



SIXTH JUDICIAL DISTRICT

UMATILLA COUNTY CIRCUIT COURT
216 SE 4th Street
Pendleton, Oregon 97801
541-278-0341

FILED
UMATILLA COUNTY
CIRCUIT COURT
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TRIAL COURT ADMINISTRATOR
BY: *[Signature]*

October 22, 2024

Letter Opinion

Re: Richard Michael Fay vs David Pedro Supt EOCI Case No. 23CV11533

On June 2, 2022, the Plaintiff in this case was the victim of a brutal attack by other AIC's in his unit, which resulted in the following injuries as summarized by Dr. Baskerville who testified at length on the consequences of this attack to the Plaintiff. Included in his injuries are the following:

1. Traumatic Brain Injury.
2. Rib Fractures.
3. Lumbar Radiculopathies, and Cauda Equina.
4. Chronic Pain.
5. Prostatic Hypertrophy

Plaintiff asserted at trial, seven distinct claims for relief arising primarily from these injuries as follows:

FIRST CLAIM (Counts 1 & 2):

Cruel and unusual punishment and unnecessary rigor in Defendant's provocation of violence against Plaintiff, and failure to protect Plaintiff from subsequent harm.

SECOND CLAIM (Counts 1 & 2):

Cruel and unusual punishment and unnecessary rigor in retaliating against Plaintiff for conviction type and for exercising his right to legal and administrative redress.

THIRD CLAIM (Counts 1 & 2):

Cruel and unusual punishment and unnecessary rigor in failure to provide adequate treatment and diagnosis of Plaintiff's serious medical condition of lumbar radiculopathy.

FOURTH CLAIM (Counts 1 & 2):

Cruel and unusual punishment and unnecessary rigor in failure to provide adequate treatment and diagnosis of Plaintiff's serious medical condition of rib fractures.

FIFTH CLAIM (Counts 1 & 2):

Cruel and unusual punishment and unnecessary rigor in failure to provide adequate treatment and diagnosis of plaintiff's serious medical condition of chronic pain.

SIXTH CLAIM (Counts 1 & 2):

Cruel and Unusual punishment and unnecessary rigor in failure to provide adequate treatment and diagnosis of Plaintiff's serious medical condition of chronic pain.

SEVENTH CLAIM (Counts 1 & 2):

Cruel and Unusual Punishment and unnecessary rigor in failure to provide adequate treatment and diagnosis of plaintiff's serious medical condition of prostatic hypertrophy.

The evidence in this case establishes that the attack on Plaintiff which resulted in these extreme and debilitating injuries, followed an announcement on the Unit by Officer Morfin on April 18, 2022, as follows: "If you are not a "Solid Dude" leave your doors open". The use of this term "Solid Dude" within the prison system, according to the AIC's who testified, and in keeping with Officer Morfin's own testimony, is a reference to sex offenders who are typically targeted by other inmates within the prison pecking order. The significance of this announcement by a guard, was perceived on the Unit as an invitation for "Solid Dudes" to go after known sex offenders within the unit. According to the testimony of the AIC's who participated in the hearing, within a couple of days of this announcement, the climate of the unit became hostile to known sex offenders, aggressive acts increased, and several men were targeted and beaten, including the extremely damaging, brutal, and violent assault against Plaintiff. Although Officer Morfin attempted to explain his conduct in benign terms, that testimony was contradictory and nonsensical, and the Court found him not to be credible in his assertion that he did not intend the statement as an invitation to violence against sex offenders. Given that this terminology is well known in the inmate community, it is inconceivable that after 18 years as a prison guard Officer Morfin did not recognize the import of that statement. His testimony was that he was trying to say: "If you are not a nice guy, close your door". The Court finds that explanation to be nonsensical, and a failed attempt to explain his announcement in a manner that contradicts the clear import of what was actually said. His testimony was not credible.

It appears that Officer Morfin has continued his duties in the prison without consequence, despite the testimony of several witnesses that he has a habit of determining the conviction status of sex offenders on the unit and sharing that information with other AIC's. Much of that testimony cannot be confirmed, and some is contradicted by other evidence, but the Court found the testimony of AIC Scott Wayne Chandler, who is not a convicted sex offender and who was not concerned about being targeted on the Unit for that reason. He testified that shortly after the announcement was made, he went to Officer Morfin and asked him to clarify what he was saying. According to Chandler, Morfin stated that he wanted everyone to know who the sex offenders were. He had no other comment except to say that he does this all the time. He makes known who's a sex offender and who is not. AIC Chandler also noted that after the announcements most sex offenders left their doors open as directed, and that it made sex offender's targets on the unit. He stated that before this occurred "mostly everybody got along". He stated that it was a "mellow unit", and that it had been for 3-4 months prior. After the announcement sex offenders started being targeted in their cells. They were coming out with bumps and bruises, cuts. It is concerning to the Court that there is no evidence presented by the State on behalf of ODOC, to establish that any serious action was taken to intervene or remediate this issue, and no known sanctions against Morfin despite a slew of inmate complaints.

Despite these concerns, and the clear nexus between the actions of Officer Morfin and the injuries sustained by the Plaintiff, the Plaintiff testified that at the time of the hearing he had been moved to a different unit more than a year prior. He stated that he had not experienced any assaultive behaviors in this new unit and that he felt safe in his current placement. Plaintiff testified that he is “lucky” in his current housing assignment and has not made any allegations or suggested that he does not feel safe in his current housing. For this reason, the Court feels it has no alternative but to dismiss Plaintiff’s First and Second claims for relief, as there is no present and ongoing risk. Plaintiff has been safely placed and by his testimony the risk of harm has been ameliorated since his move. The Court finds that Plaintiff has not been subject to “ongoing and periodic assaults”. The court does find, based on a preponderous of the evidence presented at trial, that Plaintiff’s injuries were in fact, the result of intentional conduct by a prison guard.

Dr. Mark Baskerville was the expert witness called by the Plaintiff. He provided the medical testimony that the court finds most credible and informed in this case. Dr. Baskerville concluded that the attack of June 2, 2022, caused a variety of serious medical issues for the Plaintiff including persistent neurological symptoms and cognitive deficits like memory loss and brain fog, chronic back and rib pain from multiple untreated fractures, spinal cord injury with lumbar radiculopathies with a history of cauda equina aggravated by the assault, prostatic hypertrophy, and symptoms associated with PTSD. And he concluded that Plaintiff has not been treated within the standard of care due in the medical community.

Dr. Baskerville also considered the pain reported by Plaintiff and documented in his medical records and testified that Defendant’s failure to provide adequate pain control for Plaintiff’s chronic, neurologic, and acute injuries does not meet the standard of care. According to Dr. Baskerville, the first line treatment for Plaintiff’s spinal cord injury with lumbar radiculopathies is gabapentin or gabapentoids. He noted that the medication currently being provided for Plaintiff’s pain is Keppra, a drug generally known in the medical community to be ineffective for neurological pain. Dr Baskerville testified that Plaintiff’s neurological pain is substantially undertreated causing Plaintiff to suffer significant pain that could be treated by an appropriate pain medication appropriate to this kind of neurological pain. Plaintiff should be seen by a board-certified Physiatrist or other independent and qualified pain management specialist, whose recommendations Defendant should be required to follow. Dr. Baskerville also testified that the pain Plaintiff suffers from the fractured ribs will likely require surgery to repair. He recommended referral to a thoracic surgeon. The Defendant should not have the latitude to decline following the recommendations of the Thoracic surgeon.

Dr Baskerville also noted that early on, as documented in his medical records after the attack, Plaintiff showed symptoms of cognitive deficits and Traumatic Brain Injury that are also due to the assault. He was diagnosed with a concussion at the time, which is a brain injury. He never had any medical interventions for these symptoms, and he continues to complain of memory and other functional issues although pain issues typically are in the forefront of his expressed concerns. It is the treating physicians who need to identify and diagnose for the appropriate interventions, and just because a patient doesn’t say anything, it is the Dr’s responsibility based on the nature of the injuries to make inquiry and identify the areas that need medical intervention whether or not the patient can recognize that on his own. It does not appear

that the ODOC medical team has demonstrated that kind of focused inquiry in assessing this patient.

The court finds that ODOC has unconstitutionally inflicted cruel and unusual punishment and unnecessary rigor by failing to provide adequate medical treatment of Plaintiff's serious medical needs in the areas identified by Dr. Baskerville as previously outlined, including the serious condition of lumbar radiculopathy. I do note that the court was advised in Defendant's closing argument, that Mr. Fay had been approved for surgery for his Lumbar Radiculopathy. Mr. Kelly referenced the Supplemental Declaration of Lisa Hitchcock in so advising the court, Ex 114, Pg 6. Ms. Hitchcock's Declaration and the attachments were filed with the court March 14, 2024, the last day of trial. Although this appears to be headway on the issue of lumbar radiculopathy, Plaintiffs third claim also includes allegations re: symptoms of cauda equina syndrome, which do not appear to be addressed in the approved surgical intervention. That is significant and could also involve the issues of loss of bowel control, which is a symptom of cauda equina syndrome according to Dr. Baskerville and is encompassed in Plaintiffs Third Claim for relief. The surgery alone does not fully resolve the Third Claim for Relief. The Court finds in favor of the Plaintiff on claims 3, 4, 5, 6, and 7.

This court orders the following:

1. Consultation with a neuropsychologist to evaluate post-concussive symptoms with follow up and implementation of treatment recommendations including PTSD symptoms.
2. Consultation with a urologist to confirm whether or not his urinary retention stems for prostatic hypertrophy (and not a neurological source) with follow up and implementation of treatment recommendations.
3. A thoracic CT scan to evaluate his rib fractures including evaluation of whether plaintiff needs interventions or rib plating by a thoracic surgeon, and implementation of treatment recommendations.
4. A chronic pain assessment and recommendations from a qualified Psychiatrist or board-certified pain management specialist and implementation of treatment recommendations.
5. A consultation with a colorectal surgeon to evaluate Plaintiff's rectal incontinence with follow up and implementation of treatment recommendations.
6. The court will retain jurisdiction to oversee the progress with meeting the above requirements, and to insure ODOC proceeds with or without TLC committee approval.
7. Plaintiff is awarded costs and fees.

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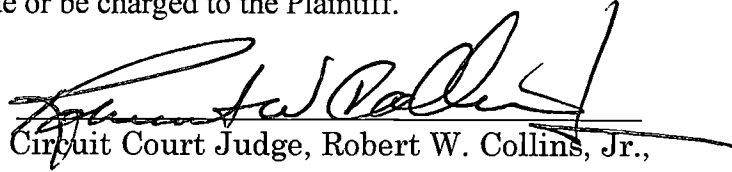
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8. Defendant is ordered to continue to provide discovery information relative to Plaintiff and his medical conditions and interventions or treatment until all sanctions required above are implemented and continuing jurisdiction is terminated by the court.
9. Any and all treatment co-pays for the interventions listed above shall be borne by the Defendant, and not accrue or be charged to the Plaintiff.

10/22/2024
Date


Circuit Court Judge, Robert W. Collins, Jr.,