

[Cite as *Scott v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-2732.]

ANTHONY A. SCOTT

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2020-00164JD

Judge Patrick E. Sheeran

JUDGMENT ENTRY

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{¶1} Pursuant to Civ.R. 53(D)(3)(b), Plaintiff filed objections to the magistrate’s March 2, 2022 decision. For the reasons set forth below, the Court OVERRULES Plaintiff’s objections and adopts the magistrate’s decisions as its own.

### **Standard of Review**

{¶2} Civ.R. 53(D)(4)(b) provides that, “[w]hether or not objections are timely filed, a court may adopt or reject a magistrate’s decision in whole or in part, with or without modification.” However, when a party files objections to a magistrate’s decision, the court “shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues, and appropriately applied the law.” Civ.R. 53(D)(4)(d). In reviewing the objections, the court does not act as an appellate court but rather conducts “a de novo review of the facts and conclusions in the magistrate’s decision.” *Ramsey v. Ramsey*, 10th Dist. Franklin No. 13AP-840, 2014-Ohio-1921, ¶ 17 (internal citations omitted).

### **Background**

{¶3} Plaintiff is an inmate in the custody and control of Defendant at Noble Correctional Institution (NCI). Plaintiff became incarcerated after being convicted for possession of drugs and drug trafficking. In late 2015, Institutional Inspector Jared McGilton initiated an investigation into the movement of drugs into and their distribution

throughout NCI. Throughout the investigation, several inmates were considered suspects. Based on the statement of an informant, McGilton suspected that the drugs were being passed into NCI through a fence outside the chapel to an inmate named “Bama”. McGilton suspected Plaintiff after he determined that Plaintiff was originally from Alabama, worked in the chapel, had access to the chapel’s emergency door which opened to a fence that separated the chapel and an outdoor visitation area and gave him the opportunity to retrieve a package being passed through the fence. Additionally, McGilton reviewed video surveillance which showed Plaintiff meeting with many of the other inmates involved in investigation.

{¶4} Plaintiff filed a complaint against Defendant seeking to recover damages for defamation, which alleged that McGilton wrote a false conduct report charging him for being a participant in a prison drug conveyance network. The case proceeded to trial before a magistrate on the issues of liability and damages. Based on the evidence presented at trial, the magistrate found that Defendant established that the conduct report is protected by qualified privilege and that Plaintiff did not demonstrate that Defendant acted with actual malice to defeat the defense of qualified privilege. Accordingly, the magistrate recommended judgment in favor of Defendant.

{¶5} Plaintiff argues the magistrate erred when he found that (1) the conduct report was protected by qualified immunity; and (2) Plaintiff did not establish that Defendant acted with actual malice.

### **Discussion**

{¶6} Initially, the Court notes that objections must be supported “by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if the transcript is not available.” Civ.R. 53(D)(3)(b)(ii)-(iii). Plaintiff did not provide a transcript of the evidence to support his objections or an affidavit of evidence. When an objecting party fails to properly support his objections with a transcript or affidavit, “the trial court must accept the magistrate’s factual findings and limit its review

to the magistrate's legal conclusions." *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728, 2013-Ohio-2743, ¶ 13. Consequently, the Court accepts the magistrate's findings of fact as true and restricts its consideration of Plaintiff's objections to a review of the magistrate's legal conclusions.

{¶7} First, Plaintiff argues that Defendant's conduct report was not protected by qualified privilege. For McGilton's statements in the conduct report to be protected by a qualified privilege, they needed to be (1) made in good faith; (2) regarding an interest to be upheld; (3) limited in their scope to that interest; (4) made on a proper occasion; and (5) published only in a proper manner and to the proper parties. *See Mallory v. Ohio University*, 10th Dist. Franklin No. 01AP-278, 2001 Ohio App. LEXIS 5720, 21-22. In concluding that Defendant proved its defense, the magistrate found that:

McGilton credibly testified regarding the genesis of the investigation, the evolution of the investigation, and its ultimate conclusions. There is no credible evidence before the court that McGilton failed to exercise good faith while conducting the investigation. It appears to the magistrate that McGilton acted professionally at all relevant points of the investigation. Indeed, McGilton credibly testified that an informant alerted him that "Bama" in the chapel would retrieve the drugs outside the chapel door by the outdoor visitation area. Prison administrators, like McGilton, no doubt have an interest in investigating suspected criminal activity in the prison system. All the statements made in the conduct report relate to the investigation. Furthermore, the conduct report was only published to individuals who were involved in the disciplinary process or the security review process.

Upon review, the Court finds no basis to modify this conclusion. Accordingly, the Court **OVERRULES** Plaintiff's first objection.

{¶8} Next, Plaintiff argues that Defendant acted with actual malice. In order to defeat the defense of qualified privilege, Plaintiff must establish by clear and convincing evidence that McGilton authored the statements in the conduct report "with a 'high degree

of awareness of their probable falsity’ or when the publisher ‘in fact entertained serious doubts as to the truth of his publication.’ (internal citations omitted).” See *Hill v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 20AP-88, 2021-Ohio-561, ¶ 19, citing *Jackson v. Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, 883 N.E.2d 1060, ¶ 10. In concluding that Plaintiff did not meet his burden, the magistrate found that:

McGilton did not act with reckless disregard for the truth of the allegations. Indeed, McGilton relied on a confidential informant statement identifying an inmate in the chapel named “Bama” who would retrieve the drugs passed through the fence separating the chapel and the outside visitation area. Plaintiff was the only inmate from Alabama working in the chapel. McGilton believed that inmate correspondence established that plaintiff may also be known as “Bama.” Furthermore, McGilton credibly testified that plaintiff was associated with a number of the other inmates who were already involved in the investigation. Any reasonable investigator would conclude at that point that plaintiff may be involved in a drug ring even if it is later determined that plaintiff was not actually involved.

Furthermore, plaintiff testified that the officer’s desk is in plain view of the chapel exterior door. However, it was established that the officer’s desk is located outside the interior door and that if someone is standing at the officer’s desk, that individual cannot see the exterior door. Additionally, anyone who wished to open the popper or exterior chapel door, would be able to open it from the inside. Because plaintiff worked in the chapel and conceivably had the ability to exit the popper door without being seen by a corrections officer, again, a reasonable investigator would conclude that plaintiff may be involved in the drug ring. In short, when McGilton authored the conduct report, an informant connected “Bama” in the chapel to the drug ring, plaintiff worked in the chapel and is originally from Alabama, plaintiff

was associated with several suspects of the drug ring, and plaintiff had access and the ability to move drugs into the prison.

Even if plaintiff had no involvement with the drug ring, that alone, does not demonstrate that McGilton published the conduct report with reckless disregard to its truth or falsity. An incorrect interpretation of the facts, or even negligence on McGilton's part, is not enough to establish malice. \* \* \* Indeed, it has not been established that McGilton authored the conduct report with a high degree of awareness of its probable falsity or that McGilton entertained serious doubts as to the truth of the publication. \* \* \* To the contrary, as noted above, McGilton had circumstantial evidence connecting plaintiff to the drug ring.

Accepting the magistrate's findings of fact, as required, the Court finds that the magistrate appropriately applied the law. Consequently, the Court OVERRULES Plaintiff's second objection.

{¶9} Upon review of the record, the magistrate's decision and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. 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.

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PATRICK E. SHEERAN  
Judge