

Court of Claims  
of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
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Judge J. Craig Wright  
Magistrate Steven A. Larson

ENTRY GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

JUSTIN HAGER

Plaintiff

v.

DEPARTMENT OF REHABILITATION  
AND CORRECTION

Defendant

{¶ 1} On March 12, 2008, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. The motion is now before the court on a non-oral hearing pursuant to L.C.C.R. 4.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “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 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.” See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility (SOCF). Plaintiff alleges that on September 13, 2006, he was assaulted by a fellow inmate named Nelson. Plaintiff claims that the corrections officers (COs) on duty failed to protect him and that defendant failed to properly train and supervise its employees. Defendant argues that its employees had no notice of any impending assault on plaintiff and that plaintiff cannot establish a claim of negligent training and supervision.

{¶ 5} 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. In cases of inmate assault, a negligence action arises only when the institution has adequate notice of an impending assault. *Id.* The legal concept of notice is of two distinguishable types: actual and constructive. The distinction between actual and constructive notice is in the manner in which notice is obtained rather than in the amount of information obtained. Where the trier of fact finds from competent evidence that information was personally communicated to or received by the party the notice is actual. Constructive notice is that which the law regards as sufficient to give notice and is regarded as a substitute for actual notice. *In re Estate of Fahle* (1950), 90 Ohio App. 195, 197.

{¶ 6} In support of its motion for summary judgment, defendant submitted plaintiff's deposition testimony. Plaintiff testified in his deposition that he did not know that Nelson might try to hurt him and that he had no reason to be afraid of Nelson. Plaintiff further testified that he had never complained about Nelson to any of defendant's employees. Plaintiff did not offer any testimony during his deposition to corroborate the allegations in his complaint that defendant's employees failed to properly respond to the incident.

{¶ 7} Defendant also submitted the affidavit of CO Jerry Howe in support of its motion. Howe stated, in part:

{¶ 8} “1. I am employed by [defendant] at [SOCF] as a [CO]. I have served as a [CO] for fourteen years, and I have worked thirteen years at [SOCF].

{¶ 9} “2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit.

{¶ 10} “3. On September 13, 2006, [plaintiff] was an inmate in the custody and control of [defendant] and was incarcerated at [SOCF] in Block L-4.

{¶ 11} “4. [Plaintiff] was involved in a physical altercation with Inmate Michael Nelson, 323-024, on September 13, 2006 around 7:20 AM in Block L-4.

{¶ 12} “5. I was on duty as a [CO] in Block L-4 at the time of the incident.

{¶ 13} “\* \* \*

{¶ 14} “7. [Plaintiff] and Mr. Nelson were immediately separated following this incident. [Plaintiff] was taken to segregation in J2. Mr. Nelson was taken to the infirmary.

{¶ 15} “8. Prior to this incident on September 13, 2006, I was not aware of any information which would lead me to believe that an altercation might occur between these two inmates. I did not observe any conduct at any time between these two inmates that would indicate an altercation might occur.

{¶ 16} “9. Prior to this incident, I did not receive any complaints from either of these two inmates regarding the other. Neither inmate expressed any concern for their safety or reported any threats.

{¶ 17} “10. As an experienced [CO], I am familiar with the post orders for L-4, all [of defendant’s] security policies, and other relevant policies. No post orders were violated during this incident. Additionally, there were no violations of any [of defendant’s] security policies or other relevant policies during this incident.

{¶ 18} “11. At the time of this incident I was up to date in regards to all necessary job training and certifications.”

{¶ 19} Based upon plaintiff’s deposition testimony and Howe’s undisputed affidavit testimony, the court concludes that no reasonable trier of fact could find that defendant had either actual or constructive notice of any impending altercation between plaintiff and Nelson. Furthermore, plaintiff has presented no evidence to rebut Howe’s testimony that all post orders and relevant regulations were followed. The court finds that there are no genuine issues of material fact and that plaintiff’s claim for negligent training and supervision fails as a matter of law. Accordingly, defendant’s motion for summary judgment is hereby GRANTED and 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.

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J. CRAIG WRIGHT  
Judge

cc:

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