

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

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CLAIMS COMMISSION
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PASHAY COVINGTON,)
) Claim No. T20130247
Plaintiff,)
)
Vs.)
)
STATE OF TENNESSEE)
) Regular Docket
Defendant)

**SUMMARY JUDGMENT FOR THE DEFENDANT AND
DISMISSAL OF CLAIM**

This claim came to be heard before Robert N. Hibbett, Commissioner and judge of the facts and law. The Claimant seeks damages arising from an inmate assault that occurred in prison due to the State's alleged negligence. Brent O. Horst, Esq., represents the Claimant. Senior Counsel and Assistant Attorney General Pam Lorch represents the State.

The State has filed a Motion for Summary Judgment alleging that based on the undisputed facts, the inmate assault upon the Claimant was unforeseeable and the State had no notice of the attack. The Claimant has filed a response and statement of material facts. A telephone hearing and oral argument on the Motion for Summary Judgment was held on May 5, 2014.

SUMMARY JUDGMENT STANDARD

Rule 56 of the Tennessee Rules of Civil Procedure provides that summary judgment

shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue to any material fact and that the moving party is entitled to a judgment as a matter of law.

Statements of Undisputed Material Facts

The parties have agreed that the following statements are undisputed:

Claimant was housed at the Turney Center Industrial Complex (TCIX) for one week before the incident on May 4, 2012. (Claimant Depo. p. 12, Lines 18-19; p. 34, Lines 13-22). Claimant was housed in a minimum security housing unit at TCIX on May 4, 2012. (Request No. 11, Requests for Admissions; Claimant Depo. p. 30, Lines 6-10; p. 34- 35, Lines 25 & 1). On May 4, 2012, Claimant was assaulted when he walked in on inmate Jonathan Martin being assaulted by inmates Javoris Sparkman and Adam Dansby-Frazier. (Request No. 2, Requests for Admissions; Claimant Depo. p. 27, Lines 6-10). Claimant did not know, nor had reason to know, that he would be assaulted on May 4, 2012. (Request No. 3, Requests for Admissions;

Claimant Depo. p. 27, Lines 11-15). Claimant did not expect to be assaulted by his assailants on May 4, 2012. (Request No. 6, Requests for Admissions; Claimant Depo. p. 27-28, Lines 24-25 & 1-2). Claimant did not know the names of the individuals that assaulted him on May 4, 2012, because he had only been housed at TCIX for a week prior to the incident on May 4, 2012. (Claimant Depo. p. 12, Lines 18-19). Claimant did not file any grievances or complaints regarding the inmates that assaulted him prior to the incident on May 4, 2012, because he did not know he would be assaulted. (Claimant Depo. p. 16, Lines 5-11). Claimant did not have any prior incidents, confrontations or altercations with the inmates that assaulted him on May 4, 2012. (Claimant Depo. p. 16, Lines 12-14, 17-25; p. 27, Lines 16-19; Request No. 4, Requests for Admissions). Claimant did not file any complaints or grievances or otherwise notify any officers or officials of any threats to his safety. (Claimant Depo. p. 17, Lines 5-12). Claimant never complained to officials at TCIX about his assailants being a threat to his safety. (Request No. 8, Requests for Admissions; Claimant Depo. p. 28, Lines 7- 11). Claimant was not previously threatened by the inmates that assaulted him on May 4, 2012. (Claimant Depo. p. 17, Lines

13-15;p. 39). Claimant never had any problems with the inmates that assaulted him prior to May 4, 2012. (Claimant Depo. p. 29, Lines 23-25; p. 39). Claimant did not consider his assailants to be a threat to his safety. (Request No. 9, Requests for Admissions; Claimant Depo. p. 28, Lines 12-15). Claimant did not foresee being assaulted on May 4, 2012, when he went into inmate Jonathan Martin's cell. (Claimant Depo. p. 29, Lines 16-19). Claimant had no reason to believe he would be assaulted on May 4, 2012, when he entered inmate Martin's cell. (Claimant Depo. p. 29, Lines 20-22). Claimant had no way of knowing Mr. Martin was being attacked in his cell on May 4, 2012. (Claimant Depo. p. 30, Lines 1-3). Claimant had no previous altercations or incidents with the inmates that assaulted him on May 4, 2012. (Claimant Depo. p. 17-18, Lines 16-25 & 1; p. 39, Lines 10-12). Claimant did not know the inmates that assaulted him on May 4, 2012, prior to the incident. (Claimant Depo. p. 25, Lines 10-16). Claimant was assaulted by inmates Javoris Sparkman and Adam Dansby-Frazier. (Claimant Depo. p. 26, Lines 11-17; Request No. 1, Requests for Admissions).

The Claimant has also proffered the following statements as being material facts to which the State objects. However, the Tribunal shall consider

the statements as factual for purposes of ruling on the Motion for Summary Judgment:

There was an attack on another inmate inside Claimant's cell before the Claimant arrived at his Cell and the attack on the other inmate lasted up to 10 minutes. (Claimant Depo. p. 44, Lines 6-9). The attackers were allowed to go to the Claimant's cell in violation of prison policy that prohibited inmates from visiting another inmate's cell. (Claimant Depo. p. 46-47, Lines 23-25 & 1-3). There was only one officer assigned to supervise an entire pod of inmates, which included 120 inmates. (Claimant Depo. p. 48 Lines 4-19; p. 49-50, L.23-25 & 1-9).The Claimant was stabbed with a broomstick and hospitalized in critical condition. (Claimant Depo. p. 14, Lines 1-18, Excerpt from hospital records attached).

CONCLUSIONS OF LAW

The Claims Commission exercises jurisdiction over this claim based on the negligent care, custody and control of persons in state custody pursuant to Tenn. Code Ann. 9-8-307(a)(1)(E). Tort claims against the State are governed by the law pertaining to negligence actions:

A claim for negligence requires proof of the following elements: (1) a duty of care owed by defendant to a claimant; (2) conduct by the defendant falling below the standard of care amount to a breach of the duty; (3) an injury or loss; (4) causation in fact; and (5) proximate causation. *Rice v. Sabir*, 979 S.W.2d 305, 308 (Tenn. 1998).

Failure to establish any one of these elements results in the dismissal of the case.

Duty is the legal obligation owed by the defendant to a claimant to conform to a reasonable person's standard of care for the protection against unreasonable risk of harm. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995). A risk is unreasonable and gives rise to a duty to act with due care if the foreseeable probability and gravity of harm posed by defendant's conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm. *Id.* To determine whether a risk is unreasonable, one must consider: (1) the foreseeable probability of the harm of injury occurring; (2) the possible magnitude of the potential harm or injury; (3) the importance or social value of the activity engaged in by the defendant; (4) the usefulness of the conduct to defendant; (5) the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct; and (6) the relative safety of alternative conduct. *Id.*

Establishing duty and breach of that duty alone does not entitle a claimant to

recovery for injuries and damages. The mere occurrence of an injury does not prove negligence and a negligent act does not entail liability. *Doe v. Linder Const. Co.*, 845 S.W.2d 173, 181 (Tenn. 1992). The claimant must still establish the requisite causal connection between the defendant's conduct and the claimant's injury. *Id.*

The Claimant argues that summary judgment, based on the facts and law, should be denied because the State's delayed response to the attack on the cell mate was the actual and proximate cause of Claimant's injuries. Furthermore, that the assault on the Claimant was a foreseeable event because inmate violence is a likely occurrence in any State penal facility. The Claimant has not submitted any Tennessee statute or precedential case law in support of his position. The Claims Commission is a statutory tribunal (court) authorized to adjudicate enumerated monetary claims against the state. The Tribunal does not make law, it must follow the law on every point as enacted by the General Assembly and interpreted by our appellate courts.

The State argues that the claim fails because prison officials had no prior notice of the assault. The Tribunal will discuss the applicable case law and what the Claimant must prove to prevail in the instant claim.

In *Kinningham v. State of Tenn.*, 2001 WL 1089501 (Tenn. Ct. App. Sept. 18, 2001), a prisoner sued the State for alleged negligent custody or control of his person after he was attacked by another inmate. The Court of Appeals stated as follows:

In this case, there has been no showing that the State breached its duty to exercise ordinary and reasonable care. As established in *Cockrum v. State*, 843 S.W.2d 433, 436 (Tenn. App. 1992), prison officials are not insurers of a prisoner's safety. In a case such as this, the conduct of the prison officials must be commensurate with the prisoner's known condition.

Another inmate assault case, *Gillespie v. Metropolitan Govt.*, 1992 WL 9441 (Tenn. Ct. App. Jan. 24, 1992), is very probative when considering the facts of the instant claim. Inmate Charles Stevens assaulted inmate Wesley Gillespie after a fight over the alleged theft of socks. Another inmate apparently accused Gillespie of stealing his socks. Upon hearing this accusation, Gillespie had an altercation with inmate Stevens. Inmate Stevens left the area after being subdued by other inmates, but returned later, picked up a milk crate and struck inmate Gillespie in the face with it. *Id.* at *1.

Inmate Gillespie sued the Metropolitan Government for his injuries. Metro filed a motion for summary judgment, which was granted, and inmate

Gillespie appealed to the Court of Appeals of Tennessee, Middle Section. Inmate Gillespie alleged that he told guards that he was having trouble with an inmate and wanted to be moved away from him. *Id.* at *2. The court acknowledged a dispute as to this testimony but nevertheless, held that merely asking to be moved for vague and unspecified reasons was not sufficient to put Metro on notice that Mr. Stevens was a physical threat to inmate Gillespie. *Gillespie* at *3. In the instant case, unlike in *Gillespie*, there is no allegation that prison staff was forewarned of the attack by the inmates upon the Claimant.

The Court in *Gillespie* further held that penal institutions are not insurers of an inmate's safety in regard to inmate-on-inmate assaults.

The general rule is that penal institutions have a duty to use reasonable and ordinary care to prevent foreseeable attacks on inmates by other inmates. A breach occurs when the institution's authorities knew of or had reason to anticipate an attack and did not use reasonable care to prevent it. *Gillespie* at *1.

Finally, the Tennessee Supreme Court has adopted the same analysis as the Court of Appeals in inmate assault cases. As a general rule, the prison must have prior notice of an attack in order to be held liable. In determining what constitutes prior notice, the Court opined:

For purposes of assessing a penal institution's liability, prior notice can be actual or constructive. Such notice may arise from knowledge

of specific threats to a specific inmate or group of inmates from another individual or group of individuals, or an inmate's prior institutional history of violent—including self-destructive or suicidal—behavior, or any other specific information or conditions that would provide prison officials with actual or constructive notice of foreseeable harm to specific individuals or groups of persons.

King v. Anderson Cnty., 419 S.W.3d 232, 249 (Tenn. 2013)

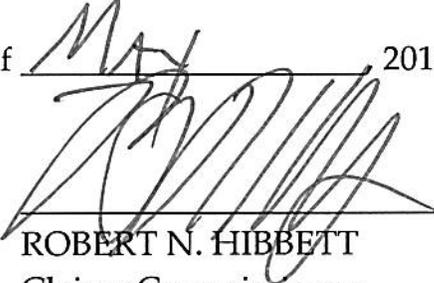
In the instant case, there was no prior notice to the prison staff of the attack on Mr. Covington, either actual or constructive. Additionally, according to the undisputed material facts, Mr. Covington did not foresee his assault, did not consider his assailants as a threat, and did not know his assailants.

While the injuries sustained by the Claimant are most unfortunate, the assault simply was not foreseeable and the claim must be dismissed on this basis.

IT IS, THEREFORE, ORDERED:

1. That Summary Judgment is granted to the State of Tennessee.
2. That the claim is respectfully dismissed.
3. That this is a final judgment.

ENTER this 21 day of May, 2015.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court of Record

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 26th of May, 2015.



PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission