

**IN THE COURT OF CLAIMS OF OHIO**

BRIAN KEITH ALFORD

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2016-00038JD

Judge Patrick E. Sheeran  
Magistrate Gary Peterson

DECISION

{¶1} Plaintiff, who at all relevant times was an inmate in the custody and control of Defendant, brought this action alleging defamation, excessive use of force, and punitive and retaliatory restrictions on his access to communications. Plaintiff also attempted to challenge parole board hearing decisions. On May 23, 2016, the Court dismissed Plaintiff's claims concerning access to various methods of communication, retaliation, and his challenges to parole board hearing decisions for lack of subject matter jurisdiction. In the same Entry, the Court clarified that Plaintiff's claim for excessive use of force is actually a negligence claim. The case was bifurcated, and Plaintiff's claims for defamation and negligence were tried before a Magistrate as to the issue of liability. On April 20, 2022, the Magistrate issued a Decision, in which he recommended that judgment be rendered in favor of Defendant.

{¶2} After receiving an extension, Plaintiff filed Objections to the Magistrate's Decision on May 11, 2022. After receiving several extensions, Plaintiff subsequently filed an Affidavit of Evidence in support of his Objections. With leave of Court, Defendant filed a Response to Plaintiff's Objections and the transcript of the trial before the Magistrate. Plaintiff's Objections are now before the Court for consideration.

**Standard of Review**

{¶3} “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision \* \* \*.” Civ.R. 53(D)(3)(b)(i). Objections “shall be specific and state with particularity all grounds for objection.” Civ.R. 53(D)(3)(b)(ii). “An objection to a factual finding, whether or not specifically designated as a finding of fact \* \* \*, shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Civ.R. 53(D)(3)(b)(iii).

{¶4} 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, ¶ 16-17. “Whether 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.” Civ.R. 53(D)(4)(b).

**Plaintiff’s Objections**

{¶5} Plaintiff does not clearly state or enumerate his objections. His Objections contain sections entitled OBJECTIONS TO FINDINGS OF FACT, DEFAMATION, and EXCESSIVE USE OF FORCE<sup>1</sup>, but it appears that a total of seven objections are presented. In reviewing Plaintiff’s Objections, the Court primarily relies on the transcript of the trial before the Magistrate, as it provides a more complete and exact record of the trial than Plaintiff’s Affidavit of Evidence.

{¶6} Plaintiff’s first objection is stated in the introduction section, in which he alleges: “Plaintiff requested an additional thirty (30) days for trial verbally on February 22nd, 2022 via telephone due to ODRC forcing Plaintiff to mail one 2.4 cubic foot legal box of active documents on the above mentioned case \* \* \*. However, Plaintiff was forced

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<sup>1</sup> The Court again notes that Plaintiff’s excessive use of force claim was determined to actually be a negligence claim.

to commence trial on February 23rd, 2022 as scheduled on the trial for liability.” (Objections, 1.) Looking at the transcript, Plaintiff explained in a preliminary conversation before the trial commenced that he called the Court the previous day to request a continuance of the trial, but he had not yet filed a motion on the docket. The Magistrate reminded Plaintiff that they discussed the reason for his continuance during the pretrial conference and confirmed that any exhibits that were not exchanged with opposing counsel and submitted to the Court would not be permitted. The Magistrate stated: “So we’re ready to go this morning. I have your other 103 documents that you submitted. So whatever additional documents haven’t made it, we won’t be able to use this morning.” Plaintiff replied: “That’s fine.” (Transcript 6:11-16.)

{¶7} From this conversation, it appears that Plaintiff withdrew his request for a continuance and agreed to proceed with the trial. Furthermore, the trial had already been continued multiple times at the request of both parties and stayed twice due to connected actions in other courts—resulting in a delay of almost five years from the original trial date. The Court finds no error in the Magistrate’s decision not to continue the trial again. Therefore, Plaintiff’s first objection is **OVERRULED**.

{¶8} In his second objection, Plaintiff argues that the testimony of Renea Myers-Carnes was based on what she “suspected” due to her conversations with Officer Wingate and Officer Epperson and the information of the DOTS portal instead of being based on what she “observed.” Myers-Carnes wrote one of the two conduct reports that Plaintiff alleges in this action were defamatory. During the trial, Myers-Carnes described the incident that was the subject of the conduct report, which took place on September 18, 2015:

And when I looked up from what I was doing, I saw Inmate Alford standing at his door. It was cracked open a couple of inches. And I noticed that his hand was down around his waist area, and it was -- he was moving it in a repetitive motion. I suspected he was violating Rule 14, which is masturbation or any other act or gesture which could be deemed as obscene.

(Transcript 84:8-17.) It therefore appears that Myers-Carnes directly observed the conduct that formed the basis of the conduct report she authored. Accordingly, Plaintiff's second objection is **OVERRULED**.

{¶9} In his third objection, Plaintiff alleges that there is a discrepancy between Lucy Miller's testimony that another inmate made eye contact with her and then looked at Plaintiff's cell and the notation on the Rules Infraction Board (RIB) decision noting that no information from a confidential source was used. Miller wrote the other conduct report that Plaintiff asserts was defamatory, based on an incident on December 26, 2015. It appears that Plaintiff's objection is challenging Miller's credibility. During cross-examination, Miller admitted that she omitted the inmate who made eye contact with her from her report "[b]ecause, as you know, as an inmate, snitches get other things." (Transcript 48:10-11.) However, the Court does not find that the assistance of the eye contact and glance amounted to making the other inmate a "confidential source" such that there is a contradiction between Miller's testimony and the RIB decision. Moreover, the Court agrees with the Magistrate's determination that Miller was a credible witness. Therefore, Plaintiff's third objection is **OVERRULED**.

{¶10} In his fourth objection, Plaintiff asserts that the affidavit of inmate Dejaun Mitchell clearly refutes Miller's testimony that she placed the handcuffs on Plaintiff's wrists and not around the middle of his forearms. However, even if the Court considers Mitchell's affidavit—which is hearsay and inadmissible—it does not convincingly refute Miller's testimony. Mitchell's statement in his affidavit is unclear and contradicts itself as to whether the handcuffs had been placed on Plaintiff's arms or wrists; the statement seems to indicate both. Miller's testimony that she placed the handcuffs on Plaintiff's wrists was more consistent and credible. Therefore, Plaintiff's fourth objection is **OVERRULED**.

{¶11} In his fifth objection, Plaintiff argues that the Magistrate erred in concluding that Defendant was entitled to "qualified immunity" because Plaintiff "present[ed] clear and convincing evidence of actual malice on the part of the defendants, since they knew [or] should have known that their conduct reports were false." (Objections, 4.) In his Decision, the Magistrate concluded that, even if Plaintiff established a *prima facie* case

of defamation arising out of the two conduct reports from 2015, the statements made in the conduct reports are subject to a qualified privilege.

{¶12} If a defendant establishes that a defamatory statement is subject to a qualified privilege, the “qualified privilege may be defeated only by clear and convincing evidence of actual malice on the part of the defendant. *Jacobs v. Frank*, 60 Ohio St.3d 111, 114-115, 573 N.E.2d 609 (1991). ‘Actual malice’ is defined as ‘acting with knowledge that the statements are false or acting with reckless disregard as to their truth or falsity.’ *Id.* at 166.” *Watley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 07AP-902, 2008-Ohio-3691, ¶ 32. “‘It is not sufficient for a libel plaintiff to show that an interpretation of facts is false; rather, he must prove with convincing clarity that defendant was aware of the high probability of falsity.’” *Jacobs* at 119, quoting *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 122-123, 413 N.E.2d 1187 (1980). In *Watley*, even though the discipline report written by a corrections officer was incorrect, the RIB determined that no infraction occurred, and the institution acknowledged that the report was incorrect, the qualified privilege applied because the officer made the report in good faith. *Watley* at ¶ 34.

{¶13} Upon review of the testimony of Myers-Carnes and Miller—the authors of the conduct reports—the Court finds their testimony to be credible. Both witnesses wrote their reports based on what they saw with their own eyes. It does not appear to the Court that either witness knew that the reports they wrote were false or that they wrote the reports with reckless disregard for the truth. Accordingly, the conduct reports are subject to a qualified privilege, and Plaintiff has not shown—by clear and convincing evidence—actual malice on the part of either Myers-Carnes or Miller. Therefore, Plaintiff’s fifth objection is OVERRULED.

{¶14} The next section in Plaintiff’s Objections, entitled EXCESSIVE USE OF FORCE, is difficult to parse into specific objections. For his sixth objection, Plaintiff appears to object to the Magistrate’s finding of fact that “there was no documentation [indicating] that medical staff had difficulty removing the cuffs” because “Plaintiff never stated medical staff removed the cuffs.” (Objections, 5.) The Magistrate’s Decision states that Plaintiff “claimed that the handcuffs were placed on so tightly that medical staff could not remove them.” During the trial, Plaintiff testified: “When I was taken to the hole, or

the special housing unit, and the officer tried to remove the cuff, he -- he couldn't even take it off. He was, like, who put this cuff on you? So I told him. So finally he got it off.” (Transcript 20:1-5.) The Magistrate’s statement regarding the medical staff removing the handcuffs therefore appears to be an error.

{¶15} However, the Magistrate also based his conclusion that Plaintiff failed to prove that the handcuffs were placed on the middle of his forearms on the credible testimony of Miller, who testified that she placed the handcuffs on Plaintiff’s wrists. The Court also concludes that Miller’s testimony that she placed the handcuffs on Plaintiff’s wrists is credible—and more credible than Plaintiff’s own testimony. Indeed, Miller credibly testified that someone of Plaintiff’s size could not be handcuffed in the manner Plaintiff alleges he was handcuffed without an extension for the handcuffs or linking two pairs of handcuffs together. (Transcript 45:21-46:7; 52:22-53:3.) Therefore, the Magistrate did not err regarding the ultimate finding of fact that the handcuffs were placed on Plaintiff’s wrists. Accordingly, Plaintiff’s sixth objection is OVERRULED.

{¶16} In the same section, for his seventh objection, Plaintiff argues that the Magistrate erred in holding that Plaintiff’s injuries from the handcuffs fell within complicated internal medical issues that are difficult for a layperson to understand and thus require medical expert testimony. Plaintiff asserts that his “health service requests and passes following [an] EMG to determine nerve damage is affirmative proof of his injury, as is the verified complaint by Plaintiff.” (Objections, 5.) Plaintiff also complains that he did not have access to his medical file, which would have substantiated his injuries.

{¶17} The Magistrate held that Plaintiff’s asserted long-term injuries—that the nerves in his arm were injured due to the placement of the handcuffs—fell “into the category of complicated internal medical issues that are difficult for a layperson to understand in the absence of supporting testimony from a medical expert.” The Magistrate also gave other reasons why Plaintiff failed to prove his negligence claim; it appears that the failure of Plaintiff to provide expert testimony only pertained to Plaintiff’s assertion of long-term injury.

{¶18} “Where the permanency of an injury is obvious, such as the loss of an arm, leg or other member, the jury may draw its own conclusions as to the measure of

damages; however, where an injury is not obvious, there must be expert evidence as to the damage sustained, the probability of future pain and suffering or the permanency of the injury.” *Corwin v. St. Anthony Medical Center*, 80 Ohio App.3d 836, 610 N.E.2d 1155 (10th Dist.1992). It is clear from Plaintiff’s testimony and varying exhibits that the numbness that he alleged he experienced as a result of the placement and tightness of the handcuff constitutes a non-obvious injury. It is not visible or objectively observable by a layperson such as the loss of an arm or a leg would be. Therefore, the Magistrate did not err when he concluded that Plaintiff could not establish long-term injuries without expert medical testimony. Furthermore—although, pursuant to R.C. 5120.21(C)(2), Plaintiff was not permitted to obtain a copy of his medical file independently—even if Plaintiff had presented his whole medical file into evidence, it would not have satisfied the requirement for expert testimony. Accordingly, Plaintiff’s seventh objection is OVERRULED.

### **Conclusion**

{¶19} The Court finds that the Magistrate has properly determined the factual issues and appropriately applied the law in this case. Therefore, Plaintiff’s Objections shall be overruled. The Court shall adopt the Magistrate’s Decision and recommendation as its own, including all findings of fact and conclusions of law. Judgment shall be rendered in favor of Defendant.

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PATRICK E. SHEERAN  
Judge

[Cite as *Alford v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-4833.]

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Plaintiff

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Defendant

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Judge Patrick E. Sheeran  
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JUDGMENT ENTRY

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**IN THE COURT OF CLAIMS OF OHIO**

{¶20} Upon an independent, de novo review of the record, the Magistrate's Decision, and Plaintiff's Objections, the Court finds that the Magistrate properly determined the factual issues and appropriately applied the law. Therefore, Plaintiff's Objections are OVERRULED, and the Court adopts the Magistrate's Decision and recommendation as its own, including the 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

Filed December 7, 2022  
Sent to S.C. Reporter 1/12/23