

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

TERONE CHALMERS

Plaintiff

v.

OHIO STATE PENITENTIARY

Defendant

Case No. 2007-09259

Judge Clark B. Weaver Sr.
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging negligence, negligent supervision, assault, and excessive use of force. Plaintiff also asserts that defendant's employees are not entitled to immunity given their wanton disregard for his safety. The issues of liability and damages were bifurcated and the case proceeded to trial on the issues of liability and civil immunity.

{¶ 2} At all times relevant, plaintiff was an inmate at the Ohio State Penitentiary (OSP) pursuant to R.C. 5120.16. Plaintiff alleges that on October 29, 2007, he returned to his cell from recreation, felt dizzy and passed out. Plaintiff contends that when Lieutenant Thompson arrived at his cell, he began to slap plaintiff and called him "a threat," stating that plaintiff had attempted to bite him. Plaintiff testified that he has no memory of the incident, that he awoke in the infirmary, and that he had been too incapacitated to assault anyone. In addition, he argued that his two front teeth had been knocked out previously and replaced with a partial plate which would have made it impossible for him to bite Thompson.

{¶ 3} It is undisputed that plaintiff was transported to the infirmary and subsequently returned to his cell block. Later that same day, plaintiff was sent to segregation as a result of the conduct report issued by Thompson. Plaintiff was charged with causing or attempting to cause physical harm to another. (Plaintiff's Exhibit 1.) On November 5, 2007, defendant's Rules Infraction Board (RIB) found him guilty of the charge. (Plaintiff's Exhibit 7.) Plaintiff asserts that as a result of the RIB ruling, his security level was raised.

{¶ 4} Lieutenant Thompson testified that when he arrived at plaintiff's cell door, he observed that plaintiff was on the floor and unresponsive. Medical personnel arrived at the scene and noted that plaintiff was seen lying on his side on the floor. (Defendant's Exhibit A.) Thompson recalled that after he and other officers entered the cell, plaintiff slowly began to respond and he became combative. The medical report documents that plaintiff was not alert, and that he was "combative, struggling, crying out names." (Defendant's Exhibit A.) Consequently, plaintiff was placed in restraints and directed to exit the cell. Thompson testified that during the transport to the infirmary, plaintiff attempted twice to bite him and that on each occasion, plaintiff was placed on the floor and restrained. Thompson also testified that he did not use excessive force in response to plaintiff's conduct and that he did not injure plaintiff.

{¶ 5} The Ohio Administrative Code sets forth the circumstances under which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) provides, in relevant part:

{¶ 6} "(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:

{¶ 7} "(a) Self-defense from physical attack or threat of physical harm;

{¶ 8} "(b) Defense of another from physical attack or threat of physical attack;

{¶ 9} “(c) When necessary to control or subdue an inmate who refuses to obey prison rules, regulations or orders;

{¶ 10} “(d) When necessary to stop an inmate from destroying property or engaging in a riot or other disturbance;

{¶ 11} “(e) Prevention of an escape or apprehension of an escapee; or

{¶ 12} “(f) Controlling or subduing an inmate in order to stop or prevent self-inflicted harm.”

{¶ 13} The court has recognized that “corrections officers have a privilege to use force upon inmates under certain conditions. * * * However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. * * * Obviously, ‘the use of force is a reality of prison life’ and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections officer.” *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Internal citations omitted.)

{¶ 14} Based upon the foregoing, the court finds that Thompson’s testimony was credible and supported by the medical documentation. The court concludes that Thompson used appropriate force at all times during the confrontation inasmuch as he was protecting himself and attempting both to subdue plaintiff and to obtain his compliance.

{¶ 15} Moreover, plaintiff admitted that he has no memory of the incident prior to waking up in the infirmary. Furthermore, plaintiff presented no medical records to support his claim that he sustained any injury on October 29, 2007. Upon review of the evidence presented at trial, the magistrate finds that plaintiff has failed to prove by a preponderance of the evidence that he was assaulted by Thompson or that Thompson’s acts on October 29, 2007, constituted a breach of any duty of care toward plaintiff. Inasmuch as plaintiff has failed to prove that defendant’s employee used excessive force against him, his claim for negligent supervision fails as well.

{¶ 16} Plaintiff also failed to prove that Thompson acted manifestly outside the scope of his employment or with malicious purpose, in bad faith, or in a wanton or reckless manner. It is therefore recommended that the court issue a determination that Lieutenant Thompson is entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86 and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against him based upon the allegations in this case.

{¶ 17} In addition, the court finds that defendant is entitled to discretionary immunity for decisions made regarding plaintiff's privilege level.

{¶ 18} Ohio Adm.Code 5120-9-08 provides, in part:

{¶ 19} "(L) Determination and disposition: * * * If a finding of guilt is made for a rule violation by the RIB panel, and subject to the warden's approval, the RIB panel may impose the following penalties:

{¶ 20} "* * *

{¶ 21} "(7) Order restrictions on personal privileges following an inmate's abuse of such privileges or facilities or when such action is deemed necessary by the warden for the safety and security of the institution, or the well-being of the inmate. Such restrictions shall continue only as long as it is reasonably necessary."

{¶ 22} Therefore, the court finds that defendant acted within its authority under Ohio Adm.Code 5120-9-08 when it changed plaintiff's privilege level. 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).

STEVEN A. LARSON
Magistrate

cc:

Christopher P. Conomy
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Terone Chalmers, #383-950
Ohio State Penitentiary
878 Coitsville-Hubbard Road
Youngstown, Ohio 44505

Magistrate Steven A. Larson

SJM/cmd
Filed September 21, 2009
To S.C. reporter October 6, 2009