

[Cite as *Haynes v. Ohio Dept. of Rehab. & Corr.*, 2006-Ohio-1801.]

IN THE COURT OF CLAIMS OF OHIO

www.cco.state.oh.us

SHANNON HAYNES :
 :
 Plaintiff : CASE NO. 2004-08456
 : Judge J. Craig Wright
 v. : Magistrate Steven A. Larson
 :
 OHIO DEPARTMENT OF : MAGISTRATE DECISION
 REHABILITATION AND CORRECTION :
 :
 Defendant :

: : : : : : : : : : : : : : : :

{¶ 1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability.

{¶ 2} At all times relevant hereto, plaintiff was an inmate in the custody and control of defendant pursuant to R.C. 5120.16. Plaintiff was incarcerated in unit "K1," a restricted housing block at the Southern Ohio Correctional Facility (SOCF). On April 12, 2004, plaintiff and inmate Chez Hawkins were placed in handcuffs and leg shackles and escorted to their cells by Corrections Officer (CO) Anthony Tackett. Plaintiff testified that Tackett and CO Joseph Young engaged in "horseplay" with another CO during the escort and that soon thereafter Young warned Tackett that another unidentified CO was upset with him. According to plaintiff, he was shackled to Hawkins in a sally port when the other CO threw an object towards Tackett that appeared to be a liquid-filled surgical glove. Although plaintiff believed that Tackett's uniform was wet, he testified that Tackett was not struck by the glove. Plaintiff testified that Tackett moved behind the inmates, placing them between himself and the other COs. Plaintiff alleged that he was

struck in the head by a bar of soap immediately after he heard someone say "duck." Plaintiff testified that Tackett approached him and asked him if he was alright.

{¶ 3} Several hours after he was returned to his cell, plaintiff asked to be escorted to the infirmary. Plaintiff's medical records show that he told the examining nurse that he was hit with a bar of soap and that he had an abrasion to the left "temporal area just inside [his] hairline" that was approximately one-quarter inch in size. (Plaintiff's Exhibit 5.) The nurse also noted that plaintiff did not exhibit any bruising, edema, or acute distress. Plaintiff was given Tylenol and instructed to follow up with nurses' sick call "as needed." On April 13, 2004, plaintiff filed an informal complaint.

{¶ 4} For several weeks following the incident, plaintiff occasionally returned to the infirmary for additional treatment and evaluation. During that time, plaintiff was diagnosed with "continued migraine headaches" and x-rays revealed "congenital underdevelopment" of the right frontal sinuses. Medical reports from the Corrections Medical Center and The Ohio State University Medical Center show that plaintiff was evaluated with a "CT scan" and that the treating physicians discovered no abnormalities other than an underdeveloped right frontal sinus.

{¶ 5} In order to prevail on his negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that defendant breached that duty, and that defendant's breach of duty proximately caused his injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. Ohio law imposes upon the state a duty of reasonable care and

protection of its inmates; however, this duty does not make defendant the insurer of inmate safety. *Mitchell v. Ohio Dept. of Rehab. & Corr.* (1995), 107 Ohio App.3d 231, 235. Further, under Ohio law, "[i]t is well settled that no presumption or inference of negligence arises from the bare happening of an accident or from the mere fact that an injury has been sustained.'" *Burns v. Ohio Dept. of Rehab. & Corr.* (Nov. 23, 1999), Franklin App. No. 98AP-1574. Rather, "[n]egligence is 'a fact necessary to be shown,' and it is 'incumbent on the plaintiff to show how and why an injury occurred - to develop facts from which it can be determined *** that the defendant failed to exercise due care and that such failure was a proximate cause of the injury.'" *Id.*

{¶ 6} Inmate Hawkins testified that he saw several COs "horseplaying" during the escort. According to Hawkins, the escort CO "used [the inmates] like shields" as they passed through the sally port between the housing units. Hawkins testified that he was unable to identify the COs who were involved when he was interviewed by Chris McCane, the unit manager. On cross-examination, Hawkins testified that he never discovered the name of either the escort CO or the CO who allegedly threw the soap that hit plaintiff.

{¶ 7} McCane testified that he interviewed both plaintiff and inmate Hawkins and that he escorted them through the unit in an attempt to determine whether they could recognize the COs who they believed were involved in the alleged incident. According to McCane, both inmates acknowledged that the COs who were on duty at that time were not involved in the incident. McCane testified that CO Dillow could not have thrown soap at plaintiff because at the time Dillow was assigned to a "constant" suicide watch that was not

"in the area." McCane's report to the deputy warden of operations noted that McCane interviewed all staff members who were working in both K1 and K2 and that each staff member assigned to the unit denied any knowledge of the alleged incident.

{¶ 8} Inmate Ervin Triplett was also called as a witness on behalf of plaintiff. Triplett testified that he saw plaintiff being escorted from his cell with another inmate and that after plaintiff returned he heard that plaintiff had been struck by a bar of soap. According to Triplett, he became upset when he heard Tackett laugh about plaintiff's allegations. Triplett testified that he engaged in a verbal confrontation or "blow-up" in response to Tackett's conduct. On cross-examination, Triplett conceded that he did not witness the alleged incident and that he became aware of plaintiff's allegations from conversations that he had overheard.

{¶ 9} Tackett testified that he did not recall working as an escort CO on the day in question, that he had no recollection of plaintiff's being injured in his presence, and that he would have written a report to document any incident which resulted in injury to an inmate. CO Young testified in a similar manner that on April 12, 2004, he was working at his regular post in unit K2 and that he did not observe anyone throw an object at plaintiff.

{¶ 10} Terri Wade, an assistant institutional inspector at SOCF, performed an investigation that included interviews with plaintiff, inmate Hawkins, McCane, and the examining nurse. Wade testified that he did not interview any COs because plaintiff could not identify the COs who were present at the alleged incident. In his investigation report, Wade explained that the matter was referred to security supervisors because plaintiff's allegations involved "standards of employee conduct" rather than defendant's

policy regarding an unauthorized use of force. James Goodman, the institution inspector, testified that he agreed that a use-of-force investigation was not appropriate under the facts alleged by plaintiff.

{¶ 11} The court finds that any credibility of plaintiff's version of the alleged incident was undermined by inconsistencies in his testimony. Specifically, plaintiff's testimony regarding the identities of the COs who were involved in the alleged incident was inconsistent with information contained in documents that he filed in this case. Both plaintiff's January 24, 2005, amended complaint and his May 9, 2005, motion for summary judgment referred to the unknown CO as John Doe. Although plaintiff testified that he did not actually see anyone throw the soap, he also testified that COs Tackett, Young, and Dillow were present at the time of the alleged incident. At trial, plaintiff conceded that he had not gained any additional information about the incident after the date that he filed his summary judgment motion. However, plaintiff testified that several months after the incident occurred he recognized CO Dillow as the CO who allegedly threw the soap.

{¶ 12} In considering the conflicting testimony and credibility of the witnesses, the court finds the testimony of Tackett and Young to be more credible. As discussed above, both Tackett and Young testified that they had no recollection of any incident involving plaintiff on the date in question. The testimony also established that COs were required to make a written report concerning any incident that resulted in injury to an inmate and defendant's inspector testified that no such report was written. The court is also persuaded by McCane's testimony that CO Dillow could not have been involved in the alleged incident because

he was assigned to a constant suicide watch that was located outside of the area where plaintiff alleged the incident occurred.

{¶ 13} For the foregoing reasons, the court concludes that plaintiff has failed to prove his claim by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant.

{¶ 14} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

STEVEN A. LARSON
Magistrate

Entry cc:

Shannon Haynes, #410-669
P.O. Box 45699
Lucasville, Ohio 45699

Plaintiff, Pro se

Douglas R. Folkert
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

AMR/cmd
Filed March 8, 2006
To S.C. reporter April 6, 2006