

Court of Claims of Ohio

The Ohio Judicial Center
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MARK J. FRASH, Admr.

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2011-04941

Judge Patrick M. McGrath

DECISION

{¶1} This cause came to be heard on a complaint brought by plaintiff as administrator of the estate of Mark W. Frash (Frash), bringing a wrongful death claim and alleging that defendant failed to protect inmate Frash from harm at the Ross Correctional Institution (RCI). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability on March 10, 2014.

{¶2} At all relevant times, Frash was an inmate in the custody and control of defendant at RCI, housed in unit 8B. RCI houses both level 2 and level 3 inmates. Frash worked as a dog handler at RCI and on September 12, 2010, he was walking a dog out in the recreation yard when he was approached by a fellow inmate, Eugene Groves (Groves). According to inmate Jeremy Maxwell's (Maxwell) testimony, Groves said to Frash, "Get your dog away from me or if not, I'll kill it." In response Frash said, "You ain't going to kill my dog, you f'ing N word. You kill my dog, and I will kill you." (Plaintiff's Exhibit 16, Page 28, Lines 4-14.) Maxwell further testified that Frash later went into the prison to apologize to Groves and that Groves walked away and to his cell. Groves then returned to the day room and began his attack on Frash.

{¶3} At the time of the incident, the corrections officer (CO) in unit 8B was Christopher Hawk (Hawk), a relief officer who had started working at RCI two weeks

prior. Hawk opened the door to let Frash in and while walking back to his desk, was bumped in the back. Hawk turned to observe what appeared to be a fight between Frash and Groves. Hawk gave orders to stop fighting, and upon hearing another inmate make reference to Groves “sticking” Frash, noticed that Groves had a shank in his hand. The shank was fashioned out of a bolt or screw and was approximately seven inches long. (Plaintiff’s Exhibit 4.) During the entire time of the incident, Hawk was within ten to fifteen feet away. After noticing the weapon, Hawk gave another order for Groves to drop his weapon, but the fight continued. Hawk then attempted to call someone for help, but could not call anyone due to his unfamiliarity with the institution and the proper numbers to call, so he pulled his man down alarm and waited for assistance.

{¶4} There were approximately 20-30 inmates in the vicinity when the fight began. Inmate Christopher Griffis (Griffis) testified that as soon as Groves came up behind Frash, he began hitting him in the back of the head. Groves put Frash in a headlock and continued to hit and stab him repeatedly, which resulted in nine penetrating wounds according to the coroner’s report. Groves then disengaged himself and walked outside. At that point, another inmate attempted to pick up a chair to hit Groves, but Hawk ordered him to put the chair down and step away. Shortly thereafter, Nathaniel Charlton (Charlton), the yard CO, arrived in response to Hawk’s man down alarm. Charlton testified that he responded to the scene within ten seconds of the alarm being pulled, and at the time he arrived, the fight was already over. Hawk informed him that Groves had walked outside and Charlton went outside to restrain him. Frash later died from a traumatic brain injury as a consequence of blunt force trauma to the head. The autopsy noted galeal, subgaleal, and subdural hematomas as well as cerebral edema with cerebellar tonsillar herniation. (Plaintiff’s Exhibit 5.) Other than the autopsy report, no other medical evidence was presented as to Frash’s cause of death.

{¶5} Groves had a long history of violence and psychological issues. In 1976, Groves was incarcerated for felony assault, kidnapping, attempted murder, and murder. As part of his intake screening evaluation, it was concluded that Groves could be unstable and had a severe paranoid personality. From 1984 to 1999, Groves had five instances of assault while in prison. In 1984, Groves stabbed an inmate in the chest with a pair of upholstery shears and was found not guilty by reason of insanity. The

same year, a psychologist suggested that he be very closely observed because he could possibly be paranoid schizophrenic. In 1988, Groves stabbed his cellmate which resulted in an attempted murder conviction. In 1994, Groves stabbed an inmate in the neck, and in 1996, Groves assaulted another inmate using a can lid to cut his face. Lastly, in 1999, Groves used a shank to stab a fellow inmate. Throughout his incarceration Groves had many evaluations of his security classification as well as psychological evaluations. After several reevaluations, defendant eventually determined that Groves' security classification could be reduced. In 2003, Groves' security classification was reduced from a level 5 to a level 4, and by March 2006, his security level was lowered to level 3 with a permanent single cell assignment. In 2007, Groves was assigned to RCI, and during his time at RCI, Groves was not involved in any attacks or fights. Until the incident with Frash, Groves had not been involved in any attack or fight for more than ten years.

{¶6} Plaintiff alleges that defendant was negligent in failing to prevent the attack on Frash. In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed Frash a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused Frash's injury. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). Ohio law imposes upon the state a duty of reasonable care and protection of its prisoners; however, the state is not an insurer of inmate safety. *Williams v. S. Ohio Corr. Facility*, 67 Ohio App.3d 517, 526 (1990).

{¶7} Defendant is not liable for the intentional attack on one inmate by another unless it has adequate notice, either actual or constructive, of an impending assault. *Mitchell v. Ohio Dept. of Rehab. & Corr.*, 107 Ohio App.3d 231, 235 (1995); *Metcalf v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 01AP-292, 2002-Ohio-5082. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Whenever the trier of fact is entitled to find from competent evidence that information was personally communicated to or received by the party, the notice is actual. Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736, ¶ 14.

{¶8} The evidence demonstrates that the attack occurred because of and shortly after an interaction between Groves and Frash in the yard. There was no testimony presented that a CO was a witness to that interaction, and there was no prior threat by Groves to Frash directly, only a threat to the dog that Frash was walking. Deputy Warden Jeffrey Lisath (Lisath) also testified that there was no previous notice of altercations or disputes between Groves and Frash. Accordingly, the court finds that the evidence does not demonstrate that defendant had actual notice that the attack was forthcoming.

{¶9} Plaintiff contends, though, that defendant had constructive notice of the attack because of Groves' history of violence and mental health problems and that defendant failed to protect Frash despite knowing about Groves' violent propensities. However, although Groves had previously attacked fellow inmates prior to being transferred to RCI, Lisath and inmate Griffis testified that Groves was not involved in any prior attacks or fights during his entire time at RCI. Further, records indicate that his last assault while in prison was in 1999, more than ten years before his attack on Frash. Although inmate Maxwell testified that Groves had a reputation in the prison for being a "crazy man," the court finds that there is no evidence to show that defendant or its employees would have reason to know that Groves would attack Frash. As the Tenth District Court of Appeals has noted, "it is the inevitable nature of penal institutions that they will contain a fair proportion, perhaps a preponderance, of violent and dangerous individuals * * * presumably any effort at complete segregation of all inmates with any trace of violent history might require extraordinary measures involving the bulk of the prison population. Prison officials are the acknowledged experts in the placement and management of their prisoners." *Kordelewski v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 00AP-1109 (June 21, 2001). Accordingly, based upon the arguments and evidence presented by the parties, the court concludes that defendant cannot be found liable for the attack on the basis of Groves' history of institutional violence.

{¶10} To the extent that plaintiff alleges that defendant was negligent by insufficiently staffing the area where the fight broke out with only one inexperienced CO, that defendant's daily visual inspections and quarterly shakedowns failed to prevent the possession of the weapon, and that defendant was negligent for not requiring Hawk to carry mace or a baton, the court finds that defendant is entitled to discretionary

immunity. The Supreme Court of Ohio has held that “[t]he language in R.C. 2743.02 that ‘the state’ shall ‘have its liability determined * * * in accordance with the same rules of law applicable to suits between private parties * * *’ means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion.” *Reynolds v. State*, 14 Ohio St.3d 68, 70 (1984). Prison administrators are provided “wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.” *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). “[D]ecisions relating to the allocation and location of correctional staff concern prison security and administration and, as such, are executive functions that involve a high degree of official discretion.” *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-1052, 2010-Ohio-4736. Accordingly, the court finds that defendant’s decisions pertaining to the assignment of COs at RCI as well as its security procedures are characterized by a high degree of official judgment and discretion and defendant is entitled to discretionary immunity for claims arising from those decisions.

{¶11} With regard to plaintiff’s assertions that Groves was inappropriately housed and classified, the court finds that defendant’s actions are also entitled to discretionary immunity. Matters involving inmate classification and placement are considered to fall under discretionary immunity. *Troutman v. Ohio Dept. of Rehab & Corr.*, 10th Dist. Franklin No. 03AP-1240, 04AP-670, 2005-Ohio-334; *Deavors v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 98AP-1104, 1999 WL 333327. Lisath testified that the Bureau of Classification makes the decisions on how to classify prisoners after considering a prisoner’s prior records, and that a single cell assignment was the most restrictive assignment at RCI other than restrictive housing and segregation. Groves’ incarceration records also show that Groves’ security status was reviewed consistently and that on more than one occasion, the decision was made to not reduce his security classification. (Plaintiff’s Exhibit 14.) Lisath further testified that regardless of an inmate’s history, once an inmate is assigned to an institution by the Bureau of Classification, there is no reason to reassign him if he is complying with the rules of the institution. As previously mentioned, Lisath and inmate Griffis both testified that there were no incidents at RCI involving Groves that would require defendant to reassign him.

Plaintiff argues that defendant was still negligent because although Groves was placed in a single cell, 8B was for level 2 security inmates only. Inmate Maxwell testified that his side of the block was for level 2 inmates and that the other side was for level 3 inmates. Hawk testified that the block was medium security which he thought was level 2. However, Lieutenant Patrick Numberger testified that 8B was closed security which constituted level 3 security. The court finds that Numberger's testimony, based on his 21 years as a CO at RCI, is more reliable than Maxwell's and Hawk's testimony with regard to security classifications. Therefore, the court finds that Groves was properly housed at RCI, and that defendant's decisions regarding the security classification at RCI are characterized by a high degree of discretion.

{¶12} Finally, to the extent that plaintiff alleges in his complaint that Hawk failed to respond to and stop the attack, the court finds that Hawk acted reasonably in response to the attack. Hawk and Lisath testified that COs are instructed to wait for help before intervening in a fight for safety reasons. Numberger also testified that COs are not required to intervene. Defendant's rules and procedures regarding use of force state that "[a]s employees of the Department, we have a duty to protect inmates, staff and third persons, but there is no requirement to needlessly sacrifice one's own personal safety in doing so. * * * An employee must balance his or her ability to be effective against the risk to personal safety. * * * Whenever possible, an employee shall summon assistance before becoming involved in a use of force. If an employee cannot effectively intervene in a situation, the employee is expected to continue to be observant of as many circumstances of the situation as possible to be reported later." (Plaintiff's Exhibit 11, page 3.) Hawk testified that he gave verbal commands to stop and that he determined that intervention would have been ineffective and could have possibly escalated the situation, leading to an assault on officers or prisoners gaining control of the area. Considering the legitimate safety concerns of a single CO physically getting involved in the fight, the decision to not physically intervene was a reasonable one. Moreover, Hawk testified that the whole situation surrounding the fight only lasted around 30 seconds. Although inmate Maxwell guessed that the fight lasted five to ten minutes, the way he described the events supports a much shorter time frame. Inmate Maxwell testified that the stabbing was in rapid succession and occurred very quickly. He further testified that Frash went limp after the third or fourth stab, which occurred within a "matter of seconds" after the fight first began. Another

inmate, Robert Lovely (Lovely), testified that the fight lasted about 20-30 seconds. Both inmates Lovely and Griffis testified that it took around 30 seconds before Hawk became aware of the fight and responded to it. This testimony supports the argument that by the time Hawk became aware of the fight, Frash had already received hits to his head and several stab wounds. Furthermore, Hawk's intervention in the fight after becoming aware of it would not have prevented the injuries to Frash's head—the cause of death—which occurred at the beginning of the fight. Therefore, plaintiff has failed to show that defendant was negligent in its response to the fight.

{¶13} Based on the foregoing, the court finds that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment shall be rendered in favor of defendant.

PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶14} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, 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.

PATRICK M. MCGRATH
Judge

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