

ODRC Motion For Summary Judgement

MEMORANDUM IN SUPPORT

INTRODUCTION

Plaintiff's allegations in her Complaint are not entirely precise, but she clarifies her allegations in response to Defendant's discovery requests. (Exhibit A, Jacobus Affidavit; Exhibit B, Plaintiff's Response to Defendant's Discovery Requests.) She has two allegations. First, she alleges that from 2016-2019, medical providers at the Ohio Reformatory for Women (ORW) were deliberately indifferent to her medical needs causing permanent injury to her eye. *Id.* at pp. 15, 18-21. Second, she alleges excessive use of force by Lt. Shelby Bennett on Dec 13, 2019. *Id.* at pp. 2, 7-10. She alleges this force exacerbated the preexisting injury to her right eye. *Id.* at pp. 11-12, 15.

Plaintiff's claims fail because:

1. This court does not have jurisdiction over claims of deliberate indifference to medical needs.
2. If the court interprets her claim as medical negligence, it fails on the merits because she does not have an expert.
3. The alleged excessive force on December 13, 2019 was not excessive force but an appropriate use of force in response to Plaintiff spitting on a correctional officer and threatening to spit on another.
4. Plaintiff alleges the excessive force exacerbated the previous injury to her right eye; however, she has no medical expert to prove exacerbation (and thus cannot prove injury).

False

STATEMENT OF FACTS

On December 13, 2019, Plaintiff was in a Rules Infraction Board (RIB) hearing with Lt. Shelby Bennett. (Affidavit of Lt. Bennett, Exhibit C.) Plaintiff was screaming and cussing during her hearing, so Lt. Bennett terminated the hearing due to Plaintiff's non-compliance. *Id.* Plaintiff dropped to the floor. *Id.* Lt. Bennett directed her several times to stand to her feet and walk. *Id.*

Bennett
Threatened to
Hit me at
RIB

so I
drop TO
floor scared

(1)

I was face first on²
ground cuffed in back

She finally complied and Correctional Officer Arthur Jones and Lt. Bennett escorted Plaintiff back to the Residential Treatment Unit (RTU). *Id.* all lies highlighted

Once inside the recreation room, Plaintiff was kicking and trying to pull away from her escorts and she threw her head back and spit on Officer Jones' left chest area and arm. *Id.* (Plaintiff admits she spit on Officer Jones. Exhibit B, p. 10.) In response, officers placed her on the ground.

Id. While on the ground, Plaintiff tried pulling her hands out of the handcuffs and continued to spit, including on another inmate. *Id.* Plaintiff then turned toward Lt. Bennett and pulled her head back like she was going to spit on Lt. Bennett, so Lt. Bennett deployed OC to protect herself and others from being spit on. *Id.*

I never tried to pull
STANDARD OF REVIEW out of cuffs

Summary judgment “* * * is a procedural device designed to terminate litigation at an early stage where a resolution of factual disputes is unnecessary.” *Frericks-Rich v. Zingarelli*, 94 Ohio App.3d 357, 360, 640 N.E.2d 905 (10th Dist.1994). Summary judgment is appropriate when (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to one conclusion, and that conclusion is adverse to the non-moving party. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The non-moving party is entitled to have evidence construed most strongly in its favor. *Id.* However, the non-moving party may not rest upon the mere allegations or denials of his pleadings, but his response must set forth specific facts showing that there is a genuine, material issue for trial.

Civ.R. 56(E); *Dresher* at 293. I was thrown on ground

face first with my hands were already
cuffed in back the entire time
I DID NOT spit on an inmate
(whats her name?) DID NOT spit on inmate
DID NOT continue TO spit
DID NOT turn toward Bennet and
pull ~~her~~ head TO spit on her

Face first
hand cuffed
in back
flat

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IN THE COURT OF CLAIMS OF OHIO

TERI GARKO

Plaintiff

v.

OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION

Defendant

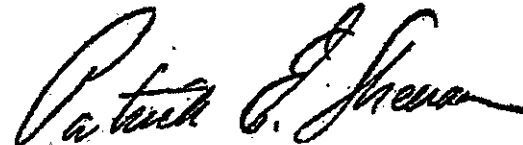
Case No. 2020-00369JD

Judge Patrick E. Sheeran
Magistrate Holly True Shaver

JUDGMENT ENTRY

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. All other pending motions are DENIED as moot. All previously scheduled events are hereby VACATED. 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.

attorney
Buchanan
set this
all up



PATRICK E. SHEERAN
Judge

cc:

TERI GARKO
#W84140
Ohio Reformatory for Women
1479 Collins Ave
Marysville, OH 43040

Lauren D. Emery
Jeanna V. Jacobus
Lindsey M. Grant
Assistant Attorneys General
30 East Broad Street, 16th Floor
Columbus, OH 43215

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The ODRC
Attorney Sean Buchanan
paid \$200,000
to cover my entire case

JOURNALIZED