[Cite as *Fair v. S. Ohio Correctional Facility*, 2008-Ohio-7045.]

Court of Claims of Ohio
The Ohio Judicial Center
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Columbus, OH 43215
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SAMUEL FAIR

Plaintiff

v.

SOUTHERN OHIO CORRECTIONAL FACILITY

Defendant
Case No. 2006-06400

Judge J. Craig Wright
Magistrate Matthew C. Rambo

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging violations of his right to medical privacy, "harassment," and negligent training and supervision. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff alleges that defendant's employees Griselda Martinez-Cooper, Carrie Bracken, and Cynthia Davis "stalk, harass, and threaten" him. Plaintiff further alleges that defendant's employees have violated his right to medical privacy by speaking to him regarding his health care within earshot of other inmates. Finally, plaintiff asserts a claim of negligent training and supervision based upon these allegations. Defendant argues that its employees have acted appropriately at all times when interacting with plaintiff.

{¶ 3} As an initial matter, to the extent that plaintiff alleges that employees of defendant violated his right to medical privacy, the court construes this as a constitutional claim arising under 42 U.S.C. 1983. See *Watley v. Dept. of Rehab. &*

Corr. (Apr. 30, 2003), Ct. of Cl. No. 2003-02012; *Petty v. Ohio Dept. of Rehab. & Corr.* (Sept. 2, 2008), Ct. of Cl. No. 2007-07001. It is well-settled that claims alleging the infringement of an inmate's constitutional rights are not actionable in the Court of Claims. See *Thompson v. Southern State Community College* (June 15, 1989), Franklin App. No. 89AP-114; *Burkey v. Southern Ohio Corr. Facility* (1988), 38 Ohio App.3d 170. Accordingly, the court lacks subject matter jurisdiction over plaintiff's claim that defendant violated his right to medical privacy.

{¶ 4} Plaintiff testified that Martinez-Cooper informed other inmates in his cell-block that he was a "baby raper" and that she and other employees frequently watch him undress and spy on him in the shower. Plaintiff further testified that Martinez-Cooper "put a hit" on him and sent other inmates to attack him, and that Martinez-Cooper gave false testimony before the parole board to ensure that plaintiff was not paroled. According to plaintiff, Martinez-Cooper and other employees "continually harass" and "have a practice of torturing" him. Plaintiff did not offer any corroborating evidence or testimony to support his allegations. On cross-examination, plaintiff admitted that he wrote sexually explicit and threatening kites to Martinez-Cooper because he wanted to "play games with her like she was playing with me." Plaintiff also testified that he wrote similar kites to Davis and Bracken.

{¶ 5} Martinez-Cooper testified that she is currently employed by defendant as the unit manager of "Unit D" and that she was previously plaintiff's case manager. Martinez-Cooper testified that she never "put a hit" on plaintiff; that she was never called to testify before the parole board concerning plaintiff; that she has never observed plaintiff in the shower or seen him undress; and that she is unaware of the nature of the conviction for which plaintiff is incarcerated. Martinez-Cooper testified that plaintiff has often said inappropriate things to her and other staff and that his behavior has been erratic. Martinez-Cooper testified that she issued plaintiff several conduct reports as a result of sexually explicit and threatening kites plaintiff has sent to her. (Defendant's

Exhibits N, S, T.) Martinez-Cooper further testified that she has no knowledge that Bracken or Davis harassed or threatened plaintiff.

{¶ 6} The court construes plaintiff's claim for "harassment" as a claim for intentional infliction of emotional distress. In order to sustain such a claim, plaintiff must show that: "(1) defendant intended to cause emotional distress, or knew or should have known that actions taken would result in serious emotional distress; (2) defendant's conduct was extreme and outrageous; (3) defendant's actions proximately caused plaintiff's psychic injury; and (4) the mental anguish plaintiff suffered was serious." *Hanly v. Riverside Methodist Hosp.* (1991), 78 Ohio App.3d 73, 82; citing *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 34.

{¶ 7} To constitute conduct sufficient to give rise to a claim of intentional infliction of emotional distress, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Yeager v. Local Union 20, Teamsters* (1983), 6 Ohio St.3d 369, 375, quoting 1 Restatement of the Law 2d, Torts (1965) 73, Section 46, Comment d.

{¶ 8} "It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. * * * Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Id. at 374-375.

{¶ 9} Based upon the evidence and testimony introduced at trial, the court finds that defendant's employees did not engage in any conduct that rises to such an extreme and outrageous character necessary to support a claim for intentional infliction of emotional distress.

{¶ 10} In considering plaintiff's claim of negligent training and supervision, "an underlying requirement in actions for negligent supervision and negligent training is that the employee is individually liable for a tort or guilty of a claimed wrong against a third person, who then seeks recovery against the employer." *Strock v. Pressnell* (1988), 38 Ohio St.3d 207, 217. Indeed, "there must first be liability on the part of the employee before the employer may be liable for the employee's acts." *Campbell v. Colley* (1996), 113 Ohio App.3d 14, 22. The court finds that plaintiff has failed to prove individual liability on the part of any of defendant's employees, and his claim for negligent training and supervision must therefore fail.

{¶ 11} Based upon the foregoing, the court finds that plaintiff has failed to prove any of his claims. Accordingly, judgment is recommended in favor of defendant.

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).

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MATTHEW C. RAMBO
Magistrate

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MR/cmd
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