inmates during Bible study on that date that he was not a corrections officer and never would be, and that inmates could trust him, Butler denied making such a statement. Butler admitted that it would have been against institutional policy if he had said or done something to turn inmates against staff.

{¶8} Butler testified that on or about May 27, 2016, he met with Warden Tim Buchanan and another administrator, Darin Clark. Butler stated that he was told the parties' contract was terminated, effectively immediately, and that his services were no

longer needed. According to Butler, the reason given was that he posed a security risk and advocated too much for inmates, which he disputes. As Butler recalled, the exact nature of the security risk was not explained nor was any specific conduct cited. According to Butler, had the contract not been terminated he would have earned approximately \$32,000 over the remaining term running through June 30, 2017.

{¶9} Jared McGilton testified that he is employed with defendant as the Investigator at NCI, where he has worked for over 13 years. McGilton described his responsibilities, including investigating alleged misconduct by employees and contractors. McGilton explained how he comes to open investigations, and that one way it happens is when the warden, who receives a copy of every Incident Report prepared by NCI personnel, assigns him to investigate a particular incident. McGilton stated that in this case the warden assigned him to open an investigation into some Incident Reports involving Butler. In performing this or any other investigation, McGilton explained, he had access to review all Incident Reports on file and also to review security video footage.

{¶10} McGilton testified that he kept a set of investigative notes documenting several areas of concern. (Defendant's Exhibit E.) McGilton noted a September 26, 2015 Incident Report regarding Butler's attempt to enter NCI with a three-foot-long ram's horn, as well as two Incident Reports regarding Butler's March 3, 2016 attempt to enter NCI with unauthorized books. McGilton explained why prison officials must account for all items brought into the institution and he stated that neither the ram's horn nor the books had been approved. McGilton noted Butler's close interactions with an inmate Evans in March 2016 and testified about reviewing video footage of Butler, who lived a considerable distance from NCI, coming in after business hours to meet in an office with Evans, which he found concerning.

{¶11} McGilton noted that he obtained Incident Reports submitted by four different employees regarding an incident on May 18, 2016, when Butler reportedly

came to the infirmary with inmate Smoot around 8:00 p.m. and confronted the nursing staff to demand that Smoot be provided medication. (Defendant's Exhibit D.) Nurse Tonya Venham reported that Butler and Smoot caused a disturbance when they knocked on the pill call window and demanded that Smoot get his medication, and Butler told her that she was not allowed to refuse anyone their medication and that he demanded respect. Venham reported that Nurse Julie Milliken came to the scene and questioned the nature of Butler's business at the infirmary, and thereafter they moved away from Venham. Milliken reported that after hearing arguing in the front lobby of the infirmary, she approached the area and observed Butler, accompanied by an inmate, yelling and angrily waving his arms at Venham. Milliken reportedly told Butler and the inmate to quit arguing and to get out, whereupon they left. Corrections Officer T.R. Moore reported that Butler and Smoot yelled at Venham, demanding that she give Smoot medication. Corrections Officer Timothy Gross also reported that Butler and Smoot got into an argument with Venham, near the end of which Butler said, "I'm a staff member here, and I will not be disrespected like this!"

{¶12} McGilton stated that Smoot was issued a Conduct Report that evening, charging him with a rules infraction for being out of place, and that Sergeant Strickland prepared an Incident Report the following day, May 19, 2016, documenting that Butler and Smoot confronted Strickland that day and argued with him about the alleged rules infraction. (Defendant's Exhibit D.) The Incident Report indicates that Strickland was the hearing officer who would hold a hearing on the Conduct Report to decide if Smoot was guilty. According to Strickland's Incident Report:

Butler continued to argue with me, saying * * * "Smoot is a decent inmate, and that I need to investigate further before rendering a decision." [Unit Manager Melanie] Good then approached the area, and told the inmate to go back to his rack for count, and then said for us to go in to my office to talk. Butler turned and walked towards the door, and UM Good stated again, "Chaplain Butler, let's go in here and talk." He turned to her and

stated, "You can talk to me in the warden's office." He then walked out the door.

McGilton testified that Butler then came to the administrative building and spoke to him and Deputy Warden of Operations Gray. McGilton recounted that Butler asked to see the warden and that Gray informed Butler that Gray was the acting warden at the time. McGilton stated that he, Butler, Gray, and Deputy Warden of Special Services Ron Foster then met in Gray's office to get Butler's version of what happened that day and the evening before. McGilton stated that after hearing from Butler, they told him they would follow up and he was advised to return to the chapel. According to McGilton, Gray subsequently directed Foster to talk to Butler, advising him that his job was to provide religious services to inmates and that he otherwise needed to allow unit staff and security staff to deal with inmates and manage their conduct.

{¶13} McGilton testified that one week later, on the morning of May 26, 2016, an Incident Report prepared the evening before by Corrections Officer Nathan Oliver came to his attention. (Defendant's Exhibit D.) The description set forth in the Incident Report stated the following:

Sir on the above date and time, I officer Oliver heard Chaplain Butler state during his bible study "Im not a CO and would never be, you can trust me"[.] Him saying this caused the inmate[s] in attendance to cheer and yell causing a disturbance that lasted until I walked into the room. I was advised by Captain Wilson to write an Incident Report.

McGilton related that upon learning of this, he tracked down and interviewed several witnesses who had been at the Bible study and most of them confirmed what Oliver reported. McGilton testified that he viewed the incident as a safety concern that needed to be brought to the warden's attention. McGilton stated that he notified Darin Clark, to whom he directly reported on investigations, so that Clark could report it up to Warden Buchanan. According to McGilton, Buchanan later contacted him and asked for his investigative file. McGilton stated that a May 27, 2016 memorandum from Buchanan

memorialized a meeting that day between Buchanan, Clark, and Butler, during which Buchanan terminated Butler's contract. (Defendant's Exhibit E.)

{¶14} Corrections Officer Nathan Oliver testified that he was familiar with Butler from working at a security post in the chapel. Oliver stated that he was at the officers' desk there on May 25, 2016, when he overheard Butler, using a loudspeaker during Bible study, make a statement to inmates insinuating that corrections officers could not be trusted but that inmates could trust Butler. When Oliver heard this, he stated, he walked to the doorway and observed inmates applauding. Oliver allowed that it was not uncommon for inmates to applaud things that Butler said and he agreed that inmates should be able to trust their spiritual advisor, but Oliver testified that this remark and the response it drew was unusual and concerned him enough that he notified his supervisor, who directed him to write an Incident Report. (Defendant's Exhibit D.)

{¶15} Darin Clark testified that he is employed with defendant in the role of Business Administrator III at NCI, and that oftentimes in the absence of the Deputy Warden of Special Services he temporarily serves in that role too according to the chain of command. Clark, who testified that he has worked for the state for 22 years, explained some of defendant's policies regarding service contracts and he testified that he signed the contract in question on defendant's behalf. Clark explained that contractors, be they providers of food, medical, religious, or other services, are held to the same standard of conduct as defendant's employees, and must be firm, fair, and consistent with inmates. There is an orientation process for contractors that includes a video presentation, Clark stated. Clark testified about the unique challenges inherent to the prison environment as a workplace, like managing felons who are sometimes difficult to deal with. Clark testified about how the failure of contractors or staff to follow the mandates of prison authorities can lead to tension and hostility with inmates. Clark also testified about how one of the chief security risks in prison is when an inmate

establishes a close enough relationship with a staff member to be able to exercise some control over that person, oftentimes leading them into being manipulated by the inmate.

{¶16} Clark stated that he attended the meeting with Warden Buchanan and Butler during which Buchanan terminated the parties' contract, and he described the meeting as short and to the point, lasting about ten minutes. Clark testified that Buchanan explained to Butler that the reason for his decision was that Butler had become a security risk. According to Clark, the recent events set forth in the Incident Reports filed between May 18-25, 2016, were cited by Buchanan, who expressed concern about the emotions Butler displayed and the severity of Butler's conduct as reported by staff. Clark testified about how and why Incident Reports are prepared, explaining that in general anything unusual that happens in the prison is supposed to be documented in an Incident Report, largely for safety reasons, and all staff are trained in how to complete them. Clark acknowledged that, even if inappropriate, not every aspect of Butler's conduct as documented in the Incident Reports constituted a security risk, and he acknowledged that not every violation of the Standards of Conduct for Contractors would result in immediate termination. Clark testified that, as set forth in the contract, defendant had the authority to terminate the contract immediately if a contractor compromised the security and safety of the institution, and that even without cause defendant had contractual authority to terminate the contract at any time with a written 60-day notice.

{¶17} "To prevail on a breach of contract claim, a plaintiff must prove the existence of a contract, performance by the plaintiff, breach by the defendant, and damage or loss to the plaintiff." *Prince v. Kent State Univ.*, 10th Dist. Franklin No. 11AP-493, 2012-Ohio-1016, ¶ 24. "The construction of written contracts * * * is a matter of law." *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus. "Contracts should be interpreted so as to carry out the intent of the parties, which is evidenced by the contractual language." Sys.

Automation Corp. v. Ohio Dept. of Admin. Servs., 10th Dist. Franklin No. 04AP-97, 2004-Ohio-5544, ¶ 26. “Where one instrument incorporates another by reference, both must be read together.” *Fouty v. Ohio Dept. of Youth Servs.*, 167 Ohio App.3d 508, 2006-Ohio-2957, 855 N.E.2d 909, ¶ 64 (10th Dist.), quoting *Christe v. GMS Mgt. Co., Inc.*, 124 Ohio App.3d 84, 88, 705 N.E.2d 691 (9th Dist.1997); see also *Volovetz v. Tremco Barrier Solutions, Inc.*, 2016-Ohio-7707, 74 N.E.3d 743, ¶ 26 (10th Dist.).

{¶18} Upon review of the evidence presented at trial, the magistrate finds as follows. The parties formed a contract by which defendant would pay Butler to perform protestant chaplain services on a part-time basis at NCI from July 7, 2015, through June 30, 2017. A separate document, the Standards of Conduct for Contractors, was incorporated by reference into the contract. Under the language set forth on the approval page of the contract, Butler acknowledged receipt of the Standards of Conduct for Contractors and agreed “to comply with these standards and with safety rules and procedures.” Butler also signed a separate form acknowledging receipt of the Standards of Conduct for Contractors, and acknowledging he understood “entering a correctional institution * * * carries responsibilities necessary to ensure safety and security to the facility and will abide by all rules and guidelines contained herein.”

{¶19} The Purpose section of the Standards of Conduct for Contractors explained, in part, that “[p]ersons entering a correctional facility or who provide services to offenders under supervision, have certain obligations under law to insure that their actions do not jeopardize the safe and secure operations of ODRC.” The Personal Conduct section of the Standards of Conduct for Contractors provided, in part, that:

It is essential to the orderly operation of a correctional department that all persons conduct themselves in a professional manner. The following are several types of behavior that will not be tolerated within a correctional environment * * *. (This is not intended to be an all-inclusive list).

* * *

2. No person shall, without authorization from the Site Manager, allow themselves to show partiality toward, or become emotionally * * * involved with offenders * * *.

{¶20} On the evening of May 18, 2016, there was an incident in which Butler accompanied inmate Smoot to an area in the infirmary where Smoot was not allowed to be at that time and they jointly demanded that nursing staff provide Smoot with medication. As reported by two nurses and two corrections officers who were there, Butler yelled at and argued with the staff in an emotionally charged manner while advocating for Smoot. Smoot was issued a Conduct Report charging him with a rules infraction for being out of place. The following day, Butler and Smoot jointly confronted Sergeant Strickland, who was to serve as the hearing officer for the Conduct Report. Butler, with Smoot in tow, argued with Strickland, insisting that Strickland investigate the matter before making a decision. After Unit Manager Good intervened and ordered Smoot to leave, Butler refused Good's request to talk and walked away. Later that day, prison officials met with Butler and admonished him to stay within his role as a provider of religious services and not interfere with other staff in their management of inmates.

{¶21} On the evening of May 25, 2016, Butler held an inmate Bible study where he made a remark to the effect that "I'm not a CO and would never be, you can trust me." The remark caused a disturbance among the inmates in attendance, who cheered and yelled until Corrections Officer Oliver entered the room. Investigator McGilton, after looking into this and interviewing witnesses, felt that it should be brought to the warden's attention as a safety concern, so he reported it up the chain of command to Darin Clark. McGilton had been investigating Butler for some time and kept a file on him. Warden Buchanan requested the file and later called a meeting with Butler and Clark on May 27, 2016, at which Buchanan terminated the contract out of concern that Butler's conduct had come to pose a risk to the safe operation of the institution.

{¶22} The contract provision that Buchanan relied upon in taking this action was from Section F, which spelled out certain ways that the contract could be terminated

before its expiration date. The specific clause that Buchanan relied upon states the following:

4. DRC may immediately terminate the contract if the Independent Contractor, subcontractor and/or any individual employed by the Independent Contractor violates the law or otherwise compromises the security and safety of the work site. * * *

{¶23} Upon carefully considering the evidence, it is apparent that the termination of the contract was in accordance with this provision. Butler engaged in conduct that was inconsistent with the Standards of Conduct for Contractors and could have the effect of compromising security. During the incidents that occurred in the days leading up to the termination of the contract, Butler showed partiality toward one or more inmates and otherwise acted in ways that jeopardized prison safety.

{¶24} Security rules dictated that inmates could only visit the pill call area of the infirmary at certain times. Butler not only enabled inmate Smoot to be there at a time when security rules prohibited Smoot from being there, but he caused a disturbance by arguing with the medical staff in front of Smoot and emboldened and condoned Smoot himself to yell at the medical staff until a nurse had to order both of them to leave. Butler, again in conjunction with Smoot, the next day confronted and challenged the hearing officer who would make a decision on the Conduct Report issued to Smoot and rebuffed Unit Manager Good after she was forced to intervene. Butler's advocacy and strong emotions during these incidents evinced favoritism and a close connection with Smoot. Whether or not Butler broadly viewed such conduct as pastoral care, his duties as a chaplain were set out in the contract and did not include serving as an inmate advocate or ombudsman relative to the type of secular matters at issue here.

{¶25} Even after being admonished by prison management, less than a week later Butler made a statement before the inmates congregated at his Bible study implying that the corrections officers at NCI were untrustworthy, but that inmates could trust him. Cultivating inmates' favor by sowing distrust against corrections officers was

not the type of impartial, professional behavior required of Butler under the Standards of Conduct for Contractors, and this kind of statement could incite hostility toward corrections officers. The unusual nature and significance of Butler's remark was demonstrated by the strong reaction it drew from the inmates in attendance and the fact that the cheering stopped only when Oliver appeared in the doorway.

{¶26} Departmental policy required that everyone working in the prison exercise firm, fair, and consistent treatment of inmates. During the incidents between May 18-25, 2016, Butler engaged in a course of conduct whereby he aligned himself with inmates and turned them against his co-workers. Butler confronted and argued with co-workers about Smoot's treatment, with Smoot present, and even condoned Smoot's quarreling with staff, and he insinuated to a group of inmates under his spiritual guidance that his co-workers were dishonest. Considering the unique nature and purpose of a prison, such conduct has the effect of compromising safety and security. While Butler generally denied arguing with staff in front of an inmate or doing anything that could turn inmates against staff, which he admitted would be impermissible, the greater weight of the evidence establishes that he did so. This is not to say that Butler had to ignore wrongs that he perceived against inmates or himself, nor should this decision be understood to minimize the troubling language he described being used toward him by co-workers, but any such concerns had to be addressed in ways that would not compromise prison safety and security.

{¶27} Butler's closing argument asserted that even if defendant's versions of events was correct, there was no "immediate" threat to safety or security. The contract did not require an immediate threat, however, and instead permitted defendant to terminate the contract immediately if the contractor compromised the security and safety of the prison. "The court's duty is to give effect to the words used in the contract and not to delete or insert words not used." *Eckel v. Bowling Green State Univ.*, 10th Dist. Franklin No. 11AP-781, 2012-Ohio-3164, ¶ 23. And, regardless, there was a

degree of immediacy in that Butler was suddenly involved in three separate incidents in the span of one week, causing no fewer than six employees to file Incident Reports about him.

{¶28} Based on the foregoing, the magistrate finds that plaintiffs failed to prove their claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶29} *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).*

ROBERT VAN SCHOYCK
Magistrate