[Cite as *Melton v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-2995.]

PERCY MELTON Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Case No. 2019-01038AD Deputy Clerk Daniel R. Borchert MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Percy Melton ("plaintiff"), an inmate, filed a complaint against defendant, Ohio Department of Rehabilitation and Correction ("ODRC"). Plaintiff related on January 27, 2019, that as the result of a "false conduc[t] report" and "false work evaluation," he suffered termination, loss wages, burns on his left and right forearms and wrists, and defamation of character which negatively impacted the parole board decisions regarding plaintiff. The basis of plaintiff's claim arises from Aramark, a contractor of defendant, employee's failing to follow "policy" regarding "Class A tools" used for performing kitchen duties. Plaintiff seeks damages in the amount of $2,500.00. Plaintiff was not required to submit the $25.00 filing fee.

{¶2} Defendant submitted an Investigation Report denying liability in this matter to which plaintiff filed a response, reiterating arguments stated in his initial complaint.

CONCLUSIONS OF LAW

{¶3} In order to prevail, in a claim for negligence, plaintiff must prove, by a preponderance of the evidence, that defendant owed him a duty, that defendant breached that duty, and that defendant's breach proximately caused his damages. *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).

{¶4} "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.), 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).

{¶5} Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University,* 76-0368-AD (1977).

{¶6} 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).

{¶7} In order to recover against a defendant in a tort action, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82, 118 N.E.2d 147 (1954).

{¶8} 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).

{¶9} Defendant argues that it is not responsible for the claimed injuries because the allegedly negligent staff members that plaintiff asserts lead to his burns were employees of Aramark, who defendant claims is an independent contractor. Although a "long line of Ohio cases stands for the proposition that an employer is not generally liable for the acts of an independent contractor or the contractor's employees,"

the defendant has not presented enough evidence that Aramark or its employees are not involved in the institution's daily operations, that the defendant is not involved in Aramark's decision making as it relates to its operations at defendant's locations, or that the defendant does not play any part in hiring, paying, or supervising Aramark's employees. Therefore, the court rejects Defendant's argument that Aramark is an independent contractor thereby making defendant not responsible for its staff members negligence.

{¶10} Regardless, the court also finds plaintiff's statement not particularly persuasive. To the extent plaintiff brings a negligence claim against defendant, plaintiff has provided no evidence, aside from his own uncorroborated statements, of his burn injuries or of the damages he claims. Therefore, plaintiff cannot prevail on a negligence claim.

{¶11} In addition, prison regulations, including those contained in the Ohio Administrative Code, "are primarily designed to guide correctional officials in prison administration rather than to confer rights on inmates." *State ex rel. Larkins v. Wilkinson*, 79 Ohio St.3d 477, 479, 1997-Ohio-139, 683 N.E.2d 1139, citing *Sandlin v. Conner* 515 U.S. 472, 481-482, 115 S. Ct. 2293, 132 L. Ed. 2d 418 (1995). Additionally, this court has held that "even if defendant had violated the Ohio Administrative Code, no cause of action would exist in this court. A breach of internal regulations in itself does not constitute negligence." *Williams v. Ohio Dept. of Rehab. and Corr.*, 67 Ohio Misc.2d 1, 3, 643 N.E.2d 1182 (10th Dist. 1993). Accordingly, to the extent that plaintiff alleges that DRC somehow violated internal prison regulations and the Ohio Administrative Code, he fails to state a claim for relief. See *Sharp v. Dept. of Rehab. & Corr.*, Ct. of Cl. No. 2008- 02410-AD, 2008-Ohio-7064, ¶ 5.

{¶12} With respect to plaintiff's claim that defendant's actions resulted in plaintiff's termination, to the extent he is arguing that the defendant breached an

employment contract when it removed him from his job assignment, "[t]raditionally, ordinary prison labor performed at a state correctional facility has not been deemed to be predicted on an employer-employee relationship." *Moore v. Ohio Dept. of Rehab. & Corr.*, 89 Ohio App.3d 107, 111, 623 N.E.2d 1214 (10th Dist. 1993). An inmate performing a job assignment during incarceration is thus not an employee of the institution. Ohio Admn. Code 5120-3-05; *State ex rel. Jones v. Hamilton County Bd. of Commrs.,* 124 Ohio App.3d 184, 194, 705 N.E.2d 1247 (1st Dist. 1997). Likewise, such inmates are not considered employees under the employment laws of R.C. Chapter 4113. See *Fondern v. Ohio Dept. of Rehab. & Corr.*, 51 Ohio App.2d 180, 183-184, 367 N.E.2d 901 (10th Dist. 1977). The nature of the inmate-prison relationship is custodial, not contractual. *Hurst v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 93AP-716, 1994 WL 49749 (Feb. 17, 1994). Thus, plaintiff's claim that he was wrongfully terminated fails to state a claim upon which relief may be granted either in contract or under the Ohio labor laws.

{¶13} Furthermore, to the extent that plaintiff claims the defendant is liable to him for defamation because a false conduct report resulted in his wrongful termination, he cannot prevail.

{¶14} "In Ohio, defamation occurs when a publication contains a false statement 'made with some degree of fault, reflecting injuriously on a person's reputation, or exposing a person to public hatred, contempt, ridicule, shame or disgrace, or affecting a person adversely in his or her trade, business or profession.'" *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, 883 N.E.2d 1060 ¶ 9, quoting *A & B-Abell Elevator Co., Inc. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 7, 651 N.E.2d 1283 (1995). "'Slander' refers to spoken defamatory words, while 'libel' refers to written or printed defamatory words." *Schmidt v. Northcoast Behavioral Healthcare*, 10th Dist. No. 10AP-565, 2011-Ohio-777, ¶ 8.

{¶15} "To succeed on a defamation claim, a plaintiff must establish: (1) a false statement, (2) about the plaintiff, (3) published without privilege to a third party, (4) with fault of at least negligence on the part of the defendant, and (5) the statement was either defamatory per se or caused special harm to the plaintiff." *Watley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-902, 2008-Ohio-3691, ¶ 26.

{¶16} "Under Ohio common law, actionable defamation falls into one of two categories: defamation per se or defamation per quod." *Am. Chem. Soc. V. Leadscope, Inc.*, 10th Dist. No. 08AP-1026, 2010-Ohio-2725, ¶ 49.

{¶17} "In order to be actionable per se, the alleged defamatory statement must fit within one of four classes: (1) the words import a charge of an indictable offense involving moral turpitude or infamous punishment; (2) the words impute some offensive or contagious disease calculated to deprive a person of society; (3) the words tend to injure a person in his trade or occupation; and (4) in cases of libel only, the words tend to subject a person to public hatred, ridicule, or contempt." *Woods v. Capital Univ.*, 10th Dist. No. 09AP-166, 2009-Ohio-5672, ¶ 28.

{¶18} "On the other hand, a statement is defamatory per quod if it can reasonably have two meanings, one innocent and one defamatory. Therefore, when the words of a statement are not themselves, or per se, defamatory, but they are susceptible to a defamatory meaning, then they are defamatory per quod. Whether an unambiguous statement constitutes defamation per se is a question of law." (Citations omitted.) *Woods* at ¶ 29.

{¶19} "When a statement is found to be defamation per se, both damages and actual malice are presumed to exist." *Knowles v. Ohio State Univ.*, 10th Dist. No. 02AP-527, 2002-Ohio-6962, ¶ 24. "When, however, a statement is only defamatory per quod, a plaintiff must plead and prove special damages." *Am. Chem. Soc.* at ¶ 51.

{¶20} "Special damages are damages of such a nature that they do not follow as a necessary consequence of the claimed injury." *Mohican Ents. Inc. v. Aroma Design Group, Inc.,* 10th Dist. No. 96APE01-26, 1996 WL 517611 (Sept. 10, 1996). "Special damages are those direct financial losses resulting from the plaintiff's impaired reputation." *Peters v. Dept. of Rehab. & Corr.*, 10th Dist. No. 14AP-1048, 2015-Ohio-2668, ¶ 7, quoting *Hampton v. Dispatch Printing Co.,* 10th Dist. No. 87AP-1084 (Sept. 13, 1988). "Special damages include 'an actual, temporal loss of something having economic or pecuniary value.'" *Griffis v. Klein*, 2nd Dist. No. 22285, 2008-Ohio-2239, ¶ 47, quoting *Whiteside v. Williams,* 12th Dist. No. CA2006-06-021, 2007-Ohio-1100, ¶ 7. "The Ohio Supreme Court has held that special damages are damages that 'result from conduct of a person other than the defamer or the one defamed.'" *Wilson v. Harvey,* 164 Ohio App.3d 278, 2005-Ohio-5722, 842 N.E.2d 83, ¶ 24 (8th Dist.), quoting *Stokes v. Meimaris*, 111 Ohio App.3d 176, 185, 675 N.E.2d 1289 (8th Dist. 1996), quoting *Bigelow v. Brumley*, 138 Ohio St. 574, 594, 37 N.E.2d 584 (1941).

{¶21} In the case at bar, the only remarks attributable to defendant's employees concern plaintiff's inability to get along with fellow workers. Plaintiff has failed to submit evidence to establish that the statements contained in the conduct report are in fact false or demonstrate how this conduct report resulted in special damages.

{¶22} Based on the foregoing, the court concludes that judgment is rendered in favor of the defendant.

IN THE COURT OF CLAIMS OF OHIO

Plaintiff v. OHIO DEPARTMENT OF REHABILITATION AND CORRECTION Defendant	Deputy Clerk Daniel R. Borchert ENTRY OF ADMINISTRATIVE DETERMINATION

{¶23} 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 defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

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