

IN THE COURT OF CLAIMS OF OHIO

ALFRED A. JOHNSON, SR

Plaintiff

v.

OHIO DEPARTMENT OF  
REHABILITATION AND CORRECTION

Defendant

Case No. 2024-00618JD

Judge Lisa L. Sadler  
Magistrate Adam Z. Morris

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

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{¶1} On May 15, 2025, Defendant filed a Motion for Summary Judgment pursuant to Civ.R. 56(B). On June 23, 2025, Plaintiff filed an untimely Response in Opposition to Defendant's Motion for Summary Judgment. However, on June 24, 2025, Defendant filed its Reply in Support of its Motion for Summary Judgment. Defendant's Motion for Summary Judgment is now before the Court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4(D). For the following reasons, Defendant's Motion for Summary Judgment is GRANTED.

**Standard of Review**

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C):

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is

adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

"[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St. 3d 280, 292 (1996). To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id.* at 292-293.

{¶3} If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E):

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

## Facts

{¶4} Defendant submitted Affidavits from its employees, Correctional Officer (CO) Tristan Manns, Correctional Officer Habib Khan, Lieutenant Correctional Officer (LCO) Phillip Morris, and Nurse Ryan Barrett, which properly authenticate attached Exhibits A-E, with its Motion for Summary Judgment. However, upon review, Plaintiff did not properly submit any Civ.R. 56 evidence since the miscellaneous exhibits submitted with his Response are unable to be considered by the Court because they were not properly sworn, certified, or authenticated by a timely affidavit. *See Gabriel v. Ohio State Univ. Med. Ctr.*, 2015-Ohio-2661, ¶ 23 (10th Dist.), citing *Riley v. Brimfield*, 2010-Ohio-5181, ¶ 66 (11th Dist.) ("Pursuant to Civ.R. 56(C), 'documents submitted in opposition to a motion for summary judgment must be sworn, certified or authenticated by affidavit to be considered by the trial court in determining a genuine issue or material fact exists for trial.'").

{¶5} Accordingly, the relevant pleadings and evidence submitted, viewed in a light most favorable to Plaintiff, show the following:

{¶6} Plaintiff, an inmate in the custody and control of Defendant, brings a claim for excessive use of force stemming from a December 5, 2023 incident with corrections officers at Defendant's Lebanon Correction Institution (LeCI). (Complaint, ¶ 10-12; Affidavit of Phillip Morris, ¶ 11).

{¶7} On December 5, 2023, CO Manns, while working on the first-floor range of K-Block at LeCI, notice Plaintiff was engaged in a confrontation with another inmate. (Affidavit of Tristan Manns, ¶ 6). CO Khan, while working on the second-floor range of K-Block at LeCI, also noticed Plaintiff was engaged in a confrontation with another inmate. (Affidavit of Habib Khan, ¶ 6). At least twelve other inmates were standing or sitting in the areas where Plaintiff's confrontation was occurring. (Khan Aff., ¶ 6).

{¶8} Plaintiff was aggressively pursuing the other inmate around the day room, appearing ready to fight. (Khan Aff., ¶ 7). CO Manns attempted to de-escalate the situation by telling the inmates to stop, and then subsequently physically standing between the inmates. (Khan Aff., ¶ 7; Manns Aff., ¶ 7). CO Khan's verbal directives also failed. (Khan Aff., ¶ 6). Plaintiff continued to disobey orders and forcefully moved past CO Manns, lunging, and swinging at the other inmate. (Manns Aff., ¶ 8). CO Manns physically restrained Plaintiff, but Plaintiff shoved him off and squared up against CO Manns and attempted to throw a fisted strike, which CO Manns reciprocated. (Khan Aff., ¶ 7; Manns Aff., ¶ 8-9; Morris Aff., ¶ 6). CO Khan responded and attempted to separate CO Manns and Plaintiff, but Plaintiff continued to not cooperate. (Khan Aff., ¶ 8; Manns Aff., ¶ 9). CO Khan maneuvered Plaintiff into the corridor to obtain assistance from other correctional officers in restraining Plaintiff. (Khan Aff., ¶ 8; Manns Aff., ¶ 10). Plaintiff resisted hand restraints and continued to assault officers, which resulted in CO Manns using closed fist hammer strikes to gain compliance. (Khan Aff., ¶ 8; Manns Aff., ¶ 11; Morris Aff., ¶ 7). Plaintiff eventually complied and was placed in hand restraints and escorted to medical for evaluation. (Khan Aff., ¶ 8; Manns Aff., ¶ 11; Morris Aff., ¶ 7). Plaintiff was evaluated, but no injuries were found or reported, and no treatment was necessary. (Affidavit of Ryan Barrett, ¶ 6; Exhibit E).

{¶9} Defendant maintains Use of Force Policy 63-UOF-01. (Khan Aff., ¶ 12; Manns Aff., ¶ 15; Morris Aff., ¶ 10; Exhibit B). LCO Morris, CO Manns, and CO Khan are each “trained and familiar with [Defendant’s] policy and protocol in the use of force on inmates” and each have a responsibility to “maintain the safety and security of the institution.” (Khan Aff., ¶ 3-4; Manns Aff., ¶ 3-4; Morris Aff., ¶ 3-4). CO Manns feared for his safety and the safety of others and opines that he did not use or witness excessive force. (Manns Aff., ¶ 12-13). CO Kahn opines that he did not use or witness excessive force. (Kahn Aff., ¶ 9-10).

{¶10} Documentation was created after Plaintiff’s use of force incident. CO Manns filed a Conduct Report consistent with the averments in his Affidavit. (Manns Aff., ¶ 14; Exhibit A). CO Khan filed a Use of Force Report consistent with the averments in his Affidavit. (Kahn Aff., ¶ 14; Exhibit C). LCO Morris investigated the use of force incident determining that by Defendant’s standards the force used was appropriate, and filed a Use of Force Summary Report consistent with the averments in his Affidavit. (Manns Aff., ¶ 5-9; Exhibit D).

### **Law and Analysis**

{¶11} Plaintiff states that the claims for which he seeks relief are “breach of duty, negligence, use of force, intention emotional distress.” (Complaint, ¶ 12). “The mere fact that claims in a complaint are couched in certain legal terms is insufficient to confer jurisdiction upon a court. . . . Instead, in order to resolve the issue of whether a court has subject-matter jurisdiction over a party’s claims, the court must look beyond the language used in the complaint and examine the underlying nature of the claims.” *Guillory v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-2299, ¶ 11 (10th Dist.). Upon review, the Court finds that Plaintiff’s Complaint sounds in an assault or excessive use of force by Defendant’s corrections officers. (See Complaint, ¶ 12-13).

{¶12} Defendant asserts that it is entitled to summary judgment because “[n]o matter what legal theory [Plaintiff] relies upon, there is no justiciable issues” and “the use of force was justified and reasonable.” (Defendant’s Motion, p. 6-10). Upon review, the Court agrees.

{¶13} “Allegations of use of unnecessary or excessive force against an inmate may state claims for battery and/or negligence.” *Brown v. Dept. of Rehab. & Corr.*, 2014-Ohio-1810, ¶ 13 (10th Dist.).

{¶14} “To prove assault under Ohio law, plaintiff must show that the defendant willfully threatened or attempted to harm or touch the plaintiff offensively in a manner that reasonably placed the plaintiff in fear of the contact. To prove battery, the plaintiff must prove that the intentional contact by the defendant was harmful or offensive.” *Miller v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-3382, ¶ 11 (10th Dist.), citing *Stafford v. Columbus Bonding Ctr.*, 2008-Ohio-3948, ¶ 17 (10th Dist.).

{¶15} “A defendant may defeat a battery claim by establishing a privilege or justification defense.” *Brown* at ¶ 13. “However, ‘the use of excessive force by one privileged to use force on another may constitute battery.’” *Russell v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-4695, ¶ 11 (10th Dist.), quoting *Shadler v. Double D. Ventures, Inc.*, 2004-Ohio-4802, ¶ 19 (6th Dist.). “Ohio courts have held that, in a civil action for assault and battery, the defendant has the burden of proving a defense of justification, such as the exercise of lawful authority.” *Miller* at ¶ 11.

{¶16} “To prevail on a negligence claim, a plaintiff must establish the existence of a duty, a breach of the duty, and an injury resulting proximately therefrom.” *Woodbridge v. Ohio Dept. of Rehab. & Corr.*, 2020-Ohio-891, ¶ 30 (10th Dist.). “Ohio law imposes a duty of reasonable care upon the state to provide for its prisoners’ health, care, and well-being.” *Ensman v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-6788, ¶ 5 (10th Dist.).

{¶17} “The use of force is sometimes necessary to control inmates.” *Jodrey v. Ohio Dept. of Rehab. & Corr.*, 2013-Ohio-289, ¶ 17 (10th Dist.). “Correctional officers considering the use of force must evaluate the need to use force based on the circumstances as known and perceived at the time it is considered.” *Brown*, 2014-Ohio-1810, at ¶ 15 (10th Dist.), citing Ohio Adm.Code 5120-9-01(C). “[T]he precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Ensman* at ¶ 23. “In Ohio Adm.Code 5120-9-01, the Ohio Administrative Code sets forth the circumstances under which correctional officers are authorized to use force against an inmate.” *Id.* at ¶ 6.

{¶18} Ohio Adm.Code 5120-9-01 provides, in part:

(C) Guidelines regarding the use of force. . . .

. . .

(2) Less-than-deadly force. There are six general circumstances in which a staff member may use force against an inmate or third person. A staff member may use less-than-deadly force against an inmate in the following circumstances:

(a) Self-defense from physical attack or threat of physical harm.

(b) Defense of another from physical attack or threat of physical attack.

(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders.

(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance.

(e) Prevention of an escape or apprehension of an escapee; or

(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.

{¶19} “Pursuant to Ohio Adm.Code 5120-9-01(C)(1)(a), correctional officers ‘may use force only to the extent deemed necessary to control the situation.’” *Brown*, 2014-Ohio-1810, at ¶ 16 (10th Dist.). “Additionally, correctional officers ‘should attempt to use only the amount of force reasonably necessary under the circumstances to control the situation and shall attempt to minimize physical injury.’” *Id.*, quoting Ohio Adm.Code 5120-9-01(C)(1)(b). “‘Excessive force’ means ‘an application of force which, either by the type of force employed, or the extent to which such force is employed, exceeds that force which reasonably appears to be necessary under all the circumstances surrounding the incident.’” *Russell*, 2019-Ohio-4695, at ¶ 14 (10th Dist.), quoting Ohio Adm.Code 5120-9-01(B)(3).

{¶20} Upon review, the Court finds that Defendant did not violate the duty of care owed to Plaintiff and the corrections officers were justified and privileged to use reasonable force against Plaintiff, which did not amount to excessive use of force. The confrontation involving Plaintiff aggressively pursuing another inmate occurred in a crowded inmate accessible area of LeCI where Plaintiff was aggressively pursuing another inmate. Plaintiff refused multiple orders from corrections officers, and assaulted corrections officers in the process of being subdued. Corrections officers are authorized to use force in the “[d]efense of another from physical attack or threat of attack” and/or

“[s]elf-defense from physical attack or threat of physical attack,” and thus were justified in protecting the other inmate in the confrontation as well as themselves and each other. Adm.Code 5120-9-01(C)(2)(a)-(b); see *Ensmann*, 2006-Ohio-6788, at ¶ 23 (10th Dist.). And corrections officers are authorized to use force “to control or subdue an inmate who refuses to obey prison rules, regulations or orders” and/or “to stop an inmate from destroying property or engaging in a riot or other disturbance,” which was necessary here as Plaintiff refused multiple orders in a crowded environment full of other inmates. Adm.Code 5120-9-01(C)(2)(c)-(d); *Carney v. Ohio Dept. of Rehab. & Corr.*, 2022-Ohio-1599, ¶ 9 (Ct. of Cl.). Ultimately, the facts currently before the Court show that the force used against Plaintiff only lasted for the time necessary to gain Plaintiff’s compliance and control him for removal from the confrontation with the other inmate and corrections officers.

{¶21} Upon review, the Court finds that the Civ.R. 56(C) evidence submitted by Defendant establishes that there is no genuine issue of material fact as to whether Defendant’s conduct did not amount to an excessive use of force against Plaintiff.

{¶22} While Plaintiff alleges issues with how the confrontation began, and the subsequent Rules Infraction Board hearing process, he failed to point to any specific facts in the evidence before the Court.<sup>1</sup> See *Gibbs v. Columbus Metro. Hous. Auth.*, 2012-Ohio-2271, ¶ 19 (10th Dist.) (“Speculation and conjecture, however, are not sufficient to overcome [Plaintiff’s] burden of offering specific facts showing that there is a genuine issue for trial.”). Plaintiff has simply provided no evidence regarding the use of force incident itself to create a genuine issue of material fact.

{¶23} Accordingly, Plaintiff has not established the existence of a genuine issue of material fact meeting the reciprocal burden pursuant to Civ.R. 56(E) regarding whether

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<sup>1</sup> To the extent Plaintiff alleges that he has been unable to complete discovery, Plaintiff has failed to properly move for and receive a continuance under Civ.R. 56(F). See *Hernandez v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-8646, ¶ 17 (10th Dist.), citing *Mootispaw v. Mohr*, 2016-Ohio-1246, ¶ 10 (10th Dist.); *Commons at Royal Landing, LLC v. Whitehall*, 2016-Ohio-362, ¶ 8 (10th Dist.) (“Civ.R. 56(F) provides the sole remedy for a party who must respond to a motion for summary judgment before it has completed adequate discovery.”). Civ.R. 56(F) allows a party to defer ruling on a motion for summary judgment to complete discovery, but a court can grant summary judgment even if discovery remains incomplete in the absence of a non-moving party moving for a Civ.R. 56(F) continuance. See *Hernandez* at ¶ 17, citing *Mootispaw* at ¶ 10; *Commons at Royal Landing* at ¶ 9, 11.

Defendant's conduct amounted to an excessive use of force against Plaintiff. Therefore, Defendant is entitled to judgment as a matter of law and granting of summary judgment in its favor.

### **Conclusion**

{¶24} Defendant has met its initial burden, pursuant to Civ.R. 56(C), by showing that there are no genuine issues of material fact regarding whether Defendant's conduct did not amount to an excessive use of force against Plaintiff. However, Plaintiff has not met his reciprocal burden, pursuant to Civ.R. 56(E), setting forth specific facts showing that there is a genuine issue for trial. Even construing the evidence in a light most favorable to Plaintiff, he has failed to demonstrate the existence of a genuine issue of material fact related to whether Defendant's conduct did amount to an excessive use of force against Plaintiff.

{¶25} For the above stated reasons, Defendant's Motion for Summary Judgment is GRANTED. Judgment is rendered in favor of Defendant. All previously scheduled events are VACATED. 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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LISA L. SADLER  
Judge