



{¶3} Plaintiff gave the following testimony regarding the events of September 2, 1999. After a CO brought plaintiff to the facility's third floor to be "dressed out," he was then brought to a maximum security holding cell. According to plaintiff, CO Skaggs entered the cell and strip-searched him in a manner plaintiff deemed to be "sexually offensive," then placed him in leg chains, a belly chain and handcuffs. Plaintiff complained to CO Skaggs that the belly chain was too tight. He stated that CO Skaggs was in a bad mood, and that Skaggs kneed him in the groin and hit him in the face multiple times, knocking him to the ground and causing his mouth to bleed. A nurse at the medical facility examined plaintiff shortly after the incident and made a contemporaneous report.

{¶4} Plaintiff was then returned to SOCF, where he was examined by a nurse at that facility. He was interviewed by an Ohio State Highway Patrol officer on September 27, 1999.

{¶5} At the time of the incident, Daryle Skaggs had been a CO for approximately 23 years, and part of his assigned duties included transporting inmates to and from CMC. CO Skaggs gave the following testimony regarding the events of September 2, 1999. On that date, he was scheduled to transport plaintiff from CMC back to SOCF. CO Skaggs moved plaintiff from the holding cell to a single cell in order to perform a "strip shake." As CO Skaggs prepared to put handcuffs on plaintiff, plaintiff complained that the belly chain was too tight. Skaggs testified that when he ordered plaintiff to put his hands out, plaintiff clenched his fists and started to raise one hand in an upward motion as if he were going to strike him. CO Skaggs threw his left hand across both of plaintiff's hands and then struck

plaintiff once on the side of his head. Plaintiff fell to the floor and said to the officer, "okay man, you got me." CO David Shonkwiler, who was attending to another inmate in the next cell, heard the noise and came into the cell and retrieved the handcuffs.

{¶6} CO Skaggs testified that he has been trained to use the least amount of force necessary to control a situation, and that he considered striking plaintiff as the least amount of force required to prevent plaintiff from assaulting him. CO Skaggs wrote an incident report on September 2, 1999, stating that plaintiff attempted to swing at him with his fist, resulting in the officer striking plaintiff. A "use of force" investigation was conducted regarding the incident, and CO Skaggs was not disciplined as a result of the investigation.

{¶7} Ramon Perez, a nurse at CMC, examined plaintiff following the incident and filled out an emergency room report. Nurse Perez noted an abrasion to plaintiff's right upper cheek. The nurse's report did not note that plaintiff had been bleeding or that he displayed any injuries to his groin area. Nurse Perez testified that plaintiff's representation that he had been hit four or five times in the mouth and kneed in the groin was not consistent with his observations.

{¶8} Jeri Tredway, a registered nurse at SOCF, also examined plaintiff on September 2, 1999, and filled out a medical report. Plaintiff complained to Tredway that he had been hit four or five times in the face and kneed in the groin. The only visible injury noted by Nurse Tredway in her report was a one-quarter inch scratch near plaintiff's right eye.

{¶9} Plaintiff next testified regarding a second alleged incident that occurred on October 1, 1999. Plaintiff stated that after he was returned to SOCF following an interview with a trooper he was escorted by CO Jack Fannin to the K-2 area. Upon entering his cell, plaintiff was called back out by the unit manager regarding a phone call. Plaintiff testified that while he was in the hallway, CO Kayser pushed him, kicked him in the shin and poked him in the head with a walkie-talkie. Plaintiff did not receive medical treatment as a result of the incident, and he acknowledged that he was not physically injured. Plaintiff stated, however, that he was injured "mentally."

{¶10} CO John Kayser testified that he did not recall any incident with plaintiff on October 1, 1999, and he was not certain if he was even on duty that day. CO Kayser stated that no incident report was ever filed concerning the alleged assault on that date.

{¶11} CO Jack Fannin testified that he did not recall escorting plaintiff on October 1, 1999, nor did he recall any incident on that date. CO Fannin corroborated CO Kayser's testimony that no incident report was filed.

{¶12} The third alleged incident of excessive force occurred on December 15, 1999, when plaintiff was one of a number of inmates on a "rec chain" passing through an area of the prison designated as "CC-3." According to plaintiff, the rec chain passed by CO Kayser, and the officer called plaintiff a "bitch" and a "girl." Plaintiff, who stated that he and CO Kayser had in the past experienced difficulties, responded by calling CO Kayser a "bitch." One of the officers subsequently ordered plaintiff to be taken off the rec chain. Plaintiff stated that CO Kayser was standing at a distance from him at this time, and

plaintiff denied that he said anything to CO Kayser after being removed from the rec chain.

{¶13} Plaintiff testified that as CO Aaron Crabtree began escorting him back to his cell, CO Kayser came up and hit him in the jaw; that CO Kayser then grabbed him by the lower part of his back and shoved him down; and that as the officers continued to escort plaintiff to his cell, CO Kayser “sucker punched” him again in the mouth. Plaintiff was examined by a nurse, who completed a medical incident report. Plaintiff was also interviewed about the incident by Captain Gary Brown.

{¶14} Regarding the events of December 15, 1999, CO Kayser testified that as plaintiff was being escorted down the hallway by CO Crabtree, he walked toward CO Kayser “aggressively” and stated, “fuck you, Kayser, I’m going to kill you when I get out.” CO Kayser assisted CO Crabtree in escorting plaintiff back to his cell utilizing a “come-along-hold.” CO Kayser denied striking plaintiff in the face or making derogatory remarks toward the inmate. CO Kayser testified that he used the amount of force necessary to control plaintiff’s aggressive actions.

{¶15} CO Crabtree also testified regarding the events of December 15, 1999. On that date, an officer ordered him to escort plaintiff back to his cell after plaintiff began swearing and making threatening remarks toward CO Kayser. As CO Crabtree and plaintiff passed near CO Kayser in the hallway, plaintiff broke toward CO Kayser in an aggressive manner. According to CO Crabtree, plaintiff “got up” in CO Kayser’s face, and began to curse at the officer.

{¶16} CO Crabtree testified that plaintiff refused to comply with an order to return to his segregation cell. CO Kayser then assisted CO Crabtree in escorting plaintiff back to his cell. CO Kayser escorted plaintiff by placing one hand on plaintiff's handcuffs and one hand on plaintiff's shoulder. CO Crabtree stated that CO Kayser did not hit or push plaintiff; rather, the only force employed was that necessary to escort plaintiff down the hallway.

{¶17} Loretta Stone is a nurse at SOCF. On December 15, 1999, she examined plaintiff after he complained of lower back and neck pain. Nurse Stone observed two abrasions to plaintiff's right elbow that "did not appear to be fresh." The nurse noted no other injuries to plaintiff.

{¶18} At the outset, the court notes that plaintiff's complaint alleges that defendant and its employees were "negligent" in utilizing unnecessary and undue force in "attacking" plaintiff.<sup>1</sup> In addition to allegations of excessive force on the part of the two COs, the court construes plaintiff's complaint to include claims against defendant for negligent supervision or training, and negligence in failing to intervene to protect plaintiff. In order to prevail on a negligence claim, plaintiff must prove by a preponderance of the evidence that defendant owed him a duty, that it breached such duty, and that the breach

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<sup>1</sup>To the extent that plaintiff's complaint alleges that COs Skaggs and Kayser were "negligent" in utilizing unnecessary force in "attack[ing]" and "assault[ing]" him, plaintiff's cause of action with respect to the conduct of the COs is in the nature of an intentional tort. See *Williams v. Pressman* (App.1953), 69 Ohio Law Abs. 470, 472 ("An assault and battery is not negligence, for such action is intentional, while negligence connotes an unintentional act").

proximately caused plaintiff's injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Ohio law imposes a duty of reasonable care upon the state to provide for its prisoner's health, care and well-being. *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136.

{¶19} Ohio Adm.Code 5120-9-01 sets forth the circumstances in which force may be lawfully utilized by prison officials and employees in controlling inmates. Ohio Adm.Code 5120-9-01(C) states in relevant part:

{¶20} "(C) There are six general situations in which a staff member may legally use force against an inmate:

{¶21} "(1) Self-defense from an assault by an inmate;

{¶22} "\*\*\*\*

{¶23} "(3) Controlling or subduing an inmate who refuses to obey prison rules and regulations; \*\*\*\*"

{¶24} This court has previously noted that "corrections officers have a privilege to use force upon inmates under certain conditions. \*\*\*\* However, such force must be used in the performance of official duties and cannot exceed the amount of force which is reasonably necessary under the circumstances. \*\*\*\* Force may be used to control or subdue an inmate in order to enforce the institution's rules and regulations. \*\*\*\* Obviously, 'the use of force is a reality of prison life' and the precise degree of force required to respond to a given situation requires an exercise of discretion by the corrections

officer." *Mason v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc.2d 96, 101-102. (Citations omitted.)

{¶25} With respect to the September 2, 1999, incident, there is no dispute that CO Skaggs struck plaintiff. The issue, however, is whether the force utilized by the officer was in the performance of his official duties, and whether such force was excessive under the circumstances. The testimony as to this incident was conflicting.

{¶26} In considering the conflicting testimony and credibility of the witnesses, the court finds more credible the testimony of CO Skaggs that he struck plaintiff once in response to what the CO reasonably perceived to be a threat of imminent bodily harm. In the face of this threat, and the fact that CO Skaggs had little time to reflect, the officer's reaction in striking plaintiff once to end the confrontation did not constitute an unnecessary use of force. Rather, the court finds that the CO properly defended himself by utilizing a reasonable degree of force under the circumstances, and the greater weight of the evidence does not support a finding that CO Skaggs acted maliciously or wantonly. See Ohio Adm.Code 5120-9-01-(C)(1); *Martin v. Central Ohio Transit Auth.* (1990), 70 Ohio App.3d 83, 93 (the law has traditionally held that "one has a right to defend oneself by force, if that force is not excessive").

{¶27} Additionally, plaintiff's credibility regarding his version of the September 2, 1999, incident was undermined by the testimony of Nurse Perez and Nurse Tredway. Specifically, plaintiff's contention that he was hit repeatedly in the face and kneed in the

groin was not consistent with the findings in the medical reports made shortly after the incident.

{¶28} Further, while plaintiff alleged that he was handcuffed at the time CO Skaggs struck him, the deposition testimony of CO Shonkwiler corroborated CO Skaggs' testimony that plaintiff was not handcuffed. (Defendant's Exhibit I.) Specifically, CO Shonkwiler, who was attending to another inmate in the next cell at the time of the incident, testified that when he entered the cell he observed plaintiff in leg chains and a belly chain, and that he retrieved the handcuffs from the back of the cell. The court also notes that plaintiff's trial testimony was inconsistent with his earlier account of the incident, as he testified at trial that CO Skaggs strip-searched him in a "sexually offensive" manner; however, plaintiff's September 2, 1999, "kite" statement contained no such allegation.

{¶29} Based upon the evidence presented, plaintiff has failed to establish that defendant or its employees negligently utilized undue and unnecessary force against him on September 2, 1999.

{¶30} Regarding the alleged incident on October 15, 1999, the evidence is undisputed that plaintiff received no medical treatment as a result of any actions by COs on that date, and plaintiff in fact admitted that he suffered no physical injuries. Moreover, there was no evidence of any incident report involving plaintiff or CO Kayser on that date, and plaintiff presented no corroboration of the alleged incident. Rather, apart from plaintiff's own account, which the court does not find to be credible, there is no evidence

of use of excessive force by defendant's employees against plaintiff on October 15, 1999.

{¶31} Concerning the December 15, 1999, incident, the court finds that CO Kayser applied the amount of force reasonably necessary to subdue or control an inmate who refuses to obey orders. According to the testimony of CO Crabtree, plaintiff refused to comply with a direct order to go with the CO to a segregation cell. CO Crabtree corroborated CO Kayser's testimony that plaintiff made threatening remarks to CO Kayser, and that plaintiff approached him in an aggressive manner. There was evidence presented that the CO placed his hands on plaintiff's handcuffs and shoulder to control him through the hallway. The nurse who examined plaintiff noted only two abrasions to plaintiff's right elbow that did not appear to be fresh, and there were no other injuries noted such as swelling or redness on plaintiff's body, despite plaintiff's claim that he had been struck twice in the face.

{¶32} An internal investigation was conducted by Capt. Brown, whose interview notes were admitted at trial. (Plaintiff's Exhibit 8.) In the report, Capt. Brown noted that he interviewed several individuals regarding the incident, and he found that statements by COs and inmates who witnessed part of the incident corroborated the information in CO Kayser's report. Based upon the information gathered, Capt. Brown concluded that plaintiff was not telling the truth about being struck in the mouth by CO Kayser.

{¶33} In considering the conflicting testimony presented, the court finds more credible the evidence that plaintiff resisted efforts by officers to return him to his cell, while

cursing and threatening CO Kayser. The court also finds that any force by defendant's employees was applied in a good faith effort to control the inmate, rather than in a wanton or malicious effort to cause the inmate harm. Further, plaintiff's allegations of being "sucker punched" several times in the face by CO Kayser are not consistent with the medical evidence. The court therefore finds that plaintiff has failed to prove that CO Kayser utilized excessive force against him during the events of December 15, 1999.

{¶34} Because plaintiff has failed to establish that defendant's employees utilized excessive force on any of the three dates at issue, plaintiff has also failed to show that defendant was negligent in supervising or training its employees, or in failing to intervene to prevent injuries to plaintiff. Based upon the foregoing, plaintiff has failed to prove his claims of negligence by a preponderance of the evidence. Therefore, judgment is recommended in favor of defendant.

{¶35} Finally, in light of the above findings, the court concludes that the actions of CO Skaggs and CO Kayser were not outside the scope of their employment or that they acted with malicious purpose, in bad faith, or in a wanton or reckless manner. Thus, COs Skaggs and Kayser are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and the courts of common pleas do not have jurisdiction over civil actions against these individuals based upon the allegations in this case.

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STEVEN A. LARSON  
Magistrate

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Filed 10-17-2002  
To S.C. reporter 11-4-2002