

Court of Claims of Ohio

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

MARK HINKSTON

Plaintiff

v.

OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-07922

Judge J. Craig Wright
Magistrate Steven A. Larson

MAGISTRATE DECISION

{¶ 1} Plaintiff brought this action alleging assault and battery. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} At the outset of the proceedings, the court GRANTED defendant's January 5, 2009 motion to quash the subpoenas that plaintiff had served upon several of defendant's employees. Furthermore, plaintiff's December 24, 2008 motion to compel is DENIED as moot inasmuch as defendant filed notice on January 5, 2009, that it provided plaintiff with the requested discovery.

{¶ 3} At all times relevant to this action, plaintiff was an inmate in the custody and control of defendant at the Southern Ohio Correctional Facility pursuant to R.C. 5120.16. Defendant's employees administered medication to plaintiff daily at around 4:00 p.m. during the afternoon "pill call." The pill call procedure for cellblock "J," where plaintiff was housed, required that a corrections officer (CO) unlock and open a hatch over the food slot on each inmate's cell door. Once the hatch was open, a nurse would

hand the inmate his medication through the food slot and then close the hatch. Finally, the CO would lock the hatch.

{¶ 4} On August 2, 2007, nurse Arjayra Treadway and CO Kevin Upton were responsible for carrying out the afternoon pill call in cellblock J. Plaintiff testified that when Treadway and Upton arrived at his cell and opened the hatch on his door, he placed his left hand through the slot and received his medication from Treadway, but that before he could remove his hand from the slot, she shut the hatch on his hand. According to Treadway and Upton, however, plaintiff's hand was out of the hatch when it closed and he gave no indication at that time that he had been injured.

{¶ 5} The gravamen of plaintiff's complaint is that Treadway intentionally shut the hatch on his hand in retaliation for several institutional complaints that plaintiff had previously filed against her. However, based upon the totality of the evidence and upon consideration of each witness' credibility, the court finds that plaintiff failed to establish that Treadway shut the hatch on his hand. To the contrary, the court concludes from the testimony of Treadway and Upton that the hatch did not shut on plaintiff's hand.

{¶ 6} Inasmuch as plaintiff's claims are predicated entirely upon his allegation that Treadway shut the hatch on his hand, the court finds that plaintiff has failed to prove his claims by a preponderance of the evidence. 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:

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Magistrate Steven A. Larson

RCV/cmd
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