

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

JAMES A. JORDAN

Plaintiff

v.

DEPARTMENT OF REHABILITATION AND CORRECTION

Defendant

Case No. 2007-08333

Judge J. Craig Wright

Magistrate Steven A. Larson

DECISION

{¶ 1} On March 17, 2009, 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(D).

{¶ 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 Lebanon Correctional Institution (LeCI) pursuant to R.C. 5120.16. Plaintiff alleges that on March 25, 2006, he was assaulted by then LeCI Corrections Officer (CO) Joshua A. Proctor. Plaintiff further alleges that Proctor was subsequently fired and convicted of a crime as a result of the assault. Plaintiff asserts that defendant owed him a duty "to ensure [CO] Proctor was properly trained and supervised." Defendant argues that plaintiff cannot establish a prima facie case of negligent training and supervision.

{¶ 5} In support of its motion, defendant filed the affidavit of Richard Timler, who states:

{¶ 6} "1. I have personal knowledge of and I am competent to testify to the facts contained in this Affidavit.

{¶ 7} "2. I am employed by [defendant] as a Lieutenant at [LeCI]. I have occupied this position for ten (10) years.

{¶ 8} "3. Through my employment with [defendant] at LeCI, I supervise correction officers. Further, I am familiar with the training [defendant's] correction officers receive. Specifically, I am aware of the training correction officers receive related to use of force on inmates.

{¶ 9} "4. I have reviewed Joshua A. Proctor's personnel, discipline and training file. Further, I have personal knowledge of Joshua A. Proctor being formerly employed by [defendant] at LeCI as a correction officer.

{¶ 10} "5. Joshua A. Proctor was a correction officer for [defendant] at LeCI from August 4, 2003 until March 31, 2006.

{¶ 11} "6. With regard to training, Joshua A. Proctor received 40 hours of correction officer training at [defendant's] Institutional Orientation at LeCI on August 4-8, 2003.

{¶ 12} "7. Joshua A. Proctor received 160 hours of correction officer training when he attended the Pre-Service training program at the Corrections Training

Academy on August 11-29, 2003. This program included specific training related to use of force on inmates as well as professionalism and ethics. Joshua A. Proctor successfully completed the Pre-Service Training Program.

{¶ 13} “8. Joshua A. Proctor also received on-the-job correction officer training relating to all [defendant’s] policies and procedures in September of 2003. Specifically, Joshua A. Proctor received on-the-job training relating to the proper use of force on inmates. Joshua A. Proctor successfully completed the on-the-job training.

{¶ 14} “9. Joshua A. Proctor received 8 hours of additional correction officer training specifically relating to the use of force on inmates on November 4, 2003.

{¶ 15} “10. Joshua A. Proctor received 8 hours of additional correction officer training on January 5, 2004.

{¶ 16} “11. Joshua A. Proctor received 8 hours of additional correctional officer training on March 19, 2004.

{¶ 17} “12. Joshua A. Proctor received 8 hours of additional correctional officer training on May 18, 2004.

{¶ 18} “13. Joshua A. Proctor received 8 hours of additional correctional officer training on September 10, 2004.

{¶ 19} “14. Joshua A. Proctor received 8 hours of additional correctional officer training on October 4, 2004.

{¶ 20} “15. Joshua A. Proctor received 8 hours of additional correctional officer training on January 13, 2005.

{¶ 21} “16. Joshua A. Proctor received 8 hours of additional correctional officer training on February 23, 2005.

{¶ 22} “17. Joshua A. Proctor received 8 hours of additional correctional officer training on April 12, 2005.

{¶ 23} “18. Based on my knowledge and experience, Mr. Proctor was properly trained to be a * * * correction officer. In addition, Mr. Proctor received all the training [defendant] requires correction officers to have.

{¶ 24} “19. Mr. Proctor was terminated as a result of his assault on [plaintiff] that occurred on March 25, 2006. Prior to this assault that occurred on March 25, 2006, Joshua A. Proctor has [sic] never used an unreasonable use of force on an inmate.

{¶ 25} “20. Based on my knowledge and experience as well as Joshua A. Proctor’s records, [defendant] had no reason to believe Joshua A. Proctor was going to use an unreasonable use of force on [plaintiff] on March 25, 2006.”

{¶ 26} In order for plaintiff to prevail on his negligent training and supervision claim, he must prove: (1) the existence of an employment relationship, (2) incompetence of the employee, (3) the employer’s actual or constructive knowledge of the employee’s incompetence, (4) an act or omission by the employee that caused damage to the plaintiff, and (5) negligent retention of the employee by the employer that proximately caused the plaintiff’s injuries. *Payton v. Receivables Outsourcing, Inc.*, 163 Ohio App.3d 722, 2005-Ohio-4978.

{¶ 27} Based upon the elements cited, the deciding factor in this case is whether or not defendant had notice of Proctor’s “incompetence” prior to the assault.

{¶ 28} 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 or assumed to have been obtained rather than in the amount of information obtained. Wherever from competent evidence the trier of the facts is entitled to hold as a conclusion of fact and not as a presumption of law that information was personally communicated to or received by a 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, paragraph two of the syllabus.

{¶ 29} The court finds that the uncontested affidavit testimony provided by defendant establishes that defendant did not have notice, actual or constructive, that Proctor would use unreasonable force against any inmate. Moreover, the affidavit testimony establishes that Proctor went through a rigorous training regimen to become a CO and then was subject to continuing on-the-job training. Accordingly, the court finds that defendant is entitled to judgment as a matter of law.

{¶ 30} Based upon the foregoing, defendant’s motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is 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.

J. CRAIG WRIGHT
Judge

cc:

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MR/cmd
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