

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

FRANCESCO FERRARI

Plaintiff

v.

CORRECTIONS MEDICAL CENTER

Defendant

Case No. 2008-08060-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On January 27, 2008, plaintiff, Francesco Ferrari, an inmate, was housed at defendant, Corrections Medical Center (“CMC”), where he was receiving treatment for a medical condition plaintiff described as “(an) episode of kidney complications.” Plaintiff recalled that “[a]t approximately 8:00 or 8:30 p.m. (on January 27, 2008), I notified medical staff to inform a registered nurse to come look at me (and) I waited patiently for about 1 hour and still never heard a response so I began to beat on the door.” Plaintiff related he received a response to his beating on the room door when defendant’s on duty Correctional Officer (C.O.) L. Hines “came to the door and told me to sit on the bed.” Plaintiff further related “now I was in excruciating pain so I decided to yell ‘C.O., C.O.’ and that’s when C.O. L. Hines ran to unlock the door and bursted” [sic] into the room. Plaintiff claimed C.O. Hines “was cursing and yelling” and threatened him. According to plaintiff, C.O. Hines then “kicked a wooden tray table causing it to shatter into multiple pieces striking me causing a cut on my left forearm.” Apparently, plaintiff also claimed to experience simultaneous “agonizing pain to my right abdominal area.” Plaintiff maintained C.O. Hines assisted by two other Correction Officers then

“began to pick up the broken pieces of the tray table placing it, or disposing of it” at some unknown location. After this described incident, plaintiff explained he waited for the shift change at CMC and then “requested to see the (CMC) third shift Captain,” who responded to the situation presented by taking photographs of the cut on plaintiff’s forearm, authorizing a nurse to perform a medical examination on plaintiff, and obtaining statements from three other inmate witnesses. Plaintiff noted he received medical treatment.

{¶ 2} Plaintiff contended he suffered “anguish, both agonizing, physical and mental pain” as a proximate cause of negligence on the part of CMC employee, C.O. L. Hines. Plaintiff also contended he was subjected to an “unexpected assault” by C.O. L. Hines, which “caused scarring to my left arm, and caused more damage to my abdominal and kidney condition.” Plaintiff filed this complaint seeking to recover \$2,500.00 in damages for personal injury resulting from either a negligent act or an assault. Payment of the \$25.00 filing fee was waived.

{¶ 3} On January 27, 2008, plaintiff submitted an “Informal Complaint Resolution” in which he provided a written description of the incident involving C.O. Hines. Plaintiff recalled Hines responded to his loud request for a C.O. by rushing into the room shouting at plaintiff and “spittin [sic] as he yelled.” Plaintiff wrote, “he (C.O. Hines) started to walk away and said come on, come on try me; he (C.O. Hines) was wanting to fight.” Plaintiff offered a description of his injury incident noting C.O. Hines “kicked my tray (wooden tray for drinks, etc.) and went to yelling as he kicked it, the tray broke sending it towards me, the plastic pitcher hit my arm and cut me while the piece of wood flew and hit me in my side.”

{¶ 4} On February 13, 2008, plaintiff submitted a “Notification of Grievance” stating again the C.O. Hines broke a tray table that caused him “physical harm.” Plaintiff also stated “Hines struck me (inappropriately).”

{¶ 5} On June 18, 2008, defendant’s R.N. Chief Assistant Inspector Mona Parks responded to plaintiff’s grievance appeal (copy submitted). In this response, defendant’s chief inspector acknowledged C.O. L. Hines “kicked the bedside table which caused a plastic pitcher to scratch (plaintiff’s) arm and pieces of the table to hit (plaintiff’s) side.” Additionally, in regard to plaintiff’s injuries suffered, a medical report documented and photographs depicted a “minor scrape on (plaintiff’s) left arm and a

lightly reddened area to (plaintiff's) right upper abdomen."

{¶ 6} Defendant denied any liability in this matter contending CMC has immunity under the facts presented. Defendant related, "[t]he report from the Inspector of Institutional Services, Corrections Medical Center (copy submitted) states that there is a conflict in evidence as to whether an inmate in the room broke the table before the corrections officer responded, or whether the corrections officer intentionally broke the table." Under either circumstance concerning how the table was broken, defendant argued CMC should be immune from liability for any injury caused by the broken table. Defendant asserted CMC is not responsible for the intentional acts of its employees outside the course and scope of employment. Correspondingly, defendant maintained it generally cannot be held liable for injury caused by the intentional acts of other inmates that are not foreseeable. Furthermore, defendant contended plaintiff failed to provide evidence to establish the scratch on his arm or the reddened area on his abdomen was caused by the broken table. Defendant disputed plaintiff's damage claim amount observing he "fails to justify his claim for \$2,500 in damages for a superficial scratch."

{¶ 7} Cary A. Sayers, the CMC Inspector, investigated plaintiff's injury claim concerning the allegation C.O. Hines kicked a bedside table causing a plastic water container on the table to be propelled which then struck plaintiff on his left forearm. Sayers wrote "I interviewed and or obtained statements from the four inmates in the room (including Ferrari) which indicated C/O Hines did kick the bedside table." Conversely, Sayers reported "C/O Hines maintained he found the table broken when he entered the room." Sayers did conclude the bedside table was broken and plaintiff did exhibit a noticeable injury on his arm.

{¶ 8} Defendant submitted the "medical exam report" for plaintiff compiled on January 28, 2008 in connection with the injury complaint of January 27, 2008. It was noted in this report that plaintiff complained of severe pain in his left side equating to a ten on a scale from one to ten. Apparently, plaintiff reported, "The CO kicked a table (at) me (and) it hit me in my side." Upon examination a CMC R.N. Mary Traxler found plaintiff "has a lightly reddened area to (his left upper) quadrant, but no bruising or swelling noted, with a small straight superficial scratch to (the) anterior surface of (his left) forearm with no bruising/swelling or active bleeding." Traxler assessed plaintiff's injuries as "minor" and recorded no treatment was required for any injury presented.

{¶ 9} Defendant submitted a January 27, 2008 written statement from C.O. Hines regarding his recollection of the incident forming the basis of this claim. C.O. Hines reported “[o]n the above date (and) time (9:55 p.m. January 27, 2008) I Officer Hines went into room 373 and found the bed side table broken.” Hines suggested, “[i]t is my belief that either Inmate Ferrari 559 331 or Inmate Aiken 503 658 had broken the table but both deny any knowledge.” Hines related he placed the table remnants in the “Hot trash” and notified his supervisor of the incident.

{¶ 10} Defendant submitted copies of statements from three inmates who were in room 373 on January 27, 2008 and witnessed the incident involving plaintiff and C.O. Hines. All witnesses were unidentified and shall be designated for the purposes of this decision as Inmate #1, Inmate #2, and Inmate #3. Inmate #1 provided the following recollection:

{¶ 11} “One of the inmates started to irritate an Officer and this went on back and forth. The CO was arguing with him, so the CO was going to leave. The inmate was still bad mouthing him calling him names and at that time the CO lost control and came back into the room and kicked a bed tray causing it to break. Then the inmate was scared and quieted down and the CO left.

{¶ 12} “A couple of the guys was complaining that a part of the table hit them but know one even needed a band aid.”

{¶ 13} Inmate #2 stated he “witnessed a c.o. enter my room that was shared with 4 other inmates and kick a table breaking in two with the top half hitting the inmate closest to it then flying up striking the inmate in the bed next to him; this was after the first inmate that was hit was reportedly ask(ing) for help due to severe pain in his kidney.”

{¶ 14} Inmate #3 related he saw C.O. Hines kick the table after he “came into the room screaming.” Inmate #3 claimed C.O. Hines made verbal threats to both he and plaintiff and then Hines broke the table tray by kicking it. Inmate #3 also related he saw a “cup” that had been sitting on the tray fly up and hit plaintiff.

{¶ 15} Plaintiff filed a response insisting “C/O Hines did act unprofessionally, and kicked a tray table causing harm to myself.” Plaintiff stated “C/O Hines is responsible for assaulting me.” Plaintiff expressed the opinion that Hines “should not work (for defendant) due to the fact he inflicts harm to inmates.” Plaintiff reiterated he suffered

personal injury to both his arm and abdomen. Plaintiff explained “C/O Hines has caused more damage to my kidneys by striking me.” Plaintiff again requested he be granted the full damage claim of \$2,500 and asserted defendant through its Investigation Report “shows that the assault has been acknowledged.”

{¶ 16} Initially the trier of fact finds the evidence available establishes C.O. Hines, an employee of defendant, kicked a table tray causing it to break into pieces and at least one broken piece along with a pitcher stored on the tray struck plaintiff. Defendant has contended the acts alleged on the part of C.O. Hines if proven would constitute an intentional act outside the scope of employment and consequently no responsibility for these intentional acts would rest with CMC. In the context to determine whether or not CMC should bear no responsibility for C.O. Hines act, the wrongful injury causing act, even if it is manifestly outside the scope of employment. *Elliott v. Ohio Dept. of Rehab. & Corr.* (1994), 92 Ohio App. 3d 772, 775, 637 N.E. 2d 106, citing *Thomas v. Ohio Dept. of Rehab. & Corr.* (1988), 48 Ohio App. 3d 86, 89, 548 N.E. 2d 991; and *Peppers v. Ohio Dept. of Rehab. & Corr.* (1988), 50 Ohio App. 3d 87, 90, 553 N.E. 2d 1093. It is only where the acts of state employees are motivated by actual malice or other such reasons giving rise to punitive damages that their conduct may be outside the scope of their state employment. *James H. v. Dept. of Mental Health and Mental Retardation* (1980), 1 Ohio App. 3d 60, 61, 1 OBR 6, 439 N.E. 2d 437. The act must be so divergent that it severs the employer-employee relationship. *Elliott*, at 775 citing *Thomas*, at 89, and *Peppers*, at 90.

{¶ 17} Malicious purpose encompasses exercising “malice,” which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. *Jackson v. Butler Cty. Bd. of Cty. Commrs.* (1991), 76 Ohio App. 3d 448, 453-454, 602 N.E. 2d 363, citing *Teramano v. Teramano* (1966), 6 Ohio St. 2d 117, 118, 35 O.O. 2d 144, 216 N.E. 2d 375; and *Bush v. Kelley’s Inc.* (1969), 18 Ohio St. 2d 89, 47 O.O. 2 d 238, 247 N.E. 2d 745.

{¶ 18} Furthermore, reckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent. *Hackatorn v. Preisse* (1995), 104 Ohio App.

3d 768, 771, 663 N.E. 2d 384, citing *Thompson v. McNeill* (1990), 53 Ohio St. 3d 102, 104-105, 559 N.E. 2d 705, citing 2 Restatement of the Law 2d, Torts (1965) at 587, Section 500. The term “reckless” is often used interchangeably with the word “wanton” and has also been held to be a perverse disregard of a known risk. *Jackson*, citing *Thompson*, at 104, fn. 1, and *Poe v. Hamilton* (1990), 56 Ohio App. 3d 137, 138, 565 N.E. 2d 887. As to all of the above terms, their definitions connote a mental state of greater culpability than simple carelessness or negligence. See *Jackson*, at 454.

{¶ 19} The Supreme Court of Ohio has established that an employer is liable for the tortious conduct of its employee only if the conduct is committed within the scope of employment and if the tort is intentional, the conduct giving rise to the tort must facilitate or promote the business of which the employee was engaged. *Byrd v. Faber* (1991), 57 Ohio St. 3d 56, 565 N.E. 2d 584, citing *Little Miami RR. Co. v. Wetmore* (1869), 19 Ohio St. 110, and *Taylor v. Doctors Hosp.* (1985), 21 Ohio App. 3d 154, 21 OBR 165, 486 N.E. 2d 249.

{¶ 20} Further, an intentional and willful tort committed by an employee for his own purposes constitutes a departure from the employment, so that the employer is not responsible. *Szydlowski v. Ohio Dept. of Rehab. & Corr.* (1992), 79 Ohio App. 3d 303,607 N.E. 2d 103, citing *Vrabel v. Acri* (1952), 156 Ohio St. 467, 46 O.O. 387, 103 N.E. 2d 564. The facts of this case, taken in the context of the situation, would constitute an intentional tort committed by defendant’s employee performed for his own personal purpose. Following this rationale, plaintiff cannot maintain a cause of action against defendant for the intentional malicious act of its employee.

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ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
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