

IN THE COURT OF CLAIMS OF OHIO

BRANDON WILLIAMS

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

Case No. 2023-00635JD

Judge Lisa L. Sadler
Magistrate Adam Z. Morris

ENTRY GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

{¶1} Before the Court for a non-oral hearing is Defendant's Motion for Summary Judgment pursuant to Civ.R. 56 and L.C.C.R. 4(D). For the following reasons, Defendant's Motion for Summary Judgment is GRANTED.

{¶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 material 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.

{¶4} Defendant submitted an Affidavit of its employee, Investigator David Schultz, with its Motion for Summary Judgment. The Affidavit of Investigator Schultz certified the authenticity of the attached Exhibit A, which is labeled as Defendant's Immediate Transfer Process Form. Plaintiff did not submit any Civ.R. 56(C) evidence with his Response in Opposition to Defendant's Motion for Summary Judgment. The relevant pleadings and evidence submitted, viewed in a light most favorable to Plaintiff, show the following:

{¶5} On September 27, 2023, Plaintiff, an inmate in the custody and control of Defendant, filed his Complaint using the Court's Claim Form, which alleges that on July 11, 2022:¹

[Plaintiff], while in custody and during transportation to the Southern Correctional Facility in Lucasville, Ohio was in the care of Officer Jonathan Barker, Officer Austin Martiken and Lt. James Simmons, [Plaintiff] brutally assaulted by Officer Baker. [Plaintiff], while shackled and unable to defend himself, was assaulted and punched multiple times in the face, his teeth went through his lip, nose was bleeding profoundly.

¹ Plaintiff's Complaint does allege the incident occurred July 11, 2023, but this is contradicted by the Affidavit of Investigator Schultz as well as the concession by Plaintiff in his Response that "the attack on Plaintiff by the employees of Defendant was done on July 11, 2022." (*Compare* Complaint ¶ 11 with Affidavit of David Schultz ¶¶ 2-4; Exhibit A and Plaintiff's Response, p. 2).

(Complaint, ¶¶ 11-12; see also Affidavit of David Schultz ¶¶ 2-4; Exhibit A). Plaintiff alleges the incident resulted in personal injury, including bruises to his face, deep laceration of his lip, and swollen eyelids. (Complaint, ¶ 13).

{¶6} Defendant asserts that it is entitled to summary judgment because “Plaintiff’s complaint sets forth a claim for assault and battery and is barred by the one-year statute of limitations set forth in R.C. 2305.111(B).” (Defendant’s Motion for Summary Judgment, p. 1). The Court agrees.

{¶7} “[T]he tort of assault is defined as the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact.” *Smith v. John Deere Co.*, 83 Ohio App.3d 398, 406 (10th Dist. 1993). “A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results.” *Love v. Port Clinton*, 37 Ohio St.3d 98, 99 (1988); see also *Estill v. Waltz*, 2002-Ohio-5004, ¶ 20 (10th Dist.) (“[a] person need not intend the harmful result; to intend the offensive contact that causes the injury is sufficient”). “Contact which is offensive to a reasonable sense of personal dignity is offensive contact.” *Love* at 99.

{¶8} R.C. 2743.16(A) provides, “civil actions against the state * * * shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.” R.C. 2305.111(B) provides that “an action for assault or battery shall be brought within one year after the cause of the action accrues.” R.C. 2305.111(B) further provides that a cause of action for assault or battery accrues upon the date on which the alleged assault or battery occurred.

{¶9} Upon review, construing the evidence most strongly in favor of Plaintiff, the non-moving party, the Court finds that Plaintiff has brought an assault and battery claim, which is governed by the applicable one-year statute of limitations. Plaintiff’s allegation that on July 11, 2022, he was assaulted and repeatedly punched while “shackled and unable to defend himself” is patently an intentional harmful or offensive contact. Plaintiff was required to file such claim within the applicable one-year statute of limitations, which expired July 11, 2023. See *Brown v. Holiday Inn Express & Suites*, 2018-Ohio-3281, ¶ 10 (10th Dist.) (“When a cause of action arises from an intentional, offensive touching,

that cause of action is subject to the one-year period of limitations applicable to battery claims under R.C. 2305.111(B) regardless of the form the cause of action takes.”); see *also Love* at 98 (“[W]hen bodily injury results from an assault or battery, the one-year statute of limitations, R.C. 2305.111, is applicable.”). However, Plaintiff filed his Complaint on September 27, 2023, which is outside the applicable one-year statute of limitations. Accordingly, Defendant has met its initial burden as the moving party seeking summary judgment pursuant to Civ.R. 56(C).

{¶10} In his Response, Plaintiff asserts that “the statute of limitations for assault is one year, however, the actions of the Officers who were on duty and employed by the Defendant, explicit[ly] shows the negligent actions of the Defendant in employing and not securing the safety of their inmate.” (Plaintiff’s Response, p. 2). Plaintiff states that “[a]s for negligence, Defendant’s duty is set by Ohio Admin. Code 5120-9-01, and the Officer’s employed has no justification for attacking Plaintiff as he was restrained during transportation.” (Plaintiff’s Response, p. 3).

{¶11} “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.). However, “[a] plaintiff cannot fulfill [their] burden under Civ.R. 56 merely by asserting new claims in response to a properly supported motion for summary judgment.” *Tchankpa v. Ascena Retail Group, Inc.*, 2020-Ohio-3291, ¶ 25 (10th Dist.) quoting *Bradley v. Sprenger Enters*, 2008-Ohio-1988, ¶ 8 (9th Dist.). “This tactic, if successful, would permit every nonmoving party-plaintiff to avoid summary judgment by simply asserting different claims based on different substantive law with different material facts.” *Bradley* at ¶ 8. “A plaintiff must respond to a motion for summary judgment based on the claims already presented rather than surprise the defendant and court with new theories of recovery.” *Tchankpa* at ¶ 25, quoting *Aronhalt v. Castle*, 2012-Ohio-5666, ¶ 26 (10th Dist.).

{¶12} Furthermore, “[w]here the essential character of an alleged tort is an intentional, offensive touching, the statute of limitations for assault and battery governs even if the touching is pled as an act of negligence.” *Love*, 37 Ohio St.3d at 99. Thus, even if the Complaint could be construed as asserting a negligence claim, Plaintiff would not succeed in evading the one-year statute of limitations because, pursuant to *Love*, the

facts in the Complaint set forth an intentional, offensive touching, which amounts to battery.

{¶13} As such, Plaintiff's Response does not demonstrate the existence of a genuine issue of material fact meeting the reciprocal burden pursuant to Civ.R. 56(E) regarding the statute of limitations. Accordingly, Defendant is entitled to judgment as a matter of law and granting of summary judgment in its favor.

{¶14} Defendant met its initial burden, pursuant to Civ.R. 56(C), by showing that there are no genuine issues of material fact regarding Plaintiff failing to file his Complaint prior to the expiration of the statute of limitations for assault and battery claims. 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, the Court concludes that Plaintiff failed to demonstrate the existence of a genuine issue of material fact related to the statute of limitations expiring.

{¶15} For these 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.

LISA L. SADLER
Judge