

IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE  
WESTERN DIVISION

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THOMAS HALE,

Claimant

v.

Claim Number T20121227

STATE OF TENNESSEE,

Defendant

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JUDGMENT

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**THIS MATTER CAME TO BE HEARD** on March 27, 2014, before Nancy C. Miller-Herron, Commissioner of Claims for the Western Grand Division of the State of Tennessee. Claimant appeared *pro se*. Lee Pope, Esq., appeared for the State of Tennessee.

At the beginning of the trial Claimant, who is transgender, asked to be referred to during the proceedings as Ms. Hale or Siti Dara Hale.

This matter comes before the Commission pursuant to Tennessee Code Ann. § 9-8-307 (a)(1)(E), for negligent care, custody and control of persons. It arises out of an alleged assault on the Claimant by another prisoner.

Based upon the evidence presented at trial the testimony of the parties, the statements of counsel and the record as a whole, the Commission **ORDERS** that this Claim be **DISMISSED**.

I.

**FACT TESTIMONY**

On November 7, 2011, Claimant was incarcerated at Northwest Tennessee Correctional Complex, hereinafter referred to as Northwest, and housed in segregation in a cell with inmate Andrew Johnson. Although she had not mentioned it in her claim,<sup>1</sup> Claimant stated that earlier in the day on November 7, 2011, Johnson put a towel around her neck and twisted it. (Tr., p. 18, lines 18-20) The gravamen of the amended complaint filed by Claimant was that Inmate Johnson hit her across the shoulder and scratched her neck. (Amended Complaint)

Claimant testified that on November 7, 2011, she told a correctional officer that she needed to meet with the corporal. But, Claimant testified, the corporal “wouldn’t let me speak with him unless I spoke in front of him with Andrew there.” (Tr., p. 26, lines 24-25)

At some point the officer came back and asked Ms. Hale and Andrew Johnson if they wanted to take showers. Hale said she said no, but Johnson said yes. (Tr., p. 27, lines 16-22) Hale said while Johnson was out of the cell taking a shower, she told the correctional officer, “You need to get the sergeant or the corporal in here because he is trying to kill me.” (Tr., p. 28, lines 7-9) Hale said the officer responded, “Okay, wait a minute.” (Tr., p. 28, lines 9-10)

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<sup>1</sup> Hale testified that she turned it into Counselor Hayes and filed a grievance on it. However, the list of grievances filed by Claimant during this time period did not include such a grievance. (Tr. Ex. A)

Hale insisted when the officer came back, he had Johnson with him. Hale said when the officer was putting Johnson back in the cell, she [Hale] tried to force herself out of the cell by pushing the cell door open. (Tr., p. 28, lines 11-25) Hale explained she got hurt while trying to get out of the cell. Hale testified that when she tried to get out of the cell, Mr. Johnson grabbed her. (Tr., p. 31, lines 15-17)

Hale testified that she wasn't allowed to refuse the cell assignment with Johnson. "They told me he wasn't going anywhere. They said they had nowhere for us to go; nowhere for us to go." (Tr., p. 33, lines 22-25)

Hale testified that she had filed other claims with the Claims Commission alleging that cellmates were going to kill her. (Tr., p. 34, line 18- p. 37, line 12) Hale was asked on cross-examination about whether she was transferred to DeBerry for mental health observation because she was "having issues of increased aggression, irritability and the delusion that you were Lewis Pate and people were out to harm [her]." (Tr., p. 37, lines 21-25) Hale responded that she was told by the psychiatrist "that's who I am and that's an alias that I use, that is the voice I hear." (Tr., p. 38, lines 1-3) Hale also insisted she was in DeBerry Special Needs facility "illegally for no reason." (Tr., p. 39, line 23)

When asked what kind of damages she suffered as a result of Johnson's assault, Hale replied: Psychological. I suffered the scratch [on her neck], I wet on myself, I had to sleep in the floor." (Tr., p. 29, lines 2-4)

Andrew Johnson testified by video conference in the trial of this matter. Johnson testified that on November 7, 2011, he was returning from the shower

when Ms. Hale kicked the door of their cell and tried to get out. (Tr., p. 47, lines 12-14) Johnson further testified that as he entered the cell Claimant brushed up against him. Johnson said he didn't know what Hale was going to do, so he grabbed her. The officer then told him to let Hale go. Johnson insisted, "the man wasn't hurt any." (Tr., p. 48, line 12) Johnson further testified that he did not receive a disciplinary write-up as a result of the incident. (Tr., p. 48, lines 13-16)

Johnson insisted that Claimant did leave the cell to go get a shower. (Tr., p. 49, lines 20-21) Johnson said when Claimant left to go to the shower she could have told someone that she didn't want to come back to the cell. (Tr., p.50, lines 1-3)

Johnson testified: [A]in't nobody ever threatened this man while we was in the same cell together." (Tr., p. 54, lines 6-8)

## II.

### LEGAL ANALYSIS

The Claims Commission statute provides that the State's liability is to be predicated upon "traditional tort concepts of duty and the reasonably prudent person's standard of care." Tenn. Code Ann. § 9-8-307(c) (Supp. 2004). Thus, the State's liability standard under Tenn. Code Ann. § 9-8-307(a)(1)(E) (Supp. 2004) is a simple negligence standards.

To prevail on a negligence claim, a Claimant must prove, by a preponderance of the evidence, that the State owed a duty to the Claimant, that the State breached that duty, that the Claimant was injured and that the State's breach was the proximate cause of the injury. *White v. Lawrence*, 975 S.W.2d

525, 529 (Tenn. 1998); **Staples v. CBL & Associates, Inc.**, 15 S.W.3d 83 (Tenn. 2000)

Duty, the first element of the claim, is the legal obligation the State owes to the Claimant to conform to the reasonable person standard of care in order to protect against unreasonable risks of harm. **McCall v. Wilder**, 913 S.W.2d 150, 153 (Tenn. 1995) The existence and scope of the duty of the State in a particular case rests on all the relevant circumstances, including the foreseeability of harm to the claimants. **Pittman v. Upjohn Co.**, 890 S.W.2d 425, 433 (Tenn. 1994)

It is clear that the State of Tennessee owed a duty of reasonable care to Ms. Hale as her custodian through the Tennessee Department of Corrections.

With regard to prison assaults, the question of liability often turns on the foreseeability of harm. The general rule is that penal institutions like Northwest have a duty to prevent foreseeable inmate on inmate attacks. A breach occurs when prison officials knew of or had reason to anticipate an attack but did not use reasonable care to prevent it.

In the case at bar, it is not even clear that what happened on November 7, 2011 was an assault on Ms. Hale by Mr. Johnson. It may have been nothing more than an attempt by Johnson to protect himself as Hale was trying to get out of the cell.

Moreover, Claimant simply has not proven any damages in this case. The prison medical records contain no indication that Claimant sought medical care for a scratch or an assault in November, 2011. Nor do the prison medical records

establish a connection between the alleged assault and Ms. Hale's transfer to DeBerry Special Needs Institution.

**III.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause, the arguments of counsel, and, indeed, the entire record as a whole.

After carefully weighing the credibility of each of the witnesses, the Commission **FINDS** that Claimant did not prove by a preponderance of the evidence that prison officials had reason to anticipate an attack on her by Mr. Johnson. The Commission further **FINDS** that Claimant failed to establish that the State was negligent in her care, custody and control under Tenn. Code Ann. § 9-8-307(a)(1)(E) (Supp. 2004). Finally, the Commission **FINDS** that Claimant has not proven any damages in this cause.

Accordingly, judgment must be entered for Defendant and this matter **DISMISSED.**

**IT IS SO ORDERED.**

  
**NANCY C. MILLER-HERRON,**  
**COMMISSIONER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was mailed by first class U.S. mail, postage prepaid, to:

Mr. Thomas Hale, #130892  
a/k/a Ms. Siti Dara Hale  
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Mr. Lee Pope, Esq.  
Assistant Attorney General  
Civil Rights and Claims Division  
P.O. Box 20207  
Nashville, TN 37202

This the 8<sup>th</sup> day of May, 2014



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Paula Swanson, CLERK