

[Cite as *Martin v. Dept. of Rehab. & Corr.*, 2019-Ohio-505.]

WILLIAM E. MARTIN

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00307JD

Magistrate Gary Peterson

DECISION OF THE MAGISTRATE

{¶1} Plaintiff was at all times relevant an inmate in the custody and control of defendant, the Ohio Department of Rehabilitation and Correction (ODRC), at the Allen-Oakwood Correctional Institution (AOCI). Plaintiff brings this action claiming that defendant was negligent in failing to prevent an attack upon him by another inmate. The issues of liability and damages were bifurcated, and the case proceeded to trial on the issue of liability.¹

{¶2} At trial, plaintiff testified that he met an inmate named Solly while they were both incarcerated at AOCI. Plaintiff stated that they met at chapel, where Solly presented himself as a Jew. Plaintiff asserted that he subsequently discovered “inconsistencies” with Solly’s story regarding his Jewish faith. Plaintiff explained that he nevertheless continued to interact with Solly at least on a weekly basis at chapel and that an ongoing disagreement commenced concerning Solly presenting himself as a Jew. Plaintiff stated that Solly, however, is a fake Jew. According to plaintiff, the dispute between the two inmates continued for approximately one year.

{¶3} Plaintiff testified that he requested protective custody due to the ongoing religious dispute. Plaintiff initially stated that he contacted the investigator for protective

¹At the conclusion of the proceedings, the parties agreed to keep the record open so that defendant could submit a deposition that would be marked as Defendant’s Exhibit C. However, on October 3, 2018, defendant filed a notice wherein it stated that it waives its right to submit the deposition. Therefore, the exhibit is withdrawn.

custody, but he later stated that he signed “papers” with the unit manager regarding protective custody. On cross-examination he claimed that he requested protective custody while speaking with the deputy warden. Plaintiff, however, did not present the court with any documentation regarding any alleged requests for protective custody.

{¶4} Plaintiff testified that Solly was aggressive and made threatening remarks directed toward him. Plaintiff claimed that Solly threatened him at chapel, which was supervised by a corrections officer, although plaintiff could not recall the name of the corrections officer. Plaintiff also testified that he informed as many as eight corrections officers regarding the religious dispute and that ultimately Solly was transferred to another dormitory at AOCI. However, plaintiff continued to interact with Solly on a weekly basis at chapel. Plaintiff added that at some point Solly began informing other inmates that plaintiff was a snitch.

{¶5} Regarding Solly’s propensity for violence, plaintiff testified that about two weeks before their physical altercation, he saw Solly strike another inmate at chapel. Plaintiff asserted that this occurred in the presence of the warden, although plaintiff claimed that no conduct report was ever issued. Plaintiff added that he also saw Solly steal coffee from his cellmate and that Solly shared the stolen coffee with him.

{¶6} Plaintiff testified that on April 30, 2015, he went to the equipment room at AOCI to speak with Solly. Plaintiff acknowledged that he did not intend to obtain sports equipment, that he had no official business being in the recreation room, and that he might have been considered out of place for being there. Plaintiff explained that he wished to “put a damper” on Solly’s attitude. Plaintiff believed that by confronting Solly, he would be able to deescalate the situation. Plaintiff stated that Solly was by the window when he entered the recreation room and that the two of them began arguing. Initially, plaintiff claimed that Solly put his “hands on” plaintiff, but he later clarified that plaintiff put his hand on Solly’s chest, escalating the altercation from verbal to physical. Plaintiff believed that by putting his hand on Solly’s chest, he could calm him down.

Plaintiff asserted that Solly responded by striking him, that he knocked Solly down, that Solly picked up a golf club, and that Solly struck him multiple times with the golf club. Plaintiff testified that this was the first time that there had been a physical altercation between him and Solly and that he did not expect Solly to hit him. Plaintiff estimated that the entire altercation lasted for 15-20 minutes.

{¶7} Following the fight, plaintiff put his hat on and went back to his cell. Solly, however, suffered a broken hand and reported the fight to staff at AOCI. As a result, plaintiff was escorted to the infirmary where he was evaluated. Eventually plaintiff was transported to a local hospital for further treatment.

{¶8} James Shrider testified that he has been employed by defendant at AOCI for 14 years and that on April 30, 2015, he was a sergeant correctional councilor. Shrider's duties included, among other things, overseeing daily operations and handling inmate problems. Shrider explained that AOCI has two facilities: Allen and Oakwood. Shrider stated that the inmates at Allen, where plaintiff and Solly were assigned, are considered level one and two inmates, which represents the lowest levels of the security classifications.

{¶9} Regarding the recreation room, Shrider testified that an inmate is assigned to distribute sports equipment to other inmates for use for recreation. Shrider stated that only inmates assigned to the recreation room are allowed to be in the recreation room. Shrider explained that the recreation room has a large window that opens to the exterior recreation yard where inmates may come and obtain sports equipment. The equipment is passed through the window to the inmates who are in the yard. Shrider explained that there is a corrections officer assigned to recreation but that the officer is not required to stay in the recreation room. Shrider explained that the recreation officer is permitted to roam all of recreation rather than be confined to the recreation room.

{¶10} Shrider testified that plaintiff complained to him on multiple occasions about Solly. Shrider recalled that plaintiff complained that Solly had religious books that he

does not need to have and that he was falsely holding himself out to be the head of the Jewish religion at AOCI. Shrider believed that the dispute had been ongoing for two weeks prior to the fight. Shrider stated that no other inmates contacted him about the dispute between plaintiff and Solly. Shrider added that he spoke with Solly prior to the fight and in Shrider's opinion, Solly did not have any dispute with plaintiff and simply wanted plaintiff to leave him alone. Shrider stated that plaintiff never complained about being in fear of Solly or fearing that Solly might harm him.

{¶11} Shrider testified that he received a call from the shift office about the fight between plaintiff and Solly. Shrider stated that he escorted Solly to medical and then placed him in restrictive housing. Shrider recalled seeing that plaintiff was receiving treatment in medical and later learned that he was transported out to a hospital for additional treatment. Shrider testified that he later spoke with plaintiff, who informed him that he went to the recreation room and that Solly attacked him. Shrider also spoke with inmate Reshawn Jones, who wrote a witness statement about the fight. Shrider explained that Jones was a porter in the recreation room. Shrider testified that he reviewed the security tape, which did not capture the fight, but did capture plaintiff entering the recreation room, and then about a minute later, plaintiff and Jones left the recreation room; Solly was the last to exit the recreation room. Shrider added that the tape showed Jones, who had a mop and a bucket, reentering the recreation room. Shrider stated that Solly and plaintiff both received conduct reports and discipline by the Rules Infraction Board.

{¶12} Rhett DePew, an inmate at AOCI, testified that he was outside the recreation room when plaintiff and Solly got into a fight on April 30, 2015. DePew did not see the fight but testified that he was aware of the religious dispute between plaintiff and Solly. DePew recalled that plaintiff did not agree with Solly's viewpoints. DePew admitted that he did not know Solly, never talked to Solly, and only knew of the dispute from plaintiff. DePew stated that he was unaware of any previous incidents of violence

between Solly and plaintiff and that plaintiff never stated to him that he was afraid of Solly.

{¶13} Larry Favors, an inmate at AOCI, testified that he was aware of the fight between plaintiff and Solly. Favors maintained that he was outside the recreation room when the fight occurred, but he admitted that he could not see in the recreation room unless he approached and looked in the window. Despite that, Favors testified that he saw plaintiff and Solly arguing and was aware that Solly hit plaintiff with a golf club. Favors also testified that he was aware that plaintiff and Solly had a disagreement over religious views. Favors stated that he was not aware of any security officers in the vicinity of the recreation room when the fight occurred.

{¶14} “To establish negligence, a plaintiff must show the existence of a duty, a breach of that duty, and injury resulting proximately therefrom.” *Taylor v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-1156, 2012-Ohio-4792, ¶ 15. “In the context of a custodial relationship between the state and its prisoners, the state owes a common-law duty of reasonable care and protection from unreasonable risks.” *Jenkins v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-787, 2013-Ohio-5106, ¶ 8. “The state, however, is not an insurer of inmate safety and owes the duty of ordinary care only to inmates who are foreseeably at risk.” *Franks v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-442, 2013-Ohio-1519, ¶ 17. “Reasonable care is that degree of caution and foresight an ordinarily prudent person would employ in similar circumstances, and includes the duty to exercise reasonable care to prevent an inmate from being injured by a dangerous condition about which the state knows or should know.” *McElfresh v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-177, 2004-Ohio-5545, ¶ 16.

{¶15} “The law is well-settled in Ohio that ODRC is not liable for the intentional attack of one inmate by another, unless ODRC has adequate notice of an impending assault.” *Watson v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-606,

2012-Ohio-1017, ¶ 9, citing *Mitchell v. Ohio Dept. of Rehab. & Corr.*, 107 Ohio App.3d 231, 235 (10th Dist.1995), citing *Baker v. State, Dept. of Rehab. & Corr.*, 28 Ohio App.3d 99 (10th Dist.1986); *Literal v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 16AP-242, 2016-Ohio-8536, ¶ 16; see also *Frash v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-932, 2016-Ohio-3134, ¶ 11, (regarding an inmate-on-inmate attack, “[t]he law is that in order to be liable, ODRC must have had notice, actual or constructive, of an impending attack.”).

{¶16} “Notice may be actual or constructive, the distinction being the manner in which the notice is obtained rather than the amount of information obtained.” *Lucero v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 11AP-288, 2011-Ohio-6388, ¶ 18. “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.

{¶17} Upon review of the evidence, the magistrate determines that plaintiff failed to prove his claim by a preponderance of the evidence. The magistrate further finds that on April 30, 2015, plaintiff went to the recreation room at AOCI to confront Solly regarding an ongoing disagreement over religious views and plaintiff’s belief that Solly had referred to him as a snitch. Plaintiff had been complaining about Solly for several weeks leading up to the confrontation, but it appears that Solly merely wished to be left alone. Nevertheless, plaintiff was not assigned to the recreation room and should not have entered the recreation room as inmates who are not assigned to work the recreation room are not permitted to be in the recreation room. Once he entered the recreation room, plaintiff and Solly engaged in a verbal argument. Plaintiff escalated the dispute by placing his hand on Solly’s chest. Plaintiff admitted to knocking Solly to the ground and Solly apparently retaliated by using a golf club to strike plaintiff several

times. The magistrate believes that plaintiff was the aggressor and that plaintiff escalated the disagreement by placing his hand on Solly's chest, causing the fight.

{¶18} Plaintiff failed to persuade the magistrate that defendant had any notice that there would be a physical altercation between plaintiff and Solly. It is apparent that leading up to the fight, plaintiff complained to several staff members at AOCI regarding Solly's religious views. However, Shrider, who spoke with plaintiff and Solly prior to the fight, credibly testified that plaintiff never informed him that he feared an attack by Solly. Additionally, plaintiff testified that he did not expect Solly to attack him when he went to the recreation room on April 30, 2015. Furthermore, neither DePew nor Favors testified that they were aware that plaintiff feared Solly would attack him.

{¶19} Plaintiff's testimony that he requested protective custody lacks credibility. As pointed out above, plaintiff claims that he requested protective custody and even completed paperwork regarding such a request. However, it is plaintiff's burden to prove his case and plaintiff did not present the court with any paperwork regarding such requests. Furthermore, plaintiff claimed to have complete the paperwork with the unit manager, but plaintiff also claimed to have contacted the deputy warden and an investigator regarding protective custody. None of those individuals testified at trial and corroborated plaintiff's claims.

{¶20} Plaintiff's credibility is further impacted by his nonsensical claim that the altercation in the recreation room lasted for approximately 15-20 minutes; Shrider credibly testified that plaintiff was only in the recreation room for approximately one minute as shown on the security camera recording. Furthermore, plaintiff's narration of what occurred in the recreation room does not account for 15-20 minutes of time. Moreover, rather than report that he was attacked, as he now claims, plaintiff attempted to conceal that the fight had occurred by placing his hat on his head and proceeding to his cell following the altercation. In short, the magistrate does not believe that plaintiff ever requested protective custody from Solly. Nevertheless, even if plaintiff requested

protective custody, there is no dispute that plaintiff went to the recreation room, where he had no official business and was not permitted to be, and confronted Solly in a location where Solly was likely to be alone. Plaintiff also was the first to create physical contact and plaintiff admits to knocking Solly to the ground. See *Brown v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 15AP-468, 2015-Ohio-4395, ¶ 17, (“The choice of an inmate to get into a fight does not somehow place strict liability upon ODRC. Even if ODRC could somehow be seen as negligent for failing to keep the two inmates apart, that negligence is more than overcome by [appellant’s] choice to engage in the fight and retire to a restroom to engage in the fight.”).

{¶21} Plaintiff argues that a corrections officer should have been in or around the recreation room such that the fight could have been prevented. However, there was no testimony or evidence regarding appropriate staffing levels or appropriate post assignments for corrections officers. Additionally, there was no testimony regarding the appropriate duties for the corrections officer assigned to the recreation yard. Furthermore, plaintiff did not present any evidence that the assigned recreation officer somehow neglected any assigned duties. Moreover, “decisions relating to the allocation and location of correctional staff concern prison security and administration and, as such, are executive functions that involve a high degree of official discretion.” *McDougald v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 17AP-776, 2018-Ohio-2315, ¶ 15, quoting *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 18. Defendant is generally immune from tort liability for such decisions. *Hughes* at ¶ 18.

{¶22} In short, the court finds that plaintiff failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶23} *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).

GARY PETERSON
Magistrate

Filed January 10, 2019
Sent to S.C. Reporter 2/13/19